



Administrative Decisions Tribunal

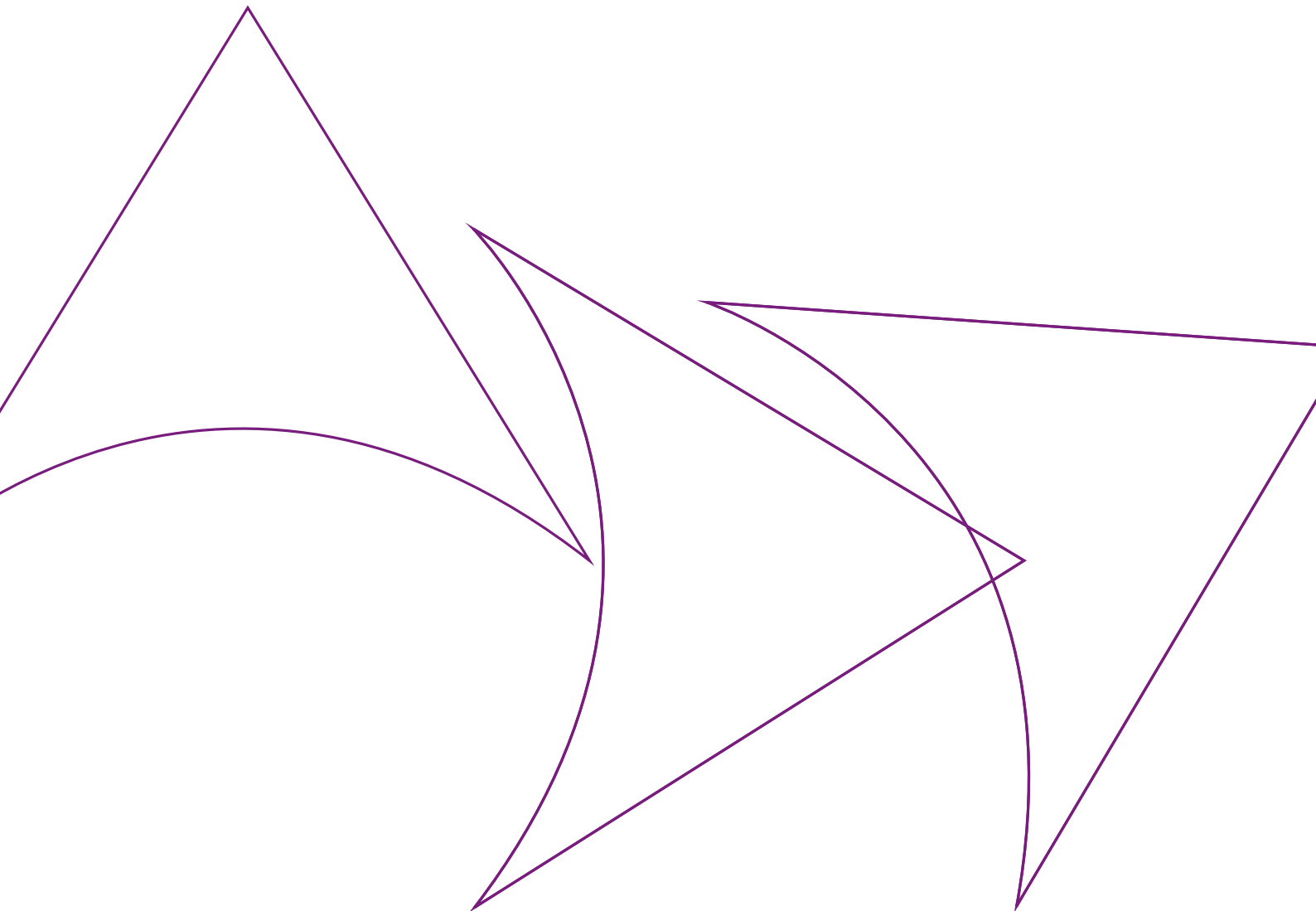
New South Wales

Annual Report
2006-2007



Administrative Decisions Tribunal

New South Wales





Administrative Decisions Tribunal

New South Wales

The Hon. John Hatzistergos MLC
Attorney General and Minister for Justice
Parliament House
SYDNEY NSW 2000

Dear Attorney,

In accordance with section 26 of the *Administrative Decisions Tribunal Act 1997*,
I am pleased to present the ninth annual report of the Tribunal, covering the period
1 July 2006 to 30 June 2007.

Yours sincerely,

Judge KEVIN O'CONNOR AM
President
30 October 2007

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The Year in Review



President
Kevin O'Connor

Litigants running their own cases are commonplace in tribunals. They are much rarer in the court system. An increasingly difficult management problem for tribunals is the repeat litigant. While the repeat litigant is not unknown in the court system, the barriers to access typical of the court system place constraints on their activity.

For several years now, one of the most popular subjects at tribunal and court conferences has been how to respond to the 'querulent' litigant. 'Querulent' is a term invented by a professor of forensic psychiatry to describe a person who has an obsession with pursuing a perceived wrong, and who will try many avenues of complaint and hearing. Studies of this type of behaviour have found that often a real injustice was suffered, but it went unrecognised. The person now has a distorted sense of the significance of the matter, and of the role played by the various institutions and officials to whom the problem has been taken. The original wrong may well disappear entirely from view, as the person pursues procedural complaints against the officials and institutions with whom he or she has dealt along the way. Sometimes obsessive behaviour has a deeper explanation connected with psychiatric conditions or other disabilities.

These users will often file mountains of paper, they will regularly arrive at the counter seeking attention or make numerous phone or fax calls. They may become personally abusive to tribunal staff. They will often make formal applications in connection with their filed claims on narrow, procedural points necessitating the giving of notices to their opponent, and the convening of hearings.

These activities can place major strain on the capacity of complaint handling institutions including tribunals. Special courses are now being developed to assist staff in dealing with these behaviours. In the litigation setting of a tribunal, repeat litigants can place major strain on the Tribunal budget as well as on persons or organisations they choose to sue. It might be thought that an increased use of costs powers could deal with the problem. That would only be likely to have marginal impact. Some litigants have little means to meet a costs award, others would simply transfer the same behaviour to the contestation of the costs order.

It is becomingly increasingly clear that complaint-handling institutions need greater gateway powers to manage the kind of behaviours mentioned. Important work has been done in recent years by the National Committee of Australian Ombudsmen. The Deputy Ombudsman for New South Wales (Mr C Wheeler) has been examining the subject. The Council of Australasian Tribunals in New South Wales (COAT), a voluntary association of tribunal members and others interested in the work of tribunals, is beginning work on what registries might do to develop common standards and practices to deal with the activities of repeat litigants and those who engage in abusive and other unreasonable behaviour.

* * *

There is a very large population of tribunal members today in the Australian justice system. COAT is now well established especially in New South Wales and is beginning to provide significant training programs for its members. Hopefully COAT will be able to persuade Governments to develop practices in relation to appointments, renewals and training which promote community confidence in tribunals, and encourage people to follow structured careers in tribunal service.

* * *

The *Report on the Jurisdiction and Operation of the Administrative Decisions Tribunal* by the Committee on the Office of the Ombudsman and the Police Integrity Commission in November 2002, noted in previous annual reports, remains without a Government response. It is now expected that the Government response will appear in the Attorney General's Statutory Review of the operation of the Tribunal due to be released late in 2007. New South Wales has not embraced the movement towards the creation of large integrated, multi-jurisdictional tribunals (seen especially in Victoria, Western Australia and the United Kingdom).

* * *

In the last year there was a small growth in filings with the Tribunal, and there were small shifts in the proportions of business among Divisions. The overall pattern remains with approximately 60% of filings being merits review applications challenging administrative decisions and the remaining 40% being applications for original decisions in relation to subjects including retail leases, discrimination and professional discipline.

The Tribunal has a disparate and large part-time membership, which to some extent is an unavoidable concomitant of having numerous specialist jurisdictions. The dependence of the Tribunal on sessional members for much of its work, while positive in many respects, creates stresses in relation to support systems and accommodation. The Tribunal has made a number of representations for improvements in these areas, so far to no avail.

The last year at the ADT has seen some changes. Deputy President Anne Britton took over as Divisional Head of the Community Services Division. I thank Deputy President Tom Kelly for his service in that position between 2001 and 2006. The ADT has a new permanent full-time Registrar, Pauline Green, who has worked at senior levels in recent years in the Supreme Court and Land and Environment Court registries. One of the registry officers, Wendy Elder, spent three months in late 2006 on a volunteer posting under an international aid program in Cambodia, helping a new tribunal responsible for handling employment disputes to set up its intake and case processing procedures. She is to be congratulated.



Judge Kevin O'Connor AM
President

Our Objectives

The Tribunal's objectives are set out in the objects clause of the legislation establishing the Tribunal, the *Administrative Decisions Tribunal Act 1997* (the ADT Act). Section 3 states:

3. Objects of Act

The objects of this Act are as follows:

- (a) to establish an independent Administrative Decisions Tribunal:
 - (i) to make decisions at first instance in relation to matters over which it is given jurisdiction by an enactment, and
 - (ii) to review decisions made by administrators where it is given jurisdiction by an enactment to do so, and
 - (iii) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or law,
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings before the Tribunal to be determined in an informal and expeditious manner,
- (d) to provide a preliminary process for the internal review of reviewable decisions before the review of such decisions by the Tribunal,
- (e) to require administrators making reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for their decisions on request,
- (f) to foster an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs,
- (g) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

Services to Users and Community Relationships

The Tribunal is committed to providing a forum accessible to all users. This includes a commitment to ensuring that proceedings are fair, informal, efficient and effective.

Access to Tribunal Information, Tribunal Proceedings and Tribunal Decisions

The Tribunal's website is located at www.lawlink.nsw.gov.au/adt. The site has links to ADT legislation and rules, daily law lists and published decisions. It also provides information about each Division (Practice Notes, standard forms and brochures).

The Tribunal, being a judicial body, sits and hears most cases in public. All hearings are notified in the newspaper and are open to the public unless special orders are made to close them.

Most hearings are conducted without restriction and are not affected by considerations relating to anonymisation or suppression. Last year's report, under the heading 'Open Justice' gave a brief outline of the Tribunal's practice in relation to anonymisation of the identity of parties or witnesses, and material that is suppressed either by statute or specific order.

The Tribunal's policy is to publish all reserved decisions and selected oral decisions on the Internet. In this way the rulings of the Tribunal can be disseminated widely, promoting a good understanding of the Tribunal's approach. All of these decisions are published on the Attorney General's Department Caselaw NSW website (www.lawlink.nsw.gov.au/lawlink/caselaw/ll_caselaw.nsf/pages/cl_adt). A comprehensive service is also provided by AUSTLII (Australasian Legal Information Institute) (www.austlii.edu.au). A number of specialist reporting services cover the decisions of the Tribunal in areas of interest to the service.

In the last year there were 383 reported decisions, compared to 411 in the previous year. The breakdown of published decisions for this year is: Appeal Panel – 65 (53 internal appeals,

12 external appeals); General Division – 164; Revenue Division – 36; Community Services Division – 14; Equal Opportunity Division – 53; Retail Leases Division – 33 and Legal Services Division – 18.

Location and Facilities

The Tribunal is located centrally, at Level 15, St James Centre, 111 Elizabeth St, Sydney. There are four hearing rooms. Two have a relatively traditional courtroom layout, but with all benches and tables at the same level. Two have a round-table design. The more traditional design is used for proceedings in the nature of trials and for Appeal Panel hearings. The other two rooms are mainly used for merits review hearings. There are three small rooms where planning meetings, case conferences and mediations are held, without transcript.

The Tribunal has very limited facilities to accommodate members outside the hearing rooms on the days they sit, or to enable part-time members to undertake research and work on their decisions on-site. It is not desirable that filed documents, exhibits and other material be taken off-site, for obvious reasons.

Remote Users and Regional Access

The Tribunal seeks to be accessible to remote users by offering the following options (where appropriate):

- telephone conferencing;
- video links; and
- conducting sittings in regional locations.

While the Tribunal does not keep specific statistics, it estimates that a telephone link is used by at least one party in about one-third of the business of the Tribunal at the directions and interlocutory stages. Often both parties are contacted by telephone. Suburban and country residents and legal practitioners welcome this facility.

The Tribunal rarely uses video links.

Where an applicant requests it, and it is justified, the Tribunal will sit at a location outside Sydney. In the last year the Tribunal sat at 24 locations in regional New South Wales, most frequently Newcastle. Other locations where the Tribunal sat more than once included Albury, Armidale, Ballina, Bathurst, Coffs Harbour, Dubbo, Goulburn, Queanbeyan and Wollongong. Wherever possible the Tribunal sits at the local courthouse in regional centres.

Access by persons with disabilities

Access by people with disabilities is aided by:

- ramp access via St James Arcade for persons with mobility disabilities;
- lifts in St James Centre equipped with braille lift buttons and voice announcements indicating the floors;
- waiting area and tribunal hearing rooms designed to optimise accessibility;
- telephone typewriter (TTY);
- Infra-Red Listening System (Hearing Loop); and
- Auslan interpreters.

Practice and Procedure

The practice of the Tribunal is formally documented in its Practice Notes and Rules. The Rules of the Tribunal are found in the *Administrative Decisions Tribunal (Interim) Rules 1998* contained in the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998*.

Practice Notes

The Tribunal has nineteen Practice Notes. Practice Notes 1 and 3–20 inclusive are operative. Practice Note 19 (Equal Opportunity Division: Practice & Procedure) replaced Practice Note 2.

On 30 August 2006, Practice Note 14 (All Divisions: Expert Evidence and Reports) was re-issued with amendments. It outlines the procedures that the Tribunal will follow in dealing with expert evidence and expert reports. The Tribunal has adopted, with some amendments, Schedule 7 of the *Uniform Civil Procedure Rules 2005* when dealing with experts.

On 9 October 2006, Practice Note 17 (General Division: Professional Discipline Proceedings) and Practice Note 12 (Costs) were re-issued with amendments. Practice Note 17 applies to applications for disciplinary finding/s by the Tribunal under the *Veterinary Practice Act 2003*, *Building Professionals Act 2005* and the *Architects Act 2003*. The aim of this Practice Note is to simplify and unify practices and procedures in these professional discipline proceedings. Practice Note 12 was re-issued to reflect the repeal of the *Legal Profession Act 1987*. No substantive amendments to the costs provision resulted.

User Groups

User Groups provide input to assist in ensuring that the Tribunal's practices and procedures are working efficiently. The Tribunal established a Freedom of Information User Group in 1999. The President chairs the Group and membership includes a Deputy President, a Judicial Member

of the General Division and representatives from the Crown Solicitor's Office, the NSW Ombudsman, the NSW FOI and Privacy Network and the Public Interest Advocacy Centre. The Group met twice this year.

Last year's report noted the establishment of a Privacy User Group, which met twice during the year. It comprises representatives from the Privacy Commissioner, the Crown Solicitor's Office, NSW Health, the NSW FOI and Privacy Network, the Public Interest Advocacy Centre and the Australian Privacy Foundation.

In early 2004 the Tribunal established the Guardianship and Protected Estates User Group to discuss and develop policies and practices in relation to matters dealt with in the Guardianship and Protected Estates List in the General Division and external appeals before the Appeal Panel. The President, Deputy President Hennessy and a non-judicial member of the Tribunal are members of this group. External members are representatives from the Offices of the Protective Commissioner and Public Guardian, the Guardianship Tribunal, the Mental Health Review Tribunal, the Chief Magistrates Office, the Crown Solicitor, the Legal Aid Commission, LawAccess NSW, Intellectual Disability Rights Service and The Aged Care Rights Service. The User Group met once during the year and resolved to meet on an as-needs basis. Issues discussed at the meeting included the representation role within the Tribunal, identification of parties and the revised Practice Note.

The Rule Committee

The Rule Committee did not meet during the current year, as there were no matters requiring its attention. Rule Subcommittees have been established in respect of the General, Community Services, Equal Opportunity, Retail Leases and Legal Services Divisions. The Divisional Head, a Judicial and Non-judicial Member from the Division and three representatives from the community and other

relevant special interests in the area of the Division's jurisdiction constitute the Rule Subcommittees. Their membership is set out in Appendix F.

Alternative Dispute Resolution

Mediation is one of two forms of alternative dispute resolution specified for use in the Tribunal by the ADT Act. The other form, neutral evaluation, is not currently in use.

Mediation is available in appropriate Equal Opportunity, Community Services, Freedom of Information and Privacy matters. The objective of referring a matter to mediation is to provide a quick and effective mechanism for resolving or partly resolving applications that are before the Tribunal.

The Tribunal provides trained mediators at no cost to the parties. The majority of mediators are also members of the Tribunal. Mediators who are members take no part in the hearing of the matter if mediation is unsuccessful.

This year the Tribunal conducted mediations in 50 matters – 45 in the Equal Opportunity Division, 2 in the Community Services Division and 3 in the General Division. Forty-two matters (84%) settled at or after mediation and 8 (16%) proceeded to hearing.

The Divisions and the Appeal Panel

The ADT Act divides the matters heard by the Tribunal, conceptually, into two categories:

- applications for *review of reviewable decisions*; and
- applications for *original decisions*.

The first category refers to disputes with a government administrative decision that has been declared by Parliament through an enactment to be reviewable by the Tribunal.

The second category is less exact in its coverage. It covers any application to the Tribunal for relief in respect of a jurisdiction vested in the Tribunal where there has been no prior binding legal decision relating to the matter in dispute. The second category's description is based merely on the fact that the Tribunal is called on to make the first or 'original' decision in the matter. The applications heard in the Equal Opportunity Division and the Retail Leases Division fall into this category. They are analogous to civil suits.

Applications for disciplinary orders also fall into the second category. However, some of the professional discipline work of the Tribunal falls into the 'review' category – cases where a professional practitioner is appealing against a decision of an internal professional body vested with the power to make disciplinary orders.

The ADT Act establishes six Divisions and an Appeal Panel.

Of the six Divisions, three have as their principal or only business merits 'review of reviewable decisions' (General Division, Revenue Division and Community Services Division).

Three Divisions have as their only or principal business the making of 'original decisions' (the Equal Opportunity Division, the Retail Leases Division and the Legal Services Division). Of these the Legal Services Division's functions belong to the field of public law (like merits review decisions), in contrast with the EOD and RLD, which are engaged, essentially, in the resolution of private disputes.

It is conceptually more accurate to group the Divisions of the Tribunal into those performing primarily administrative or public law functions and those performing primarily civil or private law functions. (In some similar multi-jurisdictional tribunals, e.g. the Victorian Civil and Administrative Tribunal, the equivalent of the EOD is placed in a 'human rights' stream as distinct from the 'administrative' and 'civil' streams.)

Administrative or Public Law Divisions

- *General Division*: operative 6 October 1998. Hears most applications by citizens for the review of administrative decisions or administrative conduct. Disciplinary matters (whether original application or review applications) not relating to lawyers are located in this Division.
- *Community Services Division*: operative 1 January 1999. Hears applications for review of various administrative decisions made in the Community Services and Ageing, Disability and Home Care portfolios and applications for original decisions for exemption from prohibition on being engaged in child-related employment.
- *Revenue Division*: operative 1 July 2001. Hears applications for review of various State taxation decisions.
- *Legal Services Division*: operative 6 October 1998. Hears complaints against legal practitioners.

The Civil or Private Law Divisions

Equal Opportunity Division: operative 6 October 1998. Hears complaints of unlawful discrimination, harassment and vilification.

Retail Leases Division: operative 1 March 1999. Hears claims by parties to retail shop leases.

Appeal Panel

The Tribunal has an Appeal Panel. It hears internal appeals against decisions made by the Divisions of the Tribunal and external appeals against certain decisions by the Guardianship Tribunal, the Mental Health Review Tribunal and Magistrates.



Deputy Presidents Nancy Hennessy, Angela Karpin, Michael Chesterman, President Kevin O'Connor, Deputy Presidents Anne Britton and Jane Needham.

The General Division

Structure and Functions

The President is also the Divisional Head of the General Division. The General Division is responsible for dealing with most of the applications for review of decisions or conduct filed in the Tribunal. It is also responsible for making original decisions in some categories of professional discipline.

Section 73 of the ADT Act gives the Tribunal a flexible charter in relation to the procedures that it may employ.

In the case of the General Division an application is first referred either to a directions hearing or to a planning meeting depending on the nature of the matter. The planning meeting is the method used in all Freedom of Information (FOI) and Privacy cases. The main aim of the planning meeting is to ascertain the extent to which the dispute is capable of complete or partial resolution without a hearing. The directions hearing is used for other matters.

Case Load

This year's proportion of filings in the General Division as compared to the rest of the Tribunal saw a decrease on last year from 47% to 39.5% (404 out of 1,021).

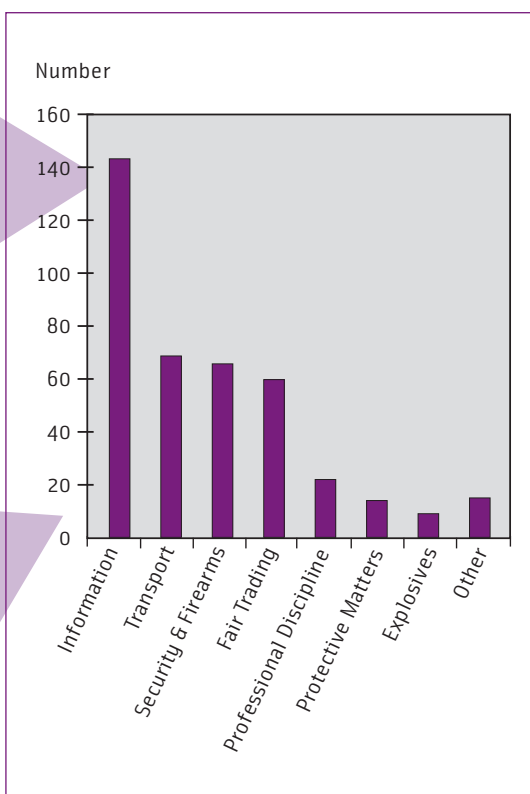
Freedom of Information Act filings fell somewhat from 125 to 114. Filings under the *Privacy and Personal Information Protection Act* remained stable on 26 compared to 27 the previous year. There were 4 filings under the *Health Records and Information Privacy Act* (3 last year). The total filings in what might be called the 'information law' category was 144, constituting 14% of the first instance business of the entire Tribunal, and 35.6% of the business of the General Division. They are allocated to one of five members with relevant expertise. The first proceeding is a planning meeting. Every effort is made at the planning meeting to resolve the dispute without going to formal hearing or, at least, to reduce the scope of the dispute.

The Tribunal's statistics do not separately deal with outcomes in this group. The global statistic for the General Division is that 170 matters out of the 404 (42%) filed during the year did not proceed to a full hearing. The Tribunal's estimate is that about 42% of 'information law' matters were resolved without a final hearing being required based on a comparison of applications filed (144) compared with the number of published reasons for decision (84), the latter being a highly reliable indicator of the number of contested hearings. This represents a decline on last year's estimate, which was 51%.

The bulk of the remaining business of the Division involves review of licensing decisions, mainly occupational licensing. It is usual for these cases to proceed, after directions, to a formal hearing.

There was a slight increase during the year in passenger transport filings (private taxi, hire car and bus licensing) from 54 to 56 and licensing of tow truck drivers from 6 to 13. The Director-General, Department of Transport administers these areas. In the case of statutes administered by the Commissioner of Police, there was a slight increase in security industry filings from 24 to 28. Firearms licensing saw a marked decrease in filings from 61 to 38. The various licensing statutes administered by the Commissioner for Fair Trading remained stable at 60 compared with 61 filings last year, which included a decrease in applications for review relating to building licensing – from 46 to 44, and property, stock and business agents – from 14 to 5. There was an increase in applications for review relating to motor dealers from 0 to 4.

The distribution of General Division filings among the categories is shown on the bar chart below.



Significant Cases and Themes

Many of the significant cases and themes affecting the General Division are covered in the Appeals section of this report.

The FOI Act contains 24 primary exemption categories, and within several of them there are more specific exemption categories. The experience of the Tribunal is that certain categories come up repeatedly, whereas others are rarely raised. In the early years of the Tribunal's jurisdiction the law enforcement documents category was raised frequently. That is less so today. The exemption that continues to arise frequently is legal professional privilege. Eleven decisions in the last year primarily dealt with this issue. Others that regularly arise are: the in-confidence communications exemption; the internal working documents exemption; the

Cabinet documents exemption; and the third party personal and commercial affairs exemptions. In privacy cases, the most common complaint is wrongful disclosure of personal information.

A separate issue that often arises in FOI matters is called 'sufficiency of search'. An applicant may claim that the agency's determination does not identify all documents in the agency's possession relevant to the request. The Tribunal regards itself as having jurisdiction to entertain such a claim, as it goes to the issue of whether there has been, in effect, a refusal to give access to documents falling within the scope of a request. In recent times, agencies have contested the Tribunal's assertion of jurisdiction to deal with this question. The matter will be addressed, it is expected, by the Supreme Court. In the last year 17 published FOI decisions referred to this issue.

Administrators' decisions to revoke, suspend or cancel licences are based on a history of contraventions or a single serious contravention. In the case of firearms licensing, there are a small number of cases each year where the administrator's decision is based on public interest grounds relating to concern over the mental health of the licensee. These can be difficult cases because the licensee will usually have had no history of improper conduct in connection with a firearm, have a demonstrated need for a firearm and have medical evidence at variance with the administrator's assessment.

Guardianship and Protected Estates

In 2003 the Tribunal's jurisdiction was extended to hear appeals from the Guardianship Tribunal, the Mental Health Review Tribunal and Magistrates against the making or failure to make guardianship and financial management orders; and to review decisions made by the Public Guardian or the Protective Commissioner as administrators of those orders. The original intention was to have these matters dealt with by a separate Division of the Tribunal. However, in response to representations from the Tribunal, the legislation as passed allocated the appeals function to the Appeal Panel, giving rise to the separation of appeals into the categories of 'internal' appeal and 'external' appeal; and the review function was allocated to the General Division. The Tribunal agreed to report separately on these new responsibilities in the annual report, and to ensure that members with relevant expertise conducted hearings. For that purpose a Guardianship and Protected Estates List was created. Deputy President Hennessy manages this List. On occasions the Tribunal has received applications for review from protected persons or their family disputing decisions of the Protective Commissioner over the long-term management of substantial estates and the extent of depletion of the capital.

Case Load

As at 30 June 2006 there were 5 appeals pending. During the year there were 15 external appeals filed (from the Guardianship Tribunal) and 14 matters were disposed of, leaving 6 appeals pending as at 30 June 2007.

As at 30 June 2006 there were 6 review applications pending. There were 14 review applications filed during the year (compared with 22 the previous year). Seventeen matters were disposed of during the year, and as at 30 June 2007, there were 3 matters pending.

Significant Themes and Cases

Persons held as involuntary patients under the *Mental Health Act* are entitled to have their detention examined quickly by an independent judicial body. That process includes an examination of their capability to manage their financial affairs.

When the Mental Health Review Tribunal (MHRT) or a visiting Magistrate undertakes an assessment, the *Protected Estates Act* gives those bodies power to make interim financial management orders pending 'further consideration' by the MHRT. In two cases that came before the Appeal Panel during 2006 it became apparent that there may have been a misunderstanding of the nature of an interim order and the nature of the right of appeal given to the patient by s 21 of the *Protected Estates Act* against interim or further financial management orders.

In the first of these cases, the Appeal Panel held that the making of 'temporary' financial management orders by the MHRT was not contemplated by the Act. The decision explained how such an order differed from an 'interim order'. In particular, there was no provision made for 'further consideration' as contemplated by the Act. In the second case, the Appeal Panel held that the visiting Magistrate had wrongly exercised the power to make an 'interim' order in two ways, first by making a 'temporary' order and secondly by giving it a duration of 12 months. Again there was no provision for 'further consideration'. The Magistrate had also failed to inform the patient of the right of appeal against his order to the Administrative Decisions Tribunal, found in s 21 of the *Protected Estates Act*. (The right of appeal is relatively new, dating from 2003). See *VU v Miles* [2006] NSWADTAP 19 and *WP v Protective Commissioner* [2006] NSWADTAP 37.

These decisions were drawn to the attention of the President, the Mental Health Review Tribunal and the Chief Magistrate. They each indicated that they would advise their membership of the correct position.

A later decision dealt with the interaction between the powers given to the Mental Health Review Tribunal and the visiting Magistrate, on the one hand, and those of the Guardianship Tribunal in respect of financial management orders affecting the estates of detained persons. The Guardianship Tribunal does not have jurisdiction to make a financial management order if orders by the bodies mentioned (or the Supreme Court) are 'in force'. In this case the Guardianship Tribunal had made

a financial management order in respect of a patient. The patient appealed. One of the arguments was that the order was incompetent, and the patient referred to a purported order already made by the MHRT. The MHRT's order had the same kind of deficiency that had been identified in the earlier appeals. Consequently the Appeal Panel held that there was no order properly 'in force', and therefore the Guardianship Tribunal had been entitled to make the order in issue. *See XC v Protective Commissioner and Ors* [2006] NSWADTAP 64.



Guardianship and Protected Estates List members at the 2006 Members' conference.

L-R: Julian Millar, Anne Whaite, Barbara Field, Ann Wunsch, Deputy President Nancy Hennessy, Professor Neil Rees.

Revenue Division

The Divisional Head is Ms Jane Needham SC, Deputy President.

Structure and Functions

The Division undertakes merits review of objection decisions made by the Chief Commissioner of State Revenue under various State Revenue laws. The ordinary principles of merits review apply to the determination of applications for review of those decisions. However, unlike the situation in most merits review matters where there is no onus of proof, the applicant in Revenue Division matters bears the onus of proving his or her case. Prior to the conferral of this jurisdiction on the Tribunal in 2001, disappointed taxpayers could only appeal to the Supreme Court. The Tribunal's jurisdiction was created to provide an accessible and inexpensive alternative forum, especially for decisions in respect of relatively low amounts. The Tribunal's general rule as to costs applies in Revenue Division matters - that they only are awarded in special circumstances (being unsuccessful is not in itself a special circumstance).

Appeals from determinations made by the Chief Commissioner or the Commissioner lie to the Tribunal or the Supreme Court. Some major cases, where the amounts in issue have been large, and the implications of the decision for revenue major, have been commenced in the Tribunal, rather than being taken to the Supreme Court.

Practice and Procedure

As the case load statistics below indicate, the Division did not clear the same number of applications as were registered during the 2006-2007 resulting in a significant increase in pending matters, and a slowdown in the average disposal time of matters. The average time has increased from about 6 months to over 8 months. In the next year, steps will be taken to arrest this trend, and bring the average time down to less than 6 months.

Split lists will be introduced. Matters likely to be of a relatively simple kind (for example First

Home Owner Grant cases and Land Tax Principal Place of Residence cases) will constitute one list. Those matters will normally be the subject of standard directions covering all preparatory steps and a hearing date. The second list will deal with other matters.

User representatives, in particular the Office of State Revenue, will be consulted before changing the Practice Note or introducing any other measures. The aim is to have the new Practice Note commence operation in February 2008.

The experience of the Division has been that a significant proportion of review applications are resolved without hearing. This is atypical of the experience of the other areas of the Tribunal that engage in merits review. Pre-hearing resolution usually occurs as a result of the Office of State Revenue agreeing at the first directions hearing to reconsider the Chief Commissioner's determination. This practice introduces an element of delay, but the delay may be productive if the Chief Commissioner alters the determination under review in the applicant's favour, or the parties resolve the matter in some other way.

Case Load

During the year the Division received 165 applications, 33 more than last year. It disposed of 117 applications, leaving 115 matters pending at the end of the year (up from 67 in the previous year).

As to the break-up of applications filed in 2006-2007 the following shifts are noted. There was an increase in the number of filings under the *Land Tax Management Act 1956* (up from 31 to 45), the *Payroll Tax Act 1971* (up from 10 to 35) and the *Land Tax Act 1956* (up from 5 to 14).

Conversely, there was a reduction in filings under the *Parking Space Levy Act 1992* (down from 9 to 3) and the *First Home Owner Grant Act 2000* (down from 52 to 46). Filings under the



Deputy President
Jane Needham SC

Taxation Administration Act 1996 continued a downward trend over the past two years, down from 7 to 5.

Analysis of the various outcomes of matters disposed of in 2006/7 shows that of the 117 disposals, 78 (67%) did not go to hearing either because the application was withdrawn or dismissed, there was no appearance or the parties reached agreement. Of the remainder, in 30 cases, the decision under review was affirmed. In seven cases the decision under review was set aside, varied, remitted or a recommendation made.

Of the 117 disposals, more than half were disposed of within six months (64), which is within the target timeframe. Forty-seven matters were disposed of within 12 months. Six matters were disposed of within 2 years. No matters remained unresolved for more than 2 years. The Division is committed to reducing the number of matters that are disposed of in over 6

months without in any way reducing the quality of hearing or decision-making in the Division.

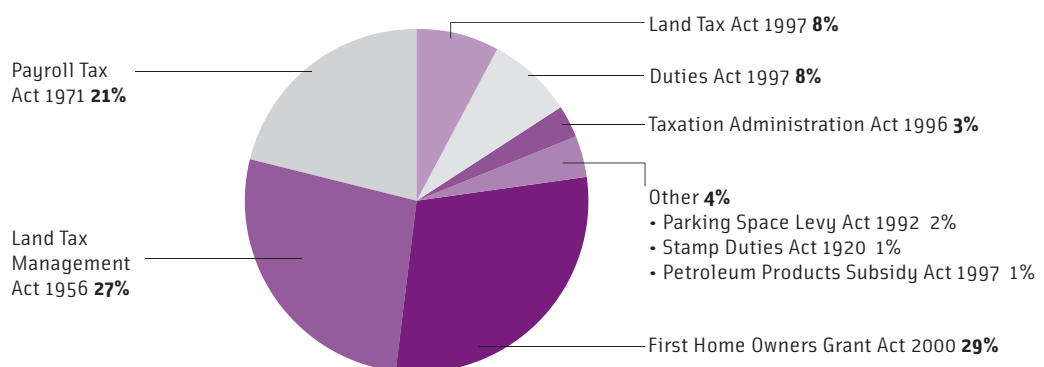
Membership

There has been little change in membership of the Division. Robin Handley has joined the Division as a Deputy Presidential judicial member, and acted as Divisional Head from November 2006 to March 2007 while Ms Needham was on maternity leave. Now that Ms Needham has resumed, the program of seminars for members initiated in 2006 will recommence.

Significant Cases

The important cases are covered in the chapter headed Appeals.

Applications by Act 2006 - 2007



Community Services Division

Ms Anne Britton was appointed Head of the Community Services Division and Deputy President in October 2006, taking over from Deputy President Tom Kelly following his decision to retire as Divisional Head.

Structure and functions

The Community Services Division is the successor of the Community Services Appeals Tribunal, which was disbanded in 1999.

The Division's eight non-judicial members come from across the spectrum of the community sector, and hold expertise in a diverse range of areas such as children's and disability services, mental health and child psychology. Many also hold appointments to the Guardianship and Mental Health Review Tribunals and bring with them significant tribunal experience.

A panel of three members determines the majority of matters that come before the Division. A judicial member sitting alone determines applications brought under the *Commission for Children and Young People Act 1998* and, where appropriate, applications for interlocutory orders.

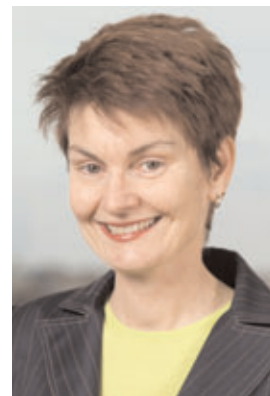
The only part of the Division's caseload that involves the exercise of the Tribunal's power to make 'original decisions' are applications brought under the *Commission for Children and Young People Act*. These applications are brought by what the Act refers to as a 'prohibited person' – that is an individual convicted of certain sex offences or offences involving the use of violence against a child. By the operation of the Act, a prohibited person is barred from working with children unless a declaration stating otherwise is made by the Tribunal. Before making such an order, the Tribunal must be satisfied that the applicant does not pose a risk to the safety of children. This jurisdiction is shared with the Industrial Relations Commission of NSW.

The Division's review jurisdiction includes decisions made by government and non government agencies to: remove a child or young person from an authorised carer (foster parent); authorise or not to authorise a person to be an authorised carer; provide financial assistance to a body that does not conform to the objects and principles of the Disability Services Act; accredit or refuse to accredit adoption service providers; fail to provide information or assistance under the Adoption Act; de-register a family day care carer; grant or refuse to grant a licence to operate a children's service, such as a childcare centre, and refuse to implement recommendations made by the Ombudsman.

Most of the decisions reviewed by the Tribunal concern the removal of children from foster parents or the revocation of a foster parent's authority. The Tribunal endeavours to appoint a guardian to represent the children who are the subject of these proceedings. In deciding matters, the Tribunal is required to give paramount consideration to the safety, welfare and well being of the child or young person (*Children and Young Persons (Care and Protection) Act 1998*).

Case Load

The number of applications for review of decisions fell from 22 to 18 in 2006-07 compared with the previous year. Twenty applications were filed this year under the *Commission for Children and Young People Act* (or its predecessor) representing a drop of one-third from the previous year. Approximately two-thirds of applications filed in the course of the year were determined in less than six months.



Deputy President
Anne Britton

Legislative amendments

Since January 2007, the Tribunal's power to determine applications made by prohibited persons is found in the *Commission for Children and Young People Act* as a consequence of legislative amendments which, among other things, saw the repeal of the *Child Protection (Prohibited Employment) Act 1998*. These amendments included that:

- the class of persons prohibited from working with children has been expanded to include adults with a conviction for intentionally wounding or causing grievous bodily harm to a child;
- persons with convictions for certain offences are now ineligible to make an application under the Act;
- the Tribunal may vary or revoke an order previously made on the application of the Commission for Children and Young People;
- applicants are presumed to pose a risk to the safety of children unless the contrary is established; and
- a prohibited person who has applied to the Commission for Children and Young People but does not consent to the order the Commission proposes to make has a right to have their application determined by the Tribunal.

In March 2007 the *Children and Young Persons (Care and Protection) Act* was amended to require designated agencies responsible for the placement of children in out-of-home care (foster care) to disclose information about the placement of the child to any birth or adoptive parent or any other person who is significant to the child. Before disclosing 'high level identification information' the designated agency must notify the child's authorised carer of its intention to do so; provide reasons for the decision; advise the carer that the information will not be disclosed for 21 days and state that a right of review exists to the Tribunal. To date, no applications have been received from authorised

carers seeking a review of a decision to disclose information.

Significant cases

The Division has jurisdiction to review a decision of the Department of Community Services (and certain other service providers) to refuse to implement a recommendation of the Ombudsman. In *Miller v Director-General, Department of Community Services (No 2)* [2007] NSWADT 140, the Tribunal considered the nature of this power for the first time.

The review applicant was the Court-appointed solicitor appearing for three children in care proceedings before the Court. She complained to the NSW Ombudsman that officers of the Department of Community Services had refused to allow her to interview the children who were under the Department's supervision and had been placed in foster care. After investigating that complaint, the Ombudsman recommended, among other things, that the Department issue an apology to the solicitor and develop a policy and guidelines for staff on the role of a legal representative appointed to represent children in the care of the Department.

The applicant contended to the Tribunal that the Department failed to implement the recommendations in full, and sought an appropriate order directed to the Department. The Tribunal found that the Department had not substantially complied with the Ombudsman's recommendations. It made an order remitting the matter to the head of Department with recommendations.

The Division has jurisdiction to review administrative decisions to deregister family day care providers.

The Tribunal commented on the difficulties surrounding proof of the allegations that may lead an administrator to exercise the power to deregister a private family day care provider in *Gray v Coffs Harbour Family Day Care Scheme (No 2)* [2006] NSWADT 176. In that case, the

administrator decided to deregister the provider after an investigation that commenced on the basis of statements made by three of the seventeen children attending the day care centre that the carer had smacked them with a wooden spoon. The Tribunal discussed the forensic difficulties of assessing unsupported allegations and the particular problems that arise where the allegation is made by a child and untested. The Tribunal was not satisfied on the evidence that the carer posed an unacceptable risk to children. The Tribunal set aside the de-registration.

Appeals

Except where a decision concerns an application brought under the *Commission for Children and Young People Act* (or its predecessor), parties have a right of appeal to an Appeal Panel of the Tribunal. Decisions made under the *Commission for Children and Young People Act* can only be appealed to the Supreme Court. This year two decisions made under the predecessor to the Act were appealed to the Supreme Court. Both were dismissed. (*UB v Commission for Children and Young People & Anor* [2007] NSWSC 546; *Commission for Children & Young People v UR* [2007] NSWSC 1099).



Legal Services Division



Deputy President
Angela Karpin

The Divisional Head is Acting Judge Angela Karpin, part-time Deputy President.

Structure and Functions

The primary function of the Division is the hearing and determination of applications for disciplinary orders brought against legal practitioners pursuant to the *Legal Profession Act 2004*, which came into force on 1 October 2005. (There remains a

small number of matters which were commenced under the *Legal Profession Act 1987*.) The Councils of the Bar Association or the Law Society or the Legal Services Commissioner may apply for disciplinary orders.

The Division also determines applications by practitioners who wish to employ persons who have been convicted of a serious offence. There has been a slight increase in the number of these applications in the past year.

As foreshadowed in last year's report, the jurisdiction to review some decisions pursuant to the *Conveyancers Licensing Act 1995* was transferred to the General Division on 15 December 2006, upon the commencement of the *Conveyancers Licensing Act 2003*.

Divisional decisions are not appealable to the Appeal Panel. The right of appeal is direct to the Supreme Court, and where the presiding member is a judge the appeal is direct to the Court of Appeal.

Case Load

There were 27 matters pending as at 30 June 2006. There was a significant increase in the number of applications filed during this year to 40 compared with 29 in the previous year. Twenty matters were disposed of during the year, and as at 30 June 2007, there were 47 matters pending resulting in a substantial increase in pending business.

During the year 2 matters were withdrawn, while 1 matter was dismissed after hearing.

In all the remaining matters findings were made against the legal practitioner. In 6 matters the name of the legal practitioner was removed from the roll. Seven applications were dealt with by way of fine, and/or reprimand. There were 2 successful applications for approval of a lay associate. In one matter, the Tribunal made consent orders.

Legislation

Schedules 1 and 2 of the *Legal Profession Further Amendment Act 2006* commenced on 7 December 2006 and 1 July 2007, respectively. The provisions amend the *Legal Profession Act 2004* with respect to the role and procedures of the Legal Profession Admission Board, the grant of local practising certificates, payments from and to the Public Purpose Fund. The amendments also abolish the Legal Profession Advisory Council and align the principal Act more closely with the legal profession model legislation. The Act also amends the *Administrative Decisions Tribunal Act 1997* to no longer make it a requirement that the appointment of a Deputy President as Divisional Head of the Legal Services Division of the Tribunal is from the barrister or solicitor members of the Tribunal.

Significant Themes and Cases

Punch v Council of the NSW Bar Association [2007] NSWCA 93

In last year's annual report (at page 20) the decision of the Tribunal was summarised. The respondent barrister appealed. The Court of Appeal decision is summarised in the Appeals section of this report.

The following is a short outline of the kinds of misconduct dealt with by the Legal Services Division in the last year, and the penalties imposed. The outline includes abbreviated references to the case, so for example 07/15 means the case reported at [2007] NSWADT 15.

Professional Misconduct

Solicitor: (1) delay in handling estate; misleading Law Society as to reason for delay; (2) forging signatures on consent orders in relation to a property settlement; misleading Law Society as to circumstances under which signatures provided; false affidavit filed in Family Court as to execution of consent orders; (3) falsely attesting signature to affidavits; misleading Family Court by filing affidavits and consent orders that were not properly attested: name removed from roll: Stanoevski 07/AP 25.

Solicitor: Misappropriation of trust monies involving falsification, fabrication and forging of documents: name removed from roll: Gavel 07/38.

Solicitor: (1) failure to comply with requirement of Law Society; failure to assist investigation of complaint; (2) wilful breach of trust account requirements; misappropriation of monies; various delays or failures in relation to requirements in respect of taxation and superannuation responsibilities affecting employees; borrowing money from client in breach of requirements; failure to document loan; other breaches including conflict of interest: name removed from roll: Vosnakis 07/42.

Solicitor: wilful breach of trust account requirements; misappropriation of trust monies; grossly offensive language in dealing with inquiries by professional bodies and their staff; failure to attend accounting course as required by practising certificate: name removed from roll: Levick 07/52.

Solicitor: failure to secure registration of a second mortgage; breach of requirements relating to borrowing from client; conflict of interest: name removed from roll: Kennedy 07/59.

Solicitor: wilful breach of trust account requirements; failure to pay counsel fees over many years; misappropriation of trust monies:

name removed from roll: Graham 07/67.

Solicitor: failure to respond at all or adequately to several communications from the Law Society in respect of its investigation of a client complaint, failure to produce relevant files and documents to the Law Society for examination: public reprimand, fine of \$8000: Knudsen 06/245.

Solicitor: Failure to keep trust account records properly, and to have available relevant ledgers: public reprimand, fine of \$8000: undertaking not to apply for a practising certificate for 5 years: Cornwell 06/308.

Unsatisfactory Professional Conduct

Solicitor: false representations in applications for employment as a solicitor: fine \$1000, private reprimand; direction to attend counselling for 12 months.

Solicitor: failure to inform client of dismissal of proceedings: public reprimand: Dwyer 06/247.

Conveyancer: licensee failed to include appropriate special conditions in contract resulting in delay and costs consequent on the delay for his clients; judgment sum imposed by Local Court; public reprimand: Ly; ex tempore decision.

Instrument of Consent under s 564, Legal Profession Act 2004

Solicitor: Breach of fiduciary duties in respect of administration of estate as solicitor and co-executor; receipt of gift from estate without referring testator for independent advice; failure to inform testator of right of solicitor to charge fees and commission in respect of estate; swearing false affidavits: conditions imposed on practising certificate; reprimand.

Solicitor: Failure to respond to complaint initiated by Legal Services Commissioner; failure to respond to requests for information; breached undertaking: public reprimand, fine of \$2000.

Review of Disciplinary Finding

Solicitor: Failure to comply with court orders;
failure to prepare a matter for hearing: Law
Society finding of unsatisfactory professional
conduct upheld, penalty reduced from
reprimand to caution: Margiotta 07/65.



Members of the Legal Services Division at the 2006 Members' conference.

Back Row L-R: Michelle Riordan, Michael Costigan, Carl Bennett, Sharron Norton, SC, Barrie Dyster, Wendy Robinson, QC.

Front Row L-R: Lucy Taska, Graham Molloy, Leisha Bubniuk, Elayne Hayes, Acting Judge Angela Karpin,

Deputy President, Rosemary Cox, Acting Judge Michael Chesterman, Deputy President.

Other Professional Discipline Jurisdictions

Veterinary Practitioners, Architects, Accredited Surveyors and Registered Surveyors

The Tribunal's other professional discipline jurisdictions cover veterinary surgeons, architects, accredited certifiers and registered surveyors. They are located in the General Division, the Divisional Head being the President.

The Committee on the Office of the Ombudsman and Police Integrity Commission's *Report on the Jurisdiction and Operation of the Administrative Decisions Tribunal*, released in 2002, recommended the creation of a single, integrated Professional Discipline Division of the Tribunal. The Government has yet to respond to this recommendation, but may do so in the Attorney General's statutory report required under s 147 of the ADT Act.

Veterinary Practitioners: The Tribunal has review and original jurisdictions in connection with the discipline of veterinary practitioners. As foreshadowed in last year's annual report (at page 21), the *Veterinary Practice Act 2003*, which repealed the *Veterinary Surgeons Act 1986* and the *Veterinary Surgeons Regulation 1995*, commenced on 1 September 2006.

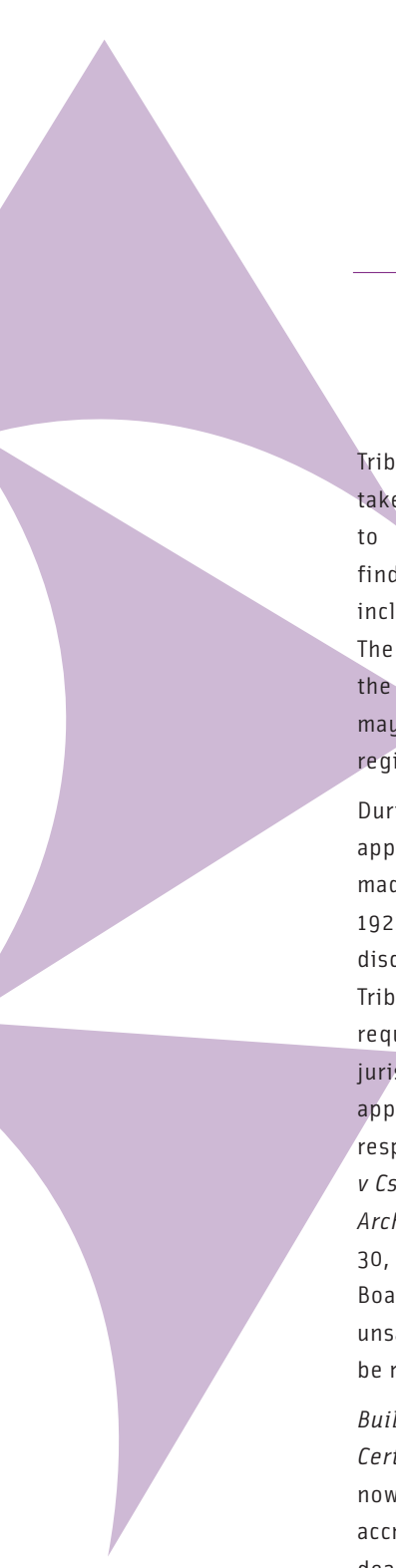
The 2003 Act introduces a new system for making complaints against, and the disciplining of, veterinarians found guilty of unsatisfactory professional conduct or professional misconduct and, in particular, removes the role of the Investigating Committee from disciplinary proceedings.

The Act establishes the Veterinary Practitioners Board, which has the power to investigate complaints and take disciplinary action against veterinary practitioners. The Board may apply to the Tribunal for an original disciplinary finding against a veterinary practitioner. If the Board is satisfied that a veterinary practitioner is guilty of professional misconduct, it *must* apply to the Tribunal for a disciplinary finding against the practitioner and, pending determination of the application, may suspend the practitioner's

registration. If the Board is satisfied that a practitioner is guilty of unsatisfactory professional conduct, it may apply to the Tribunal for a disciplinary finding against the practitioner or it may itself take disciplinary action by way of a variety of orders, including imposing a maximum fine of \$5,000. A veterinary practitioner may apply to the Tribunal for a review of any disciplinary action taken by the Board. In addition to the orders available to the Board, the Tribunal may cancel or suspend the practitioner's registration and impose a maximum fine of \$25,000. A veterinary practitioner may also apply to the Tribunal for a review of certain registration decisions, including a decision to remove a person's name from the Register of veterinary practitioners.

There were 2 veterinary practitioner cases dealt with during the year. In *Veterinary Surgeons Investigating Committee v Thompson* [2007] NSWADT 107, the Tribunal found a veterinary surgeon had engaged in serious misconduct in a professional respect pursuant to s 22A of the *Veterinary Surgeons Act 1986* and ordered the removal of his name from the Register of Veterinary Surgeons or the Register of Specialists. The veterinary surgeon is not able to make an application for the restoration of his name to The Register prior to 10 May 2011. In *Veterinary Surgeons Investigating Committee v Mason* [2007] NSWADT 91, the Tribunal determined it had jurisdiction to entertain the application from the Veterinary Surgeons Investigating Committee on the basis that Mr Mason had submitted to the jurisdiction of the Tribunal by choosing to appear and contest the case on its merits, even though he was residing in New Zealand.

Architects: Under the *Architects Act 2003* the NSW Architects Registration Board has disciplinary functions. The Board has power to investigate complaints, hold hearings and to take disciplinary action by way of a variety of orders not including suspension or deregistration. An architect may apply to the



Tribunal for review of any disciplinary action taken by the Board. The Board may apply directly to the Tribunal for an original disciplinary finding. The orders available to the Tribunal include orders like those available to the Board. The major difference is that if the Tribunal finds the architect guilty of professional misconduct it may suspend or cancel the architect's registration.

During the last year, the Tribunal dealt with 4 applications for review of findings and orders made by the Board under the successor to the 1921 Act – the *Architects Act 2003*. In the first disciplinary application under the 2003 Act, the Tribunal found that non-compliance with requirements stipulated in the Act deprived it of jurisdiction to hear and determine a disciplinary application brought by the Board against the respondent: *NSW Architects Registration Board v Cserhalmi* [2006] NSWADT 110. In *Leech v NSW Architects Registration Board* [2007] NSWADT 30, the Tribunal set aside the decisions of the Board that the applicant was guilty of unsatisfactory professional conduct and should be reprimanded.

Building Professionals including Accredited Certifiers: The Building Professionals Act 2005 now governs the accreditation and discipline of accredited certifiers. The majority of provisions dealing with investigations, certification and disciplinary proceedings commenced on 1 March 2007. The new Act establishes the Building Professionals Board and removes, from the *Environmental Planning and Assessment Act 1979*, provisions that allow for certain professional associations to accredit persons as accredited certifiers for the purposes of that Act. The Act also transfers (with modifications) the complaints process and disciplinary scheme from those associations to the Board. The Board has power to investigate complaints, hold hearings and take disciplinary action by way of a variety of orders. The Board may also suspend or cancel a certificate of accreditation or impose

conditions to protect the public. If the Board is satisfied that there is a reasonable likelihood that an accredited certifier will be found guilty of professional misconduct, it must apply to the Tribunal for a disciplinary finding against the accredited certifier. If the Board is satisfied that a practitioner is guilty of unsatisfactory professional conduct, it may apply to the Tribunal for a disciplinary finding or it may itself take disciplinary action by way of a variety of orders, including a fine. An accredited certifier may apply to the Tribunal for a review of any disciplinary action taken by the Board.

The Board may apply directly to the Tribunal for an original disciplinary finding. The orders available to the Tribunal include the orders available to the Board. The major difference is that the Tribunal may suspend or cancel the accredited certifier's accreditation if a finding of unsatisfactory professional conduct or professional misconduct is made.

In the last year the Tribunal received 14 applications. In *Building Professionals Board v Hans* [2007] NSWADT 83, the Tribunal found the certifier guilty of unsatisfactory professional conduct. A reprimand and fine of \$2,200 was imposed. The Tribunal also imposed a condition on the certifier's A2 accreditation as a Building Surveyor Grade 2. The Board has lodged an appeal against the decision. In *Director, Building Professionals Branch, Department of Planning v Dwyer* [2007] NSWADT 53, the Tribunal found the certifier guilty of unsatisfactory professional conduct. A reprimand and fine of \$5,000 was imposed.

Registered Surveyors: Registered surveyors are subject to the discipline of the Board of Surveying and Spatial Information under the *Surveying Act 2002*. The Board has all disciplinary orders available to it. Any registered surveyor against whom action is taken may apply to the Tribunal for a review of the Board's determination. There have been no applications to the Tribunal.

Equal Opportunity Division

The Divisional Head is Magistrate Nancy Hennessy, full-time Deputy President.

Structure and Functions

The Division exercises jurisdiction conferred by the *Anti-Discrimination Act 1977*.

The Division hears and determines matters falling into the following four categories:

1. complaints referred by the President of the Anti-Discrimination Board (ADB);
2. applications for leave to proceed when a complaint has been declined by the President of the ADB;
3. applications for the registration of conciliation agreements made at the ADB; and
4. applications for interim orders.

The main work of the Division relates to the first category. Of the 147 matters finalised during the year 123 belonged to that category. There were 17 matters finalised in the second category, 3 in the third and 4 in the fourth.

The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable.

Membership

A panel of three sits on each hearing – one judicial member and two non-judicial members who have expertise in various areas of anti-discrimination law and practice. For some kinds of preliminary and interim applications, the Tribunal comprises only one judicial member.

There are three other Deputy Presidents who sit part-time in the Equal Opportunity Division: Ms Anne Britton, Ms Jane Needham SC and Acting Judge Michael Chesterman. In addition there are 11 judicial members and 16 non-judicial members all of whom sit on a sessional basis.

Case Load

There were 97 matters pending at the beginning of the year. The Division registered 138

applications and finalised 147 matters during the year. The result is that there were 88 matters pending as at 1 July 2007. The number of referrals represented an increase of 31 from the previous year. The previous year had seen the lowest number of referrals in many years.

Each of the four categories of business is discussed briefly below.

(1) A person must first complain about alleged unlawful discrimination or other matters such as victimisation to the President of the ADB. If the complaint cannot be resolved by the ADB it is referred to the Tribunal.

Grounds of complaint. A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were disability (45), sex including sexual harassment (36) and race (26). There were 15 complaints alleging victimisation of a person as a result of them alleging discrimination. There were fewer complaints about discrimination on the ground of having responsibilities as a carer (9), homosexuality (4) and marital status (3). The Tribunal received four complaints of racial vilification and three complaints of homosexuality vilification.

Outcomes. There were 105 complaints referred this year and 123 were finalised. Of the finalised complaints, 84 (68%) were settled or withdrawn, 3 (2%) were summarily dismissed and 18 (15%) were dismissed after a hearing. The balance, 18 (15%) had orders made in favour of the applicant. The low proportion of matters in which an order is ultimately made in favour of an applicant, comes about because many meritorious matters are settled either through mediation or direct negotiation between the parties.



Deputy President
Nancy Hennessy

Mediation. Of the 123 original complaints disposed of during the year, mediation was conducted in 45 matters. Of those 45 matters, 38 (84%) settled at or after mediation and 7 (16%) proceeded to a hearing. There is a significant incentive for parties to resolve complaints without having a hearing because of the high cost of litigation and the fact that the Tribunal can only award a maximum of \$40,000 in damages for each complaint. If parties are legally represented, legal costs can consume a considerable proportion of any compensation that may ultimately be awarded.

(2) Where the President of the ADB declines a complaint because, for example, it lacks substance or is frivolous or vexatious, the complainant must obtain the Tribunal's "leave" or permission before being allowed to proceed.

There were 4 applications pending at the beginning of the year. The Tribunal received 26 new applications for leave during the year. Of the 17 matters disposed of, leave was granted in two cases (12%) and refused in 11 cases (65%). The applicant withdrew the application or settled the complaint in the remaining 4 cases (23%). There were 13 pending applications as at 1 July 2007. In the two cases where leave to proceed was granted, the complaints were dismissed following a full hearing.

(3) The Tribunal may register conciliation agreements made in matters before the President of the ADB. The agreement must contain terms of a kind consistent with the matters about which the Tribunal is empowered to make orders. If that is the case, the registered agreement can be enforced as an order of the Tribunal. Three applications for registration were made this year and 3 were finalised. The Tribunal registered one agreement and the other two applications were withdrawn.

(4) The President of the ADB, or a party to a complaint, may apply to the Tribunal for an interim order to preserve the status quo between the parties, or the rights of the parties, pending

determination of the complaint. This year 4 applications for interim orders were made. An interim order was granted in 3 cases and the application was withdrawn in the other matter.

Disposal rates

The Equal Opportunity Division's time standard for disposal of matters is 80% of matters to be finalised within 12 months and 100% within 2 years. This year 71% (104) were disposed of in less than one year and a total of 97% (a further 39 matters) in less than 2 years. The remaining 17 matters were more than two years old when they were finalised. Two reasons for complaints taking longer than 2 years to finalise are that the matters have been adjourned pending the finalisation of related proceedings in other jurisdictions or multiple interlocutory applications and/or appeals have been made.

Significant Cases

Two of the cases decided during the year highlight the difficult issues that can arise in dealing with disability discrimination complaints.

In the first case, the complainant had a disability that affected his ability to walk long distances. He lived in a private residential estate made up of large lots, and with special features such as a residents' swimming pool. The management of the estate redesigned the swimming pool area, making it no longer possible for him to get to the pool by car.

The Appeal Panel upheld a Tribunal decision finding that the management of the estate had engaged in unlawful discrimination on the ground of disability, and making an award of \$6000 in favour of the complainant. [See *Tallong Park Association Inc v Sutherland; Sutherland v Tallong Park Association Inc (EOD)* [2007] NSWADTAP 19].

The unlawful act involved the imposition of an unreasonable requirement about access in the provision of services. This is a form of 'indirect' discrimination.

The entity responsible for management of the estate was an incorporated association. The Tribunal held that the exception for so-called “voluntary bodies” in s 57 of the AD Act did not apply to the conduct of the Association.

In addition to the orders made by the Tribunal, the Appeal Panel also ordered the respondent to publicly apologise to the complainant.

The second case concerned a complainant affected by epilepsy. She worked as a railway station attendant with RailCorp. She had a seizure outside working hours. RailCorp moved her from the station to an office where standard hours only were worked. As a result, she was no longer able to earn the penalty rates and allowances that went with out of hours and weekend work. RailCorp submitted that it had to put the applicant in an office job to comply with the *Rail Safety (Health Assessment) Guidelines* 2004.

RailCorp relied on the exemption in s 54 of the AD Act protecting from liability action that is necessary to comply with statutory requirements. The Tribunal decided that RailCorp had gone beyond what was required by the Guidelines, and the exemption was not applicable.

See *Dunne v Rail Corporation, New South Wales* [2006] NSWADT 273 and (No 2) at 335 (Award of damages, \$14,000; respondent ordered to pay 75% of the complainant’s costs).



Retail Leases Division



Deputy President
Michael Chesterman

The Divisional Head is Acting Judge Michael Chesterman, part-time Deputy President.

Structure and functions

The Division's jurisdiction is conferred by the *Retail Leases Act 1994*. The Tribunal may determine applications brought by parties to 'retail shop leases' as defined in the Act. The Act provides for two categories of claim: retail tenancy claims and unconscionable conduct claims.

A judicial member of the Division, sitting alone, conducts all hearings arising out of retail tenancy claims. The same applies to hearings on interlocutory issues, including the granting of urgent interim orders that arise in unconscionable conduct claims.

But in the final determination of unconscionable conduct claims the Tribunal must be constituted by a judicial member who is a Deputy President or a current, acting or retired judge of a court in Australia. Two non-judicial members who possess relevant expertise assist him or her in these cases. They act in an advisory capacity only.

The Act requires that, except where a party to a lease applies for an order in the nature of an interim injunction, mediation by the Retail Tenancy Unit must be attempted, or must be found to be unlikely to resolve the dispute, before any proceedings may be taken in the Tribunal or in any other court or tribunal.

Case load

At the beginning of the year, 108 applications were pending. During the year, 227 new applications were filed. Exactly the same number of applications were disposed of, so the number of applications pending at the end of the year remained at 108. This represents a welcome contrast to previous years, in which the Division

has not been able to dispose of as many applications as were filed.

The number of new applications (227) was significantly greater than last year's figure of 184. Among these new applications, 162 (71.4%) contained retail tenancy claims only, 4 (1.8%) contained unconscionable conduct claims only and 61 (26.9%) contained both types of claim.

Of the 227 applications that were disposed of, 157 (69.2%) were withdrawn, discontinued or settled. This is a relatively high rate of disposal without a determination by the Tribunal or a transfer to another court or tribunal, though not as high as last year. A further 2 (0.9%) were transferred to the Supreme Court. Out of the 68 applications that were determined by the Tribunal, 14 (6.2%) were dismissed (including one on the ground of lack of jurisdiction). In the remaining 54 (23.8%), orders were made.

One of the factors contributing to the increase in the number of new applications is that on 1 January 2006 the Tribunal acquired jurisdiction under the *Retail Leases Amendment Act 2005* to appoint one or more specialist retail valuers to determine, or review a determination of, the current market rent when it is payable under a lease. In 2006-07, 26 applications of this nature (which fall within the category of retail tenancy claims) were filed. In almost all of them, an order was made (though usually no hearing was necessary). The introduction of this new jurisdiction accordingly had the effect of reducing the proportion of applications disposed of without a determination and increasing the proportion of cases in which an order was made.

An unusually small number of appeals – only two – were decided by an Appeal Panel on appeal from the Division. Only one of these dealt with issues directly arising from the *Retail Leases Act*.

Timeliness

According to time standards adopted by the Division, 85% of the applications made to it should be disposed of within six months and 100% within one year. Of the 227 applications disposed of in 2006-07, 146 (64.3%) were disposed of within six months and 192 (84.6%) within a year. Out of the remaining 35, 10 (4.4%) took more than two years to resolve.

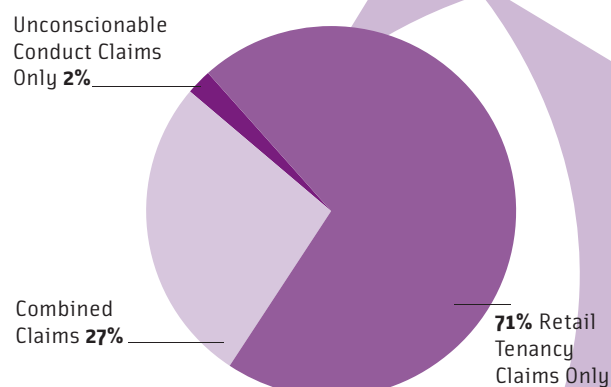
Significant themes

The last annual report included a summary account of the types of issues that frequently arise in retail leases cases. Those issues arose again. Others to arise this year included the following:

- Pre-lease misrepresentations.
- Whether, and if so in what circumstances, an agreement for a retail lease can be concluded orally.
- The consequences of refusal or failure by a lessor to provide a registrable lease.
- The obligations of a lessor when the premises are subject to strata title.
- What may constitute unconscionable conduct by a lessor of a newly established retail shopping centre.
- What constitutes repudiation of a lease by a lessee.
- The extent, if any, to which a lessor is obliged to consider granting a lease to a replacement lessee who has been proposed by a departing lessee.
- The liabilities of a guarantor of a lessee's obligations.
- Periods of limitation prescribed by the Retail Leases Act.
- The appointment of specialist retail valuers.

The last matter in this list has created some difficulties for Tribunal members and staff. As noted earlier, the Tribunal's jurisdiction in this field was conferred only recently. It is a very limited jurisdiction, confined almost exclusively to the task of appointing valuers. Applicants and their professional advisers have not always appreciated how the relevant provisions of the Retail Leases Act are intended to operate. With a view to resolving some of the teething problems in the new legislation, the Divisional Head has given presentations on the Tribunal's powers and procedures at seminars attended by valuers.

Applications by Type



APPEALS

Appeal Panel

The President has responsibility for the operation of the Appeal Panel.

Structure and Functions

The Appeal Panel hears both 'internal' and 'external' appeals. Internal appeals are appeals from decisions of a Division of the Tribunal. External appeals are appeals from decision-makers outside the Tribunal, presently the Guardianship Tribunal and, in respect of protective estate orders, the Mental Health Review Tribunal and Magistrates.

The Appeal Panel comprises a presidential member, a judicial member and a non-judicial member. The usual practice is for the President or the Divisional Head of the relevant Division to preside at appeals.

Case Load

The Appeal Panel dealt with 90 appeals, 76 being internal appeals and 14 being external appeals. Of the internal appeals, 42 were dismissed, 17 resulted in decisions that varied or set aside the decision under appeal and 13 were withdrawn or discontinued. Of the external appeals, 4 were upheld, 8 were dismissed, and the remaining 2 were withdrawn or discontinued.

Survey of Appeal Panel Decisions

The following is a limited survey of Appeal Panel decisions referring mainly to appeals where an order varying or setting aside the decision under appeal was made. The survey includes abbreviated references to the case, so for example 07/27 means the appeal reported at [2007] NSWADTAP 27.

Internal Appeals

From General Division

Costs: Costs power should not be used as a sanction to punish applicants for improper conduct. By doing so, the Tribunal made an error of law: 06/39.

Jurisdiction – interlocutory matter: Question of whether the appellant had standing to appeal

against a costs order made by the President against him when appellant appeared at a directions hearing as a "McKenzie friend". Appellant argued it was doubtful or questionable that the Appeal Panel had the power to make a finding of either apprehended or actual bias against the President of the Tribunal. Held that the Appeal Panel has jurisdiction to hear and determine the appeal and there was no obligation to refer the matter to the Supreme Court: 07/22.

Freedom of Information – Statutory interpretation: Concerned the proper construction of, and approach to, clause 12, which allows agencies to claim an exemption for documents that are the subject of secrecy provisions (in this case, s 431 of the *Co-operatives Act*). Appeal Panel agreed with the submissions put by counsel that the proper approach to the interpretation of cl 12 is the approach employed by the Court of Appeal in *General Manager, WorkCover Authority of NSW v Law Society of NSW* (2006) 65 NSWLR 502; [2006] NSWCA 84. The case was remitted to the Tribunal to allow it to exercise its residual discretion to release exempt documents: 07/14.

Privacy and Personal Information Protection Act – Jurisdiction: A direction made at a planning meeting construed as a decision and that decision about the Tribunal's jurisdiction to review conduct should have been made at a hearing after receiving submissions from both parties: 06/56.

Freedom of Information Act – Application of Government Policy: Agency and Tribunal did not take account of a Government policy. Tribunal remitted the decision to the agency under s 65 of the ADT Act with a recommendation that it apply the policy in the overlooked Premier's Memorandum: 06/48.

Passenger Transport: Cancellation of taxi driver authority by administrator. Tribunal varied decision by substituting a suspension of six

months. On appeal, suspension reduced by one month on the basis that the negative inferences drawn regarding the taxi driver's conduct (complaint of overcharging and unusual route taken) had not been established: 06/68.

Freedom of Information Act - leave to appeal interlocutory decision - actual and apprehended bias: Application for leave to appeal an interlocutory decision of a Tribunal Member not to disqualify herself for bias. Application refused on the basis that no substantial injustice arose from the refusal of leave and an appeal would not undo the Tribunal's directions or decisions made in relation to legal representation and the filing of documents: 07/6.

Firearms licensing: Concerned the application of the *Firearms Act 1996* to club armourers in shooters clubs in NSW. Tribunal set aside decision to refuse licence by finding that the relevant provision in the Regulation does not apply to a club armourer and the armourer was a fit and proper person to be granted a licence. While the Appeal Panel agreed with the substance of the Tribunal's decision, it held that because of a procedural error the matter was to be remitted for redetermination by a differently constituted Tribunal: 07/13

From Revenue Division

Leave to appeal out of time - leave to extend to the merits: Tribunal set aside a decision of the Commissioner, ordered a refund of vendor duty paid by the taxpayer plus interest, relying on the discretion in s 162 B (4) of the *Duties Act 1997*. Commissioner sought leave to appeal out of time and also sought to extend to the merits. Commissioner challenged the ability of the Tribunal to exercise discretion in light of ss 147 and 150 of the *Duties Act 1997*, which set out provisions relating to a 'liability date'. The Appeal Panel (by majority) refused leave on both counts on the grounds of prejudice to the taxpayer and insufficient public interest in

determining the points raised: 06/22.

From Equal Opportunity Division

Vilification: Five statements published on the Internet contained the necessary element of incitement to hatred or serious contempt, so as to satisfy the test for homosexual vilification under section 49ZT(1) of the *AD Act*: 06/51

From Retail Leases Division

Guarantors' liability; raising new ground: Legal effect of onward sale of business on guarantors' liability for unpaid rent. Written agreement for new lease did not operate to discharge appellants' liability for rent. Consideration of principles and cases on raising new grounds on appeal: 07/26

From Legal Services Division

As previously mentioned, Divisional decisions are not appealable to the Appeal Panel. The right of appeal is direct to the Supreme Court, and where the presiding member is a judge the appeal is direct to the Court of Appeal. However, during the year, in unusual situations, two appeals were determined. The first case was commenced under the now repealed *Legal Profession Act 1987*, which allowed appeals to the Appeal Panel. The matter was remitted to the Appeal Panel from the Court of Appeal (*Stanoevski v The Council of the Law Society of New South Wales* [2005] NSWCA 428) for determining the dispositive orders for professional misconduct findings made in an Appeal Panel decision: 07/25.

In the second case, a solicitor filed an application for leave to appeal from an interlocutory decision of the Tribunal. The Appeal Panel (constituted by a Presidential Judicial member sitting alone) dismissed the application on the grounds that the Appeal Panel lacked jurisdiction: *ex tempore*.

External Appeals

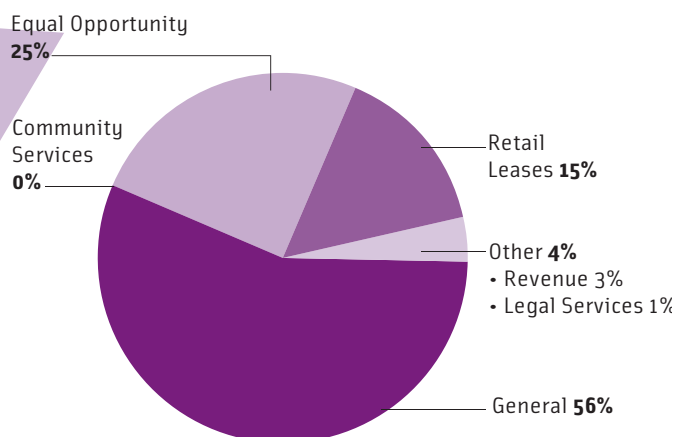
From Guardianship Tribunal, Mental Health Review Tribunal and Magistrates

Procedural fairness: Material adverse to a party: The Appeal Panel found that the Guardianship Tribunal had denied a party procedural fairness by not giving the party an adequate opportunity to respond to adverse material that was contained in two reports: 07/8.

Protected Estates Act – operation of s 20: A hearing before a Magistrate had miscarried in two significant respects: the failure to follow the procedure contemplated by s 20 (initial order followed by timely, further consideration) and a failure to notify the appellant of her appeal rights: 06/37.

Stay of decision: The Appeal Panel granted a stay of the decision of the Guardianship Tribunal pending further order to “secure the effectiveness of the determination of the application”: 07/21.

Appeals lodged by Division



Supreme Court and High Court

Parties to Appeal Panel decisions may appeal on a question of law to the Supreme Court. In some instances a Divisional decision is not appealable to the Appeal Panel but is appealable to the Supreme Court (e.g. Legal Services Division decisions).

In the case of appeals against Appeal Panel or Divisional decisions where a judge has presided, an appeal goes directly to the Court of Appeal of the Supreme Court as required by s 48 of the *Supreme Court Act 1970*.

During the last year the Supreme Court dealt with a number of appeals from the Tribunal. Two matters were the subject of applications to the High Court for special leave to appeal.

Supreme Court

Whether the Tribunal is a 'Court' able to apply Commonwealth law

In decisions delivered in July 2006 and December 2006 the Court of Appeal reversed decisions made by Appeal Panels of the Tribunal holding, respectively, that the Retail Leases Division and the Equal Opportunity Division of the Tribunal satisfied the description of a 'court' for the purposes of the *Judiciary Act 1903*, and therefore could apply Federal law in proceedings in those Divisions. The Court of Appeal decisions, respectively, are *Trust Company of Australia Ltd (t/as Stockland Property Management) v Skiwing Pty Ltd (t/as Café Tiffany's)* [2006] NSWCA 185) and *Attorney General v 2UE Sydney Pty Ltd & Ors* [2006] NSWCA 349.

In the instance of the Retail Leases Division case, the question had been whether the applicant for redress could agitate a claim based on contravention of the Federal Trade Practices Act. In the instance of the Equal Opportunity Division, a respondent had contended that the Tribunal had no jurisdiction because the law upon which the complainant relied, a State law, was unconstitutional being ultra vires the Commonwealth Constitution.

Responding to one of the views expressed by the Appeal Panels, the Court held that the Tribunal as a whole needed to be assessed. It was not permissible to determine the question of whether it was a court in the relevant sense on a Division by Division basis.

The result is that the Tribunal cannot apply federal law by relying on the Judiciary Act devolution of that authority to State 'courts'. The result is that parties to proceedings in the Tribunal are not able to invoke the whole body of relevant State and Commonwealth law in bringing or defending proceedings. The Commonwealth element is excluded.

(The Court rejected the reasoning of the Federal Court (Heerey J) in *Wood v Commonwealth* (2006) 148 FCR 276, which had taken a similar approach to the Appeal Panel in the *2UE* case in dealing with the question of whether the Tasmanian Anti-Discrimination Tribunal could entertain proceedings brought against the Commonwealth, which again depended on whether it was a 'court' in the Judiciary Act sense).

The decisions have implications for all Tribunals in New South Wales, except, it would seem, those that are entirely constituted by tenured judges and in other respects satisfy the usual characteristics of a 'court'.

The decisions mean that if a party to Tribunal proceedings wishes to raise a Commonwealth law point, the Tribunal should consider whether the proceedings should be removed to a competent 'court' – in retail leases cases, that would be the Supreme Court. The problem is more acute in settings where the Tribunal has exclusive trial jurisdiction – the position that applies, for example, in anti-discrimination matters. In such a situation, it may be necessary for the Tribunal to refer the point to the Supreme Court, and adjourn until the Supreme Court deals with it.

Freedom of Information

Independent Commission Against Corruption v McGuirk [2007] NSWSC 147

Section 9 of the *Freedom of Information Act 1989* exempts from the operation of the Act bodies or offices described in Schedule 2 of the Act in relation to the functions specified or described there. The Independent Commission Against Corruption (ICAC) is a scheduled body in respect of certain functions including corruption prevention and complaint handling. It had declined to deal with an application for access to documents in its possession as the documents were connected with one of the protected functions.

The applicant, who was the respondent to the appeal in the Supreme Court, applied to the Tribunal for review. The Tribunal upheld the ICAC's objection to jurisdiction. The applicant appealed. The Appeal Panel held that as the ICAC fits the general definition of 'agency' contained in s 6 of the Act, it was bound to observe those general provisions in the FOI Act that affect an 'agency' such as s 17 (access applications) and s 24 (determination on application). Therefore it was obliged to process and respond to the applicant's application. It could only raise any s 9 objection after that point. ICAC appealed to the Supreme Court. The Court upheld the appeal and restored the decision of the Tribunal at first instance. It ruled that once the documents are categorised as s 9 documents, the FOI Act has no further application to that body or office. That includes s 24.

The Court considered that this conclusion did not mean that a ruling that the documents sought were s 9 Schedule 2 documents was unreviewable. The Court read s 53 as leaving open the possibility for an applicant to challenge that determination in the ADT.

University of New South Wales v McGuirk [2006] NSWSC 1362

The University refused to disclose to the

respondent (the applicant to the Tribunal) the full copies of expert reports made to the University assessing allegations of serious misconduct and scientific fraud by a professor in his published academic work. The parties had agreed that the documents were exempt under cl 20 (1)(d) of the FOI Act as protected disclosures. The University also relied on other exemptions. The applicant had argued that even if exempt, the Tribunal should release the documents in the public interest.

The Tribunal at Divisional level disposed of the proceedings by ruling that none of the exemptions were established. It did not need to deal with the public interest discretion point. It ordered release of the documents. The University appealed to the Appeal Panel. The Appeal Panel dismissed the appeal. In the appeal the University objected to the Tribunal's decision on the ground of procedural fairness. The University appealed again to the Supreme Court. The Supreme Court upheld the University's objections as they went to the procedural fairness issue. The University's objection was that it had not been informed that the Tribunal would not accept the parties' concession that the protected disclosure exemption applied. The Court held that the Tribunal was entitled to accept the concession agreed by the parties and that if it did not intend to do so it should have warned the parties so that further submissions could be made. By failing to warn the parties the Tribunal had denied the appellant procedural fairness. The Court rejected the Appeal Panel's finding that the Tribunal made it clear that it would not be acting on the concession.

Notwithstanding this, the respondent argued that the University should nonetheless have exercised its discretion and released the exempt documents because it was in the public interest to do so. The Court further held that the Tribunal has an overriding discretion to order access be given to documents which are exempt documents under the FOI Act if it decides that to do so is the

correct and preferable decision, adopting the reasoning in *Mangoplah Pastoral Co Pty Ltd v Great Southern Energy* [1999] NSWADT 93 and specifically rejecting the conclusion reached in *Neary v the Treasurer NSW* [2002] NSWADT 261 to the opposite effect.

The Court allowed the appeal and remitted the matter to the Tribunal.

Privacy

Director General, Department of Education and Training v MT [2006] NSWCA 270

MT complained that the Department improperly used and disclosed information about her medical condition in breach of the *Privacy and Personal Information Act 1998*. The complaint arose out of the actions of a teacher at the school ("X"), who was also the coach of a local soccer team in which MT played. MT's mother had disclosed that MT suffered from a form of arthritis and would tell the coach if she had difficulty playing. X had also been informed by other players in the team that MT had mentioned that if she had a fall it could result in MT being permanently disabled and requiring the use of a wheelchair.

The team made it to the finals. When other players repeated concerns about MT's health, X took steps to access the school file, which was open to all teachers. The file confirmed that MT suffered from the condition. X reported this information to the club president. Both X and the club president confronted MT and MT's mother with this information.

The Department had always admitted that it breached s 12 of the Act by failing to take steps to prevent unauthorised use and disclosure of the information. In addition to s 12, the Tribunal found that the Department had contravened ss 18 and 19, but not 16 and 17.

Both parties appealed. Neither challenged the Tribunal's finding in relation to section 12.

The Appeal Panel set aside the Tribunal's finding as to s 16 and held that the Department breached ss 16, 18 and 19 of the Act. The Department appealed the Appeal Panel's decision as to ss 16, 18 and 19.

The Court of Appeal upheld the Appeal Panel's order in relation to s 16 as to "use" of the information but set aside the Appeal Panel's order in relation to ss 18 and 19 as to "disclosure". The Court held that whether the conduct of an individual is to be attributed to a corporation would depend on the particular statutory context. The rules of agency do not necessarily apply in the case of institutions. Policy issues are relevant in determining whether the actions of an individual will be attributable to a corporation.

The Court held that the Act left no scope for attributing to the Department conduct that did not relate to any purpose of the Department. The Court further held that X did not act in his capacity as an employee of the Department when he disclosed the information to the president of the soccer club. X acted without authority and for a purpose which had no connection to the school's functions. In that context the "use" or "disclosure" of information should not be characterised as "use" or "disclosure" by or "conduct" of the Department.

Budd v Director, Attorney General's Department [2006] NSWSC 1267

The Court dismissed an appeal brought by the appellant against the Appeal Panel's decision upholding the Tribunal's finding regarding the effect of s 6(1) of the *Privacy and Personal Information Act 1998* ("the Act"). The Tribunal held that s 6 (1) did not apply to the actions of the Registrar of Waverley Local Court (or those acting on behalf of the Registrar) in releasing documents lodged by the appellant in Local Court proceedings because they were performed as part of the Court's judicial functions.

The Court noted that there were a number of Court Rules, which granted the Registrar (and those acting on behalf of the Registrar) responsibility for making decisions regarding access to material filed in the Registry. When making decisions about granting access to material filed, the Registrar is exercising judicial functions.

Licensing

Obradovic v Commissioner for Fair Trading [2007] NSWSC 368

A building contractor unsuccessfully lodged an appeal against the Tribunal's decision to affirm the Commissioner's decision to refuse his application for a contractor licence. Malpass AsJ made several general comments in relation to an attempt by the plaintiff to litigate matters that had been fully and thoroughly dealt with in venues where there was jurisdiction to entertain such material. Furthermore, the contractor's submissions concerned questions of fact, which had been agitated before the Tribunal and the Appeal Panel. Malpass AsJ made it clear that the Court did not have jurisdiction to redress error in the fact-finding process and that the appeal was limited to questions of law.

Discrimination

Pradeep Deva v University of Western Sydney [2007] NSWSC 341

Following the dismissal of the plaintiff's unfair dismissal claim in the Australian Industrial Relations Commission ("the AIRC"), he made a complaint of discrimination to the Anti-Discrimination Board ("the Board"). The President of the Board declined the complaint. At the request of the plaintiff, the complaint was referred to the Equal Opportunity Division of the Tribunal. On 12 December 2006, Deputy President Hennessy refused leave for the complaint to be the subject of proceedings before the Tribunal (leave is required pursuant to s 96 of the *Anti-Discrimination Act*) on the basis that the subject matter of the complaint to

the ADB was the determination of the plaintiff's employment and it had been dealt with by the AIRC. Consequently, there was no substantial reason for leave to be granted.

The plaintiff commenced proceedings in the Supreme Court by way of summons. The defendant filed a Notice of Motion seeking summary dismissal of the proceedings. The Court found that the Tribunal was entitled to accept, as a matter of fact, that the substance of the complaint concerned an alleged termination of the plaintiff's employment on the ground of unlawful discrimination. The Court further found that the Tribunal was entitled to find that this was the subject matter of the complaint to the AIRC.

Sebastian v ADT & 2 Ors [2007] NSWSC 437

The Tribunal held that an agreement reached between the parties following referral to mediation was binding and the Respondents were entitled to orders, which gave effect to that agreement. The plaintiff sought leave to appeal that decision. Leave was refused as the Appeal Panel took the view that no substantial injustice would result if leave were refused. The Appeal Panel also decided that the Tribunal's decision was interlocutory.

On appeal, the Court observed that it did not matter whether the decision being appealed was an interlocutory or final determination of the matter because the appeal was incompetent. The Court agreed with the reasoning of the Appeal Panel in relation to the Tribunal's identification of the principles of agreement as falling within the second category of the test in *Masters v Cameron* (1954) 91 CLR 353. The Court found that the Appeal Panel had jurisdiction to decide the issue it did, it had afforded the parties procedural fairness, there was no unreasonableness, nor bias, nor bad faith and it had not failed to take into account relevant considerations.

Budd v New South Wales Commissioner of Police [2006] NSWSC 1266

The appellant brought two complaints of discrimination on the ground of disability against officers of the NSW Police. The President of the Anti-Discrimination Board declined the complaints as lacking in substance. The appellant requested leave from the Tribunal, pursuant to s. 96 of the *Anti-Discrimination Act 1977*, for the complaint to be the subject of proceedings before the Tribunal. The Tribunal formed the view that the appellant's complaints of discrimination had no reasonable prospects of success and leave was refused.

In dismissing the appeal, the Court held that the appellant's submissions failed to identify any arguable error of law and that the proceedings were manifestly hopeless.

Professional Discipline

Punch v Council of the NSW Bar Association [2007] NSWCA 93

In disciplinary proceedings brought against a barrister the Bar Association relied on evidence obtained unlawfully by the use of a listening device. The recording had been admitted at a criminal trial against two accused. The barrister had acted for them. The recording included a conversation, which provided a basis for the Bar Association's allegation that in those proceedings he adduced evidence that he knew to be untrue. There was a question as to whether the terms of the *Listening Devices Act* required the Tribunal to exclude the evidence. The Tribunal decided it was not barred by the LD Act and admitted the evidence. The barrister appealed to the Court of Appeal unsuccessfully. The Court held that s 14 of the LD Act does not implicitly prohibit the giving of evidence in civil proceedings; nor is a permission to do something in criminal proceedings a prohibition on doing it in civil proceedings.

The Council of the New South Wales Bar Association v Sahade [2007] NSWCA 145

In proceedings in 2005 the Tribunal found a barrister guilty of professional misconduct, but refused the application of the Bar Association that he be deregistered. Instead, the Tribunal ordered the respondent to pay a fine of \$10,000, publicly reprimanded him and ordered him to pay the costs of the proceedings. Both parties appealed, the barrister seeking dismissal of the proceedings against him, the Bar Association seeking an order of deregistration. Both appeals were dismissed. The Court made a number of observations and findings bearing on the conduct of legal profession disciplinary cases in the Tribunal, for instance:

- An appeal from a decision of the ADT under s 171F of the *Legal Profession Act 1987* (NSW) is by way of rehearing, pursuant to s 75A(6) of the *Supreme Court Act 1970*.
- The failure of the Tribunal to advert in its reasons to affidavits of character referees was not a material error casting doubt on its factual conclusions. The Tribunal must form its own view as to the character of the practitioner and is entitled to give such weight as it sees fit to the views of others.
- At general law, conduct occurring other than in connection with the practice of law may be relevant to whether a practitioner is of good fame and character or a fit and proper person to remain on the roll, particularly where the conduct contains an element of dishonesty or deceit.
- Section 127(1)(b) should not be interpreted as introducing a temporal requirement that good fame and character or fitness to practice be assessed at the time of the hearing. It was a definitional provision establishing criteria against which conduct was to be assessed.

- The Tribunal was correct to conclude that at the time of the conduct the practitioner was guilty of misconduct, which would satisfy a general law finding of professional misconduct, but erred in its treatment of the evidence regarding the practitioner's fitness to practise at the time of the second hearing. However, as the parties agreed to a separate hearing as to orders, it was open to the Tribunal to revise its views as to the practitioner's fitness after the second hearing. The penalties imposed by the Tribunal were within an appropriate range.

State Revenue: Hire of Goods Duty

Chief Commissioner of State Revenue v Telstra Corporation Limited [2006] NSWCA 370; (2006) 65 ATR 309

Telstra, as it did when it was the monopoly supplier, continues to supply a basic telephony service to customers who wish only to have that level of service. The service includes the provision of a handset over which Telstra retains ownership and a monthly rental charge. This is a charge in addition to the primary charge for subscription to the service.

For many years Telstra paid without protest State hire of goods duty in respect of that part of the transaction. In these proceedings, which commenced in the Tribunal, it disputed liability. The Tribunal at first instance dismissed Telstra's application for review. The Appeal Panel upheld Telstra's appeal, and held that it was not liable for duty based on its interpretation of the exemption from duty found at s 186(1)(f) of the *Duties Act 1997*. The Court of Appeal dismissed the Commissioner's appeal.

The main question was whether Telstra was entitled to the exemption from duty under then s 186(1)(f) of the *Duties Act 1997* for an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service'.

On the issue of whether the handset is required for the contractual provision of the service, the Court of Appeal rejecting the Commissioner's submission, held that it was unrealistic to regard the service provided by Telstra as being limited to providing a connection to its network, and as not, at least potentially, including the actual use of the network by the customer. As the Appeal Panel did not limit the service to the provision of a connection to the network, Hodgson JA held that this could not be an error of law.

In response to another of the Commissioner's submissions, Hodgson JA agreed that it was possible for a customer to use the connection to the network, and the handset, for making calls pursuant to a contract with another service provider. However, His Honour held that it was plainly open to the Appeal Panel to decide, as a matter of fact, that the provision of handsets was for use of Telstra's service for receiving and making telephone calls.

On the question of whether the provision of the handset is solely to enable the contractual provision of the service, Hodgson JA accepted that the test is an objective one involving consideration of the intention as to the use for which the goods are provided. The Court of Appeal held that it was open to the Appeal Panel to find that Telstra's intention to supply the handsets was no wider than to provide handsets for use in connection with its service.

The Commissioner sought special leave to appeal to the High Court. On 15 June 2006, it was refused.

Retail Leases: Transfer of Proceedings

World Best Holdings Limited v Sarker & Anor [2006] NSWSC 1101

The plaintiff made an application to the Tribunal for an order pursuant to s 76A of the *Retail Leases Act 1994* to transfer two matters to the Supreme Court. The matters concerned an unconscionable conduct claim ("Sarker") and a retail tenancy claim ("WBH"). The application to

transfer the Sarker matter was refused because the Tribunal was not satisfied that it may be more effectively and appropriately dealt with in the Supreme Court (s 76A(2)(a)). The application to transfer the WBH matter was refused on the basis that it did not involve a question of unconscionable conduct and the Tribunal had no power to transfer such a matter. In the Supreme Court proceedings, the plaintiff appealed on a question of law and also sought leave to appeal against the merits of the decision. The Court rejected an amended application on the grounds that it was of no utility and its admission would make the appeal similar to a fresh hearing. The Court held that the Tribunal, despite error, had reached the right result in deciding that s 76A(2)(a) had not been satisfied. The plaintiff fell well short of discharging its onus in relation to the matter. The plaintiff, both before the Tribunal and in the present proceedings had either failed to address or address successfully the nature of its claim. This was not a case in which leave should be granted.

High Court

Two decisions of the Court of Appeal relating, in turn, to decisions of the Tribunal were the subject of special leave applications that were refused.

Hayson Group of Companies Pty Ltd v Chief Commissioner of State Revenue: High Court Application No. 5336 of 2006 (9 February 2007). The taxpayer sought to appeal against a Court of Appeal decision restoring the Commissioner's determination of liability under the *Parking Space Levy Act 1992*, and reversing the Appeal Panel's decision in the taxpayer's favour.

Chief Commissioner of State Revenue v Telstra Corporation Limited: High Court Application No. 537 of 2007; [2007] HCATrans 314 (15 June 2007). (As noted earlier).

Membership

Composition of Membership

As at the end of the reporting year the Tribunal's membership comprised 55 presidential or judicial members and 61 non-judicial members. The list with appointment details appears in Appendix A.

Of the judicial members (including presidential members), 26 are male and 29 are female. Of the non-judicial members there are 31 men and 30 women. The gender distribution for the entire membership is 57 men and 59 women.

Changes in Membership

New Members: During the year, Acting Judge John McGuire was appointed as a part-time Deputy President, and assigned to the Legal Services Division. The appointment followed his retirement from the bench of the District Court where he served for 22 years. His Honour was the first solicitor appointed to the District Court.

Retirements: Thirteen members resigned or retired following completion of their term of appointment. Five were judicial members: Phillip Boyce, Pauline Curraey, Chrissa Loukas, Therese MacDermott and David Officer QC. Eight were non-judicial members: Renia Cox, David Dobell, Ray Gietzelt, AO, Karen Greenhill, Deborah Klika, Belinda Mericourt, Doreen Toltz and Cleonie Quayle.

Appointments: Our congratulations to Professor Neil Rees on his appointment as Chairperson, Victorian Law Reform Commission, which commenced on 1 June 2007. Professor Rees was the founding Dean of the University of Newcastle Law School. He is an eminent authority on anti-discrimination law. He served as a judicial member of the Equal Opportunity Division and the predecessor Equal Opportunity Tribunal since 1994. He has also made a substantial contribution at Appeal Panel level in equal opportunity matters and in guardianship and protected estates matters. In protective matters, he was able to draw on his background as founding President of the Mental Health Review

Board of Victoria. He served on a number of occasions as an Acting Deputy President of the Tribunal.

Members' Professional Development

The Members' Annual Conference or Professional Development Day was held each year from 1999 to 2003. It was rested for the years 2004 and 2005, and instead the Tribunal concentrated on seminar programs and workshops, as outlined in last year's annual report. The Conference was reinstated in 2006, and held on Friday 27 October at the Australian Museum. This event is the one occasion during the year when the disparate membership of the Tribunal has the opportunity to come together.

The title of the conference was "The Individual and the Law: Increased Access, Increased Rights & Our Response." The Hon Justice Ronald Sackville of the Federal Court of Australia delivered the keynote address on 'Courts and Social Change'.

Other topics and speakers included:

- Respecting Difference: The Equality before the Law Bench Book – Anthea Lowe, Author of the Bench Book and Non-Judicial Member.
- Procedure and Evidence in Court Substitute Tribunals – Professor Neil Rees, Law School, University of Newcastle and Judicial Member.
- The Litigant in Person – Jack Waterford, Editor of the Canberra Times; and,
- Domestic Law and the Impact of Human Rights Instruments with special reference to England and New Zealand – Simeon Beckett, Barrister.

The day also included break out sessions with Dr Chris Birch, SC addressing the Equal Opportunity Division on Indirect Discrimination and the Amery Case; Ms Joanne Muller, Chairperson of various health professional tribunals addressing the Legal Services Division on Expert Evidence in

Professional Discipline Tribunals; Mr Greg Sorenson, Solicitor and former Queensland Deputy Information Commissioner addressing the General Division on Freedom of Information and Mr Gary Ulman, Partner, Minter Ellison updating the Retail Leases Division.

A specialised workshop, titled *'Some Comments on Managing FOI Applications from a Tribunal perspective'* was conducted on 20 September 2006 for members of the General Division.

Conferences

A number of conferences relevant to the work of the Tribunal were held during the year.

The President delivered a paper, *'Merging Tribunals: Some Reflections'*, at a seminar jointly conducted by the Australian Institute of Administrative Law (AIAL) and the Council of Australasian Tribunals (COAT) ACT Chapter on 22 September 2006 in Canberra (since published in the AIAL Forum: (2006) 51 AIAL Forum 33).

The President's paper *'Judicial Conduct out of Court'* (since published in The Judicial Review: (2006) 8(1) TJR 81) presented at the District Court Judges' Conference in 2006 was the subject of a supplementary paper delivered at the same Conference in April 2007.

The President and Deputy President Hennessy attended the Australian Institute of Judicial Administration's 10th Tribunals Conference on 7-8 June 2007 in Melbourne; and the AIAL Annual Conference on 14-15 June 2007 in Canberra.

The President delivered a paper on *'Mediation in the Tribunal Setting'* to the 20th Annual Conference of the NSW Branch of the Australian Dispute Resolution Association (ADRA) on 22 June 2007 in Sydney.

Council of Australasian Tribunals (COAT)

The ADT was well represented at the Annual Conference of the NSW Chapter of the Council of Australasian Tribunals (COAT) on 11 May 2007. Speakers included Justice Keith Mason, President, Court of Appeal, David Bennett QC, Commonwealth Solicitor-General and Justice John O'Meally, President of the Dust Diseases Tribunal. The President delivered a paper on issues of importance for specialist and merged tribunals - *Super Tribunals or Specialist Tribunals: is there a best model for the delivery of quality administrative justice'*.

The papers delivered at these conferences, including those delivered by the President at the COAT NSW and ADRA Conferences, are available on the websites of the host organisations.

International

In his capacity as Chairman (Alternate) the President, Judge O'Connor, attended the 65th session of the Commission for Control of Interpol's Files held at Lyon France in October 2006.



The Hon. Justice Ronald Sackville, Federal Court of Australia, delivering the keynote address at the 2006 Members' conference.

Registry and Budget



Registrar
Pauline Green

Accommodation

The Registry is located at Level 15, 111 Elizabeth Street Sydney. The design of the Registry counter, the reception area and the hearing rooms seeks to accommodate the needs of Tribunal users with disabilities. There are four hearing rooms and three interview rooms for mediations and conferences.

Staff

The Registry has eleven positions, including the Registrar and Deputy Registrar. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills, officers are rotated between the teams.

A separate position of Research Associate to the President provides legal and research support for the President and the full-time Deputy President.

The Registry provides the following services: enquiries, registrations, hearing support, case management and general administrative support to members. In addition, registry staff maintain the Tribunal's website, ensuring that information about the Tribunal's jurisdiction and procedures are up-to-date and readily available to the public.

Projects

In order to respond to increased caller demands, the registry installed a new phone queuing system in January 2007. The new system allows a high degree of flexibility, identifying call traffic and thereby enabling staff to respond more quickly during high demand periods. The system also includes a call announcement facility to advise users of the progress of their calls.

A user survey was undertaken in February 2007. Over 81% of respondents provided positive feedback, reporting that registry provided useful information and advice, and users received excellent service from staff. Although the survey showed a high level of satisfaction with registry staff, comments indicated that there is still a further need to improve the forms and information brochures available. To this end an overall review of the Tribunal's publications is being conducted. This includes forms, frequently asked questions (FAQs) and general procedural information sent to parties. Additional measures have been taken to address a perception that registry staff may have difficulty interpreting directions and concerns about the clarity of directions given. Those measures include changes to the program for Staff Training and Development to include presentations by the Deputy Presidents and other members, with a focus on the various procedures in, and current issues pertaining to, the divisions.

Staff in the registry continue to engage in team based projects designed to streamline a number of internal processes and systems and improve service delivery to the Tribunal's users. Current projects include a review of Tribunal forms to achieve uniformity and consistency.

A project was commenced in January 2007 with the aim of improving procedure, documentation and information about the appointment and role of Guardians ad Litem and Separate Representatives in the Tribunal.

Digital sound recording equipment was purchased and installed in June 2007. The registry aims to use the implementation of the new equipment as an opportunity to review the process of ordering transcripts and tapes.

Work has commenced on the development of a functional retention and disposal authority for the Tribunal's records as required by the State Records Act 1998.

Staff development

Staff receive training through the Attorney General's Department, and through attendance at relevant conferences. Additionally, staff receive in-house training on new legislation and procedural changes. All staff participate in a performance plan, which is used as a tool to identify opportunities for individual officers to develop and consolidate the skills they require to effectively deliver services to members and Tribunal users.

Budget and Financial Information

The Tribunal is an independent statutory body that for budgetary purposes is a business centre within the Attorney General's Department. The Tribunal has two sources of funds. Government funding is provided by a budget allocated by the Attorney General's Department and funding allocated by the trustees of the Public Purpose Fund. The Public Purpose Fund is used primarily to meet the cost of operating the Legal Services Division of the Tribunal. The Public Purpose Fund comprises interest earned on solicitors' clients' funds held in compulsory trust account deposits under the *Legal Profession Act 2004*. Appendix C provides a picture of the expenditure incurred by the Tribunal in the reporting period.



Appendices

Appendix A: List of Members

1 July 2006 to 30 June 2007

This list of members of the Tribunal indicates who held appointments during the reporting period, organised by Divisions. In the case of new members appointed during the current reporting period, their date of appointment to the Tribunal is shown next to their names. In the case of continuing members, their first date of appointment is shown in the relevant previous annual report unless they held appointments to former tribunals and were continued under transitional provisions.

If a member has been assigned to more than one Division, there is a corresponding entry. The President is assigned to all Divisions.

PRESIDENT

Judge KEVIN PATRICK O'CONNOR, AM, to 9 August 2010

Assigned to all Divisions in accordance with s 21(1) of the *Administrative Decisions Tribunal Act 1997*.

DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY, to 7 March 2010

Assigned as set out below.

GENERAL DIVISION

Current Expiry date

Divisional Head

Judge KEVIN PATRICK O'CONNOR, AM, President 9.8.10

Deputy Presidents

Acting Judge MICHAEL RAINSFORD	
CHESTERMAN	2.10.08
Magistrate NANCY LOUISE HENNESSY	7.3.10
JANE ANNABEL DARLING NEEDHAM, SC	30.4.08
ROBIN PATRICK HANDLEY	
(Acting 19.10.06 to 18.10.07)	30.4.08

Judicial Members

CATHERINE LOUISE FITZGERALD	30.4.08
PENELOPE HELEN GOODE	30.4.09
YVONNE GRANT	30.4.08
SIGRID HIGGINS	31.10.07
SUZANNE MAREE LEAL	31.10.09
PETER HENRY MOLONY	31.10.07
STEPHEN HENRY MONTGOMERY	31.10.07
LINDA MARY PEARSON	30.4.08
NEIL ROBERT REES	26.07.07
ROBERT BRUCE WILSON	30.4.08

Non-judicial Members

ZITA ROSE ANTONIOS	31.10.08
CLIFFORD DOUGLAS BLAKE, AM	31.10.07
MARY ELIZABETH BOLT	31.10.07
BARBARA RUTH FIELD	31.10.09
KEVEN WILLIAM MAPPERSON	31.10.07
ANNETTE FRANCES O'NEILL	31.10.08

Presidential Members assigned to Guardianship and Protected Estates list

Magistrate NANCY LOUISE HENNESSY,	
Deputy President	7.3.10
ANNE BRITTON (from 12.10.06),	
Deputy President	11.10.09

Judicial Members assigned to Guardianship and Protected Estates list

SUZANNE MAREE LEAL	31.10.09
JULIAN JOSEPH MILLAR	31.10.09
NEIL ROBERT REES	26.7.07

Non-judicial Members assigned to Guardianship and Protected Estates list

MARY ELIZABETH BOLT	31.10.07
BARBARA RUTH FIELD	31.10.09
JENNIFER GREEN	31.10.08
LYNN MARY HOULAHAN	31.10.08
RALPH WILLIAM MERRELL	31.10.08
BRUCE GEOFFREY THOMSON	31.10.08
ELIZABETH ANNE WHAITE	31.10.09
ANN DOMINICA WUNSCH	31.10.09

Non-judicial Members, Public Health

ANNEMARIE HENNESSY	31.10.07
RICHARD MATTHEWS	31.10.07

Non-judicial Members, Accredited Certifier

PETER GABRIEL FRIEDMANN	31.10.09
PHILIP ARTHUR HAYWARD	31.10.09
GRAHAM JOHN MALLISON	31.10.09
GORDON PATRICK WREN	31.10.09

Non-judicial Members, Veterinary Surgeons Discipline

TANYA LORRAINE CARTER	31.10.09
FIONA JENNIFER CLARK	31.10.08
ROSALIE JANE MAYO-RAMSAY	31.10.08
RUTH ROSEMARY THOMPSON	31.10.09

Non-judicial Members, Education

TERENCE RICHARD BURKE, AM	30.4.08
JOLYN MARGARET KARAOLIS, AM	30.4.08
JOSEPH RIORDAN, AO	31.10.07

Non-judicial Members, Architects

MARTYN DAVID CHAPMAN, AM	31.10.07
JANE MARGARET JOSE	31.10.07
PATRICK JOHN O'CARRIGAN	31.10.07
PETER ROY WATTS	31.10.07

EQUAL OPPORTUNITY DIVISION

Divisional Head

Magistrate NANCY LOUISE HENNESSY,
Deputy President 7.3.10

Deputy President

Acting Judge MICHAEL RAINSFORD
CHESTERMAN 2.10.08
JANE ANNABEL DARLING NEEDHAM, SC 30.4.08
ANNE BRITTON (from 12.10.06) 11.10.09

Judicial Members

LARISSA YASMIN BEHRENDT 31.10.08
DAVID LEE BITEL 31.10.09
JENNIFER LOUISE CONLEY 30.4.08
JANICE MARGERY CONNELLY 30.4.08
PENELOPE HELEN GOODE 30.04.09
ERAINE ELIZABETH GROTE 30.4.08
GRAHAM REGINALD IRELAND 31.10.08
RUTH LAYTON 30.04.09
SIMON JAMES RICE, OAM 30.04.09
JANELLE ANNE SAFFIN 30.04.09
MARGARET MARY SMYTH 31.10.07

Non-judicial Members

ZITA ROSE ANTONIOS 31.10.08
MARY ELIZABETH BOLT 31.10.07
MAREE JANE GILL 30.4.09
DENNY GROTH 31.10.07
ELAYNE HAYES 31.10.07
NOEL ARTHUR HIFFERNAN 30.4.09
LYNN MARY HOULAHAN 31.10.08
ANTHEA ELISABETH LOWE 30.4.09
LINDA MARILYN MONAGHAN-NAGLE 31.10.07
LAURA CLARE MOONEY 30.4.09
LOUISE NEMETH DE BIKAL 30.4.09
MAURICE MICHAEL O'SULLIVAN 30.4.09
HENRY NAN HUNG PAN, OAM 30.4.09
CLEONIE DOROTHY QUAYLE 30.4.07
ANTHONY MICHAEL JOSEPH SCHEMBRI 30.4.09
JOACHIM SCHNEEWEISS, AM 31.10.07
BETTY LORRAINE WEULE 31.10.07

COMMUNITY SERVICES DIVISION

Divisional Head

THOMAS JOSEPH KELLY, Deputy President
(to 11.10.06) 31.10.07
ANNE BRITTON, Deputy President
(from 12.10.06) 11.10.09

Judicial Members

MARGARET MARY SMYTH 31.10.07

Non-judicial Members

MARY ELIZABETH BOLT 31.10.07
JENNIFER GREEN 31.10.08
DENNY GROTH 31.10.07
LYNN MARY HOULAHAN 31.10.08
MEREDITH MARTIN 31.10.08
JAN MASON 31.10.07
LINDA MARILYN MONAGHAN-NAGLE 31.10.07
JEANETTE McDONALD MOSS, AM 31.10.08
CLARITA NORMAN 31.10.07

LEGAL SERVICES DIVISION

Divisional Head

Acting Judge ANGELA JEANNE
STIRLING KARPIN, Deputy President 8.6.08

Deputy Presidents

Acting Judge MICHAEL RAINSFORD
CHESTERMAN 2.10.08
Acting Judge JOHN McGUIRE (from 21.9.06) 20.9.09

Barrister Members

ROBERT BRUCE SCOTT MACFARLAN, QC 31.10.08
SHARRON NORTON, SC 31.10.08
LIONEL PHILIP ROBBERDS, QC 31.10.08
WENDY LOUISE ROBINSON, QC 31.10.08
ALISON PATRICIA STENMARK, SC 31.10.09

Solicitor Members

MICHAEL JAMES BARNES 31.10.07
CHRISTINE ANNE BISHOP 31.10.08
JOHN WILLIAM FRANCIS BRENNAN, RFD 31.10.08
ROGER JAMES CLISDELL 31.10.08
ROSEMARY COX 31.10.08
JOHN SYDNEY CURRIE 31.10.08
JULIE LOUISE GREENWOOD 31.10.08
SANDRA NERYL HALE 31.10.08
GRAHAM BRIAN MOLLOY 31.10.08
JOHANNA PHEILS 31.10.07
MICHELLE ANNE RIORDAN 31.10.07
GORDON ALBERT SALIER 30.4.08
CEDRIC BOHRSMANN VASS 31.10.08

Licensee Members

JANICE LOUISE HEDISON 31.10.07

Non-judicial Members

CARL DONALD BENNETT 31.10.07
LESHIA OLGA BUBNIUK 31.10.07
MICHAEL EUGENE COSTIGAN 31.10.08
BARRIE DRUMMOND DYSTER 31.10.08
ROSS ANDREW EDWARD FITZGERALD 31.10.08
ELAYNE HAYES 31.10.07
ELISABETH WILMA KIRKBY 31.10.07
ANNETTE FRANCES O'NEILL 31.10.08

RETAIL LEASES DIVISION

Divisional Head

Acting Judge MICHAEL RAINSFORD
CHESTERMAN, Deputy President 2.10.08

Deputy President

Magistrate NANCY LOUISE HENNESSY 7.3.10

Judicial Members

ROBERT JOHN FOX 31.10.08
SIGRID HIGGINS 31.10.07
MARGARET COLLEEN HOLE, AM 31.10.07
GRAHAM BRIAN MOLLOY 31.10.08
STEPHEN HENRY MONTGOMERY 31.10.07
KIM BERESFORD RICKARDS 31.10.09
JANELLE ANNE SAFFIN 30.04.09

Appendices



Plenary session at the 2006 Members' conference: 'Respecting Difference: The Equality before the Law Bench Book' presented by Anthea Lowe, Author of Bench Book, Non-judicial Member, ADT.

Non-judicial Members

NEIL FAGG	31.10.07
ROGER KENNETH FAIRWEATHER	31.10.07
GARTH WARREN GRIFFITHS	31.10.07
BRIAN TERRY HARRISON	31.10.09
ANNETTE FRANCES O'NEILL	31.10.08
BARRY THOMAS OWENS	31.10.07
TERENCE JAMES TYLER	31.10.09
ROBERT VAUGHAN WARD	31.10.07
BETTY LORRAINE WEULE	31.10.07
LEXIA GAI WILSON	31.10.07

REVENUE DIVISION

Divisional Head

JANE ANNABEL DARLING NEEDHAM, SC	
Deputy President	30.4.08
ROBIN PATRICK HANDLEY, Acting Deputy President	
(Acting 7.12.06 to 31.3.07)	30.4.08

Deputy President

ROBIN PATRICK HANDLEY	
(Acting 19.10.07 to 18.10.07)	30.4.08

Judicial Members

JULIAN BLOCK	31.10.07
JULIE LOUISE GREENWOOD	31.10.08
MARGARET COLLEEN HOLE, AM	31.10.07
JOANNE CHRISTINE SEVE	31.10.07
AMARJIT SINGH VERICK	31.10.07

Non-judicial Members

CARL DONALD BENNETT	31.10.07
CLIFFORD DOUGLAS BLAKE, AM	31.10.07
DANNY KOUTOULAS	31.10.07

Appendix B: Legislation

Principal Legislation

Administrative Decisions Tribunal Act 1997
Administrative Decisions Tribunal (General) Regulation 2004
Administrative Decisions Tribunal Legislation Further Amendment Act 1998
Administrative Decisions Tribunal Rules (Transitional) Regulation 1998

Primary Legislation

Note: This list of legislation contains conferrals of jurisdiction, as at 30 June 2007, as advised to Registry.

Aboriginal Lands Rights Act 1983
Adoption Act 2000
Agricultural Livestock (Disease Control Funding) Act 1998
Agricultural Tenancies Act 1990
Air Transport Act 1964
Animal Research Act 1985
Anti-Discrimination Act 1977
Apiaries Act 1985
Architects Act 2003
Betting Tax Act 2001
Births Deaths and Marriages Registration Act 1995
Boxing and Wrestling Control Act 1986
Building and Construction Industry Security of Payment Act 1999
Building Professionals Act 2005
Business Names Act 2002
Charitable Fundraising Act 1991
Child Protection (International Measures) Act 2006
Child Protection (Offenders Registration) Act 2000
Children (Care and Protection) Act 1987
Children and Young Persons (Care and Protection) Act 1998
Children and Young Persons (Care and Protection) Regulation 2000
Children's Services Regulation 2004
Chiropractors Act 2001
Coal Industry Act 2001
Coal Mine Health and Safety Act 2002
Coal Mine Health and Safety Regulation 2006
Commercial Agents and Private Inquiry Agents Act 2004

Community Justices Centres Act 1983
Community Services (Complaints, Reviews and Monitoring) Act 1993
Community Services (Complaints, Reviews and Monitoring) Regulation 2004
Conveyancers Licensing Act 1995
Co-operative Housing and Starr-Bowkett Societies Act 1998
Dangerous Goods Act 1975
Debits Tax Act 1990
Dental Practice Act 2001
Disability Services Act 1993
Duties Act 1997
Education Act 1990
Electricity (Consumer Safety) Act 2004
Electricity Supply Act 1995
Electricity Supply (General) Regulation 2001
Entertainment Industry Act 1989
Explosives Act 2003
Fair Trading Act 1987
Firearms (General) Regulation 1997
Firearms Act 1996
First Home Owner Grant Act 2000
Fisheries Management Act 1994
Food Act 2003
Food Regulation 2004
Forestry Act 1916
Freedom of Information Act 1989
Game and Feral Animal Control Act 2002
Gaming Machine Tax Act 2001
Gas Supply Act 1996
Guardianship Act 1987
Guardianship Regulation 2000
Health Care Complaints Act 1993
Health Insurance Levies Act 1982
Health Records and Information Privacy Act 2002
Higher Education Act 2001
Home Building Act 1989
Home Building Regulation 2004
Hunter Water Act 1991
Impounding Act 1993
Institute of Teachers Act 2004
Insurance Protection Tax Act 2001
Land Tax Act 1956

Appendices

Land Tax Management Act 1956
Legal Profession Act 2004
Licensing and Registration (Uniform Procedures) Act 2002
Local Government Act 1993
Lotteries and Art Unions Act 1901
Motor Accidents Compensation Act 1999
Motor Dealers Act 1974
Motor Vehicle Repairs Act 1980
Motor Vehicle Sports (Public Safety) Act 1985
Mount Panorama Motor Racing Act 1989
Native Title (New South Wales) Act 1994
Non-Indigenous Animals Act 1987
Nurses and Midwives Act 1991
Occupational Health and Safety Act 2000
Occupational Health and Safety Regulation 2001
Ombudsman Act 1974
Optometrists Act 2002
Osteopaths Act 2001
Parking Space Levy Act 1992
Passenger Transport Act 1990
Pawnbrokers and Second-hand Dealers Act 1996
Pay-roll Tax Act 1971
Pesticides Act 1999
Petroleum Product Subsidy Act 1997
Photo Card Act 2005
Physiotherapists Act 2001
Plant Diseases Act 1924
Plant Diseases Regulation 2003
Podiatrists Act 2003
Police Act 1990
Powers of Attorney Act 2003
Privacy and Personal Information Protection Act 1998
Private Hospitals and Day Procedure Centres Act 1988
Property, Stock and Business Agents Act 2002
Protected Estates Act 1983
Protected Estates Regulation 2003
Psychologists Act 2001
Public Health Act 1991
Public Lotteries Act 1996
Rail Safety Act 2002
Registration of Interests in Goods Act 1986
Retail Leases Act 1994

Rice Marketing Act 1983
Road and Rail Transport (Dangerous Goods) Act 1997
Road Transport (General) Act 2005
Road Transport (Safety and Traffic Management) Act 1999
Road Transport (Safety and Traffic Management)(Driver Fatigue) Regulation 1999
Security Industry Act 1997
Shops and Industries Act 1962
Stamp Duties Act 1920
State Water Corporation Act 2004
Surveying Act 2002
Sydney Water Act 1994
Sydney Water Catchment Management Act 1998
Taxation Administration Act 1996
Timber Marketing Act 1977
Tow Truck Industry Act 1998
Trade Measurement Act 1989
Trade Measurement Administration Act 1989
Travel Agents Act 1986
Valuers Act 2003
Veterinary Surgeons Act 1986
Vocational Education and Training Act 2005
Weapons Prohibition Act 1998
Wine Grapes Marketing Board (Reconstitution) Act 2003
Wool Hide and Skin Dealers Act 2004
Workers Compensation Regulation 2003
Workplace Injury Management and Workers Compensation Act 1998
Youth and Community Services Act 1973

Appendix C: Financial Information

Financial Information as at 30 June 2007¹

Administrative Decisions Tribunal & Legal Services Division

	ADT			LSD ²	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (Including Crown Liabilities)	1,982,007	1,830,501	(151,506)	8,709	1,990,716
Property Items	393,195	386,391	(6,804)		393,195
Other Operating	1,149,386	1,280,100	130,714	164,485	1,313,871
Depreciation	64,366	38,022	(26,344)		64,366
Total Expenditure	3,588,954	3,535,014	(53,940)	173,194	3,762,148
Total Revenue³	(807,182)	(807,652)	(470)	(173,194)	(980,376)
Net Cost Of Services	2,781,772	2,727,362	(54,410)	0	2,781,772
Less Depreciation	(64,366)	(38,022)	26,344	0	(64,366)
Less Crown Liabilities	(236,686)	(217,273)	19,413	0	(236,686)
Controlled Net Cost Of Services	2,480,720	2,472,067	(8,653)	0	2,480,720

Notes

1. This appendix has been based on information supplied by the Attorney General's Department. The Audit Office had not completed the audit of the Department's financial statements when this information was supplied.
2. Legal Services Division
The Public Purpose Fund funds the Legal Services Division. A global amount is contributed towards the operating costs of the Tribunal and is included in the "actual" and "budget" columns of the ADT. Additionally the costs of members' fees and associated costs and transcription services provided to that Division are separately recouped. These are the amounts shown in the LSD column.
3. Revenue
The Tribunal received \$980,376 in revenue. Of this, \$890,194 was by way of recoupment from the Public Purpose Fund for the cost of operating the Legal Services Division. The balance was general revenue items.

Appendices

Appendix D: Statistics

General Division 1/7/2006 - 30/6/2007

1. Case flow 2006-2007

Matters pending at 30 June 2006	New Applications filed	Disposals	Pending as at 30 June 2005
246	404	408	242
*incorrect pending figure in 2005-2006 annual report (248)			

2. Applications by type 2006-2007

Applications for Original Decision	Applications for review	Professional Discipline
0	388	16

3. Applications by Act 2006-2007

Agricultural Tenancies Act	1
Architects Act	4
Births Deaths and Marriages Registration Act	2
Commercial Agents Act	7
Conveyancers Licensing Act	2
Environmental Planning and Assessment Act	14
Explosives Act	9
Fines Act *	1
Firearms Act	38
Freedom of Information Act	114
Guardianship Act	6
Health Records and Information Privacy Act	4
Home Building Act	44
Impounding Act	2
Licensing and Registration (Uniform Procedures) Act	1
Motor Dealers Act	4
Motor Vehicle Repairs Act	3
Occupational Health and Safety Act	4
Passenger Transport Act	56
Police Act	1
Privacy and Personal Information Protection Act	26
Property Stock and Business Agents Act	5
Protected Estates Act	8
Security Industry Act	28
Tow Truck Industry Act	13
Veterinary Surgeons Act	2
Vocational Education and Training Accreditation Act	4
Weapons Prohibition Act	1

* Question of Jurisdiction

4. Outcomes in Review matters 2006-2007

Application withdrawn Dismissed/ No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/ remitted/ recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	Privacy – contravention – no action	Privacy – contravention – order made	Privacy application dismissed	No Jurisdiction
170	132	62	20	0	2	1	14

5. Outcomes in Original matters 2006-2007

Application withdrawn dismissed/ No appearance dismissed/ Agreement reached dismissed	Application granted	Application refused	No jurisdiction
0	0	0	0

6. Outcomes in Professional Discipline 2006-2007

Dismissed	Orders made	Applications withdrawn dismissed	No jurisdiction
0	0	6	1

7. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	254
No. disposed of in under 12 months	115
No. disposed of in over 12 months	38
No. disposed of in over 2 years	1

8. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
3	2	0	1

Guardianship and Protected Estates List 1/7/2006-30/6/2007

Note: This information also forms part of the General Division statistics. The List has two components of activity, External Appeals, and General Division Reviews. The External Appeals statistics are provided in the Appeals section below. As to the General Division Reviews, more detailed statistics than those that appear in the General Division table follow.

1. Case Flow-Guardianship and Protected Estates Review Matters 2006-2007

Pending as at 30 June 2006	New Applications Filed	Disposals	Pending as at 30 June 2006
6	14	17	3

2. Applications for Review by Act 2006-2007

Subject by Act	Number
Guardianship Act	6
Protected Estates Act	8

3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2006-2007

Application withdrawn Dismissed/ No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside varied/ remitted recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction	Total
8	7	1	1	1	17

4. Timeliness-time from date of application to date of disposal

No. disposed of in under 6 months	13
No. disposed of in under 12 months	4
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

Appendices

Community Services Division 1/7/2006 - 30/6/2007

1. Case flow 2006-2007

Matter pending as at 30 June 2006	New Applications filed	Disposals	Pending as at 30 June 07
19	33	35	17

*incorrect pending figure in 2005-2006 annual report (20)

2. Applications by type 2006-2007

Applications for original decision	Applications for review
15	18

3. Applications by Act 2006-2007

	Number
Children and Young Persons (Care and Protection) Act	18
Children (Care and Protection) Act	7
Declaration that Child Protection (Prohibited Employment) Act 1998 does not apply	8

4. Outcomes - Reviewable Decisions 2006-2007

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction/ Jurisdiction Declined
11	2	2	0	0

5. Outcomes- Original Decisions 2006-2007

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed	Declaration made	Declaration Refused	No Jurisdiction
4	10	5	1

6. Mediation 2006-2007

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
2	1	1	0

7. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	19
No. disposed of in under 12 months	13
No. disposed of in over 12 months	3
No. disposed of in over 2 years	0

Equal Opportunity Division 1/7/2006 – 30/6/2007

1. Case flow 2006– 2007

Matters pending at 30 June 2006	New Applications filed	Disposals	Pending as at 30 June 07
97	138	147	88

2. Applications by type 2006–2007

Referrals of complaints by President of Anti-Discrimination Board	Application for registration of conciliation	Applications for leave to proceed agreement	Applications for interim orders
105	3	26	4

3. Referral of Complaints by President of Anti-Discrimination Board by Ground 2006–2007

Head of discrimination**	Number
Race	26
Racial vilification	
Racial vilification	4
Sexual harassment	15
Sex	21
Transgender vilification	
Disability	45
Carers responsibilities	9
Homosexuality vilification	
Homosexuality	4
Homosexual vilification	3
Age	4
Victimisation	15
Marital status	3
Aiding and abetting	1

**NB: a number of complaints have been referred to the Tribunal under more than one head of discrimination

4. Outcomes of Referrals 2006–2007

Withdrawn Dismissed/ Settled Dismissed/ No Appearance Dismissed	Summary dismissal under section 111, s 102D	Dismissed after hearing*	Orders made
84	3	20	18

*includes 2 matters where leave granted and proceeded to hearing

5. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
45	9	29	7

6. Timeliness – time from date of application to date of disposal

for original and reviewable decisions

No. disposed of in under 6 months	45
No. disposed of in under 12 months	38
No. disposed of in over 12 months	25
No. disposed of in over 2 years	17

Appendices

7. Application for registration of conciliation agreement 2006 - 2007 (this information also forms part of the Equal Opportunity Division case flow statistics above)

Matters pending at 30 June 2006	New Applications filed	Disposals	Pending as at 30 June 07
1	3	3	1

8. Outcome of application for registration of agreement 2006-2007

Agreement registered	Agreement not registered	Application withdrawn dismissed
1	0	2

9. Timeliness - time from date of application to date of disposal

For registration of agreement

No. disposed of in under 6 months	3
No. disposed of in under 12 months	0
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

10. Applications for leave to proceed 2006-2007

(this information also forms part of the Equal Opportunity Division case flow statistics above)

Matters pending at 30 June 2006	New Applications filed	Disposals	Pending at 30 June 2007
4	26	17	13

*incorrect pending figure in 2005-2006 annual report (3)

11. Outcome of applications for leave 2006-2007

Leave granted	Leave not granted	Application withdrawn dismissed/ settled dismissed
2	11	4

12. Timeliness - time from date of application to date of disposal

For leave applications

No. disposed of in under 6 months	15
No. disposed of in under 12 months	1
No. disposed of in over 12 months	1
No. disposed of in over 2 years	0

13. Outcome of applications for interim orders

order granted	order not granted	Consent orders	Application withdrawn dismissed
2	0	1	1

14. Timeliness - time from date of application to date of disposal

For interim orders

No. disposed of in under 6 months	4
No. disposed of in under 12 months	0
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

Retail Leases Division 1/7/2006 – 30/6/2007

1. Case flow 2006-2007

Matters pending at 30 June 2006	Applications filed	Disposed	Pending as at 30 June 2007
108	227	227	108

*incorrect pending figure in 2005-2006 annual report (111)

2. Applications by type 2006-2007

Retail tenancy claim	136
Unconscionable conduct claim	4
Combined retail tenancy & unconscionable conduct claim	61
Specialist Retail Valuer	26

3. Outcomes 2006-2007

Withdrawn/ Discontinued/ Dismissed without hearing	Dismissed after hearing	Settled – Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
136	13	21	54	1	2

4. Timeliness – time from date of application to date of disposal

No. disposed of in under 6 months	146
No. disposed of in under 12 months	46
No. disposed of in over 12 months	25
No. disposed of in over 2 years	10

Revenue Division 1/7/2006 – 30/6/2007

1. Case flow 2006-2007

Matters pending at 30 June 2006	Applications filed	Disposals	Matters pending as at 30 June 07
67	165	117	115

2. Applications by Act 2006-2007

Duties Act 1997	14
First Home Owners Grant Act	46
Land Tax Act	14
Land Tax Management Act 1956	45
Parking Space Levy Act 1992	3
Payroll Tax Act 1971	35
Taxation Administration Act 1996	5
Stamp Duties Act	2
Petroleum Products Subsidy Act	1

* a number of applications have been made under more than one Act

3. Outcomes 2006 – 2007

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed	Decision under review affirmed	Decision under review set aside/ varied/remitted/ recommendation made	Mixed Result – Partly Affirmed/ Partly set aside, varied or remitted	No Jurisdiction
78	30	7	2	0

4. Timeliness – time from date of application to date of disposal

No. disposed of in under 6 months	64
No. disposed of in under 12 months	47
No. disposed of in over 12 months	6
No. disposed of in over 2 years	0

Appendices

Legal Services Division 1/7/2006 – 30/6/2007

1. Case flow 2006-2007

Matters pending at 30 June 2006	Applications filed	Disposed	Pending as at 30 June 07
27	40	20	47

2. Applications by type 2006-2007

Applications for original decision	34
Applications for review	6

3. Applications by subject 2006-2007

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	5
Barrister	Reprimand/Compensation Order s.540	1
Solicitor	Disciplinary action	25
Solicitor	Reprimand/Compensation Order s.540	2
Lay associate	Approval of lay associate s.17(4)	3
Lay associate	Approval of lay associate s. 17(3)	3
Lay associate	Prohibition on employment s. 18	1

4. Outcomes in Original matters 2006-2007

Disciplinary - Penalty imposed by type

Dismissed after hearing	1
Reprimanded and Fined	5
Reprimanded	2
Removed from Roll	6
Consent order	1
<i>Approval of lay associate</i>	
Application granted	2
Withdrawn	2
Total	19

5. Outcomes in Review matters 2006-2007

Application withdrawn/ Dismissed	
Decision under review affirmed	0
Decision under review set aside/varied/remitted/recommendation made	1

6. Timeliness - time from date of application to date of disposal

No. disposed of in under 6 months	7
No. disposed of in under 12 months	8
No. disposed of in over 12 months	5
No. disposed of in over 2 years	0

Appeals 1/7/2006 - 30/6/2007

Internal Appeals to Appeal Panel

1. Case Flow 2006-2007

	Appeals Pending as 30 June 2006	New Appeals filed	Disposals	Pending as at 30 June 07
General Division*	25	45	43	27
Community Services Division	0	0	0	0
Equal Opportunity Division	13	20	18	15
Retail Leases Division	4	12	10	6
Revenue Division	4	2	3	3
Legal Services Division	1	1	2	0
Total	47	80	76	5

*incorrect pending figure in 2005-2006 annual report (26)

2. Outcome of Internal Appeals 2006 - 2007

	Upheld (in full or part)	Dismissed	No Jurisdiction	Consent Orders	Withdrawn Discontinued	Total
General Division	12	26	0	1	4	43
Community Services Division	0	0	0	0	0	0
Equal Opportunity Division	1	10	0	3	4	18
Retail Leases Division	3	3	0	0	4	10
Revenue Division	1	1	0	0	1	3
Legal Services Division	0	2	0	0	0	2
Total	17	42	0	3	13	76

3. Timeliness - time from date of appeal to date of determination

No. disposed of in under 6 months	47
No. disposed of in under 12 months	24
No. disposed of in over 12 months	4
No. disposed of in over 2 years	1

External Appeals to the Appeal Panel

1. Case Flow 2006 -2007

	Appeals Pending as at 30 June 2006	New Appeals filed	Disposals	Pending as at 30 June 07
Guardianship Tribunal	4	15	13	6
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	0	0	0
Legal Services Commissioner	1	0	1	0
Total	5	15	14	6

Appendices

2. Outcome of External Appeals 2006-2007

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	Total
4	8	2	14

3. Timeliness – time from date of application to date of disposal

No. disposed of in under 6 months	11
No. disposed of in under 12 months	2
No. disposed of in over 12 months	1
No. disposed of in over 2 years	0

Appeals to the Supreme Court

1. Case flow 2006 – 2007

	Appeals Pending as at 30 June 2006	New Appeals filed	Disposals	Pending as at 30 June 2007
General Division	0	1		1
Community Services Division	3	1	1	3
Equal Opportunity Division	0	2	1	1
Retail Leases Division	2		1	1
Revenue Division	0			
Legal Services Division	4	2	5	1
Appeal Panel	13	14	13	14
*incorrect pending figure in 2005-2006 annual report				
Total	22	20	21	21

2. Outcome of Appeals 2006 – 2007

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Orders made following s118 referral
General Division				
Community Services Division		1		
Equal Opportunity Division		1		
Retail Leases Division				
Revenue Division		1		
Legal Services Division	2	2	1	
Appeal Panel	9	2	2	
Total	11	7	3	0

Published Appeal Decisions- Presiding Member

Member	Number- Internal Decisions	Number-External Decisions	Total
O'Connor, P	24	1	25
Hennessy, DP	22	9	31
Chesterman, D	3	1	4
Needham, DP	2		2
Karpin, DP	4		4

Appendix E: Case Load, Time Standards

Case Load

	All Divisions			Appeal Panel		
	Applications Lodged	Applications Completed	Applications Pending	Appeals Lodged	Appeals Completed	Appeals Pending
1998-1999	625*	234	391*	8	2	6
1999-2000	568	619	340*	44	20	30
2000-2001	666	629	377	53	45	38
2001-2002	695	642	430	61	59	40
2002-2003	766	817	379	73	67	46
2003-2004	908	791	496	93 (65 Int; 28 Ext)	110 (89 Int; 21 Ext)	29 (21 Int; 8 Ext)
2004-2005	919	910	505	96 (77 Int; 19 Ext)	80 (59 Int; 21 Ext)	45 (39 Int; 6 Ext)
2005-2006	969	913	561	99 (82 Int; 17 Ext)	92 (74 Int; 18 Ext)	52 (47 Int; 5 Ext)
2006-2007	1007	954	614	95 (80 Int; 15 Ext)	90 (76 Int; 14 Ext)	57 (51 Int; 6 Ext)
Total	7123	6509	(614)	622 (543 Int; 79 Ext)	565 (491 Int; 74 Ext)	(57)

* Includes 257 transferred from predecessor tribunals and District Court on 6 October 1998 and 1 January 1999

Pending figures have been adjusted following an audit and manual reconciliation of files in 2007.

Time Standards

As at 30 June 2007 the Tribunal's performance against its time standards was:

(target appears in brackets)

General Division (other than professional discipline matters)

Community Services Division, Revenue Division, Retail Leases

- 66% of matters disposed of in less than 6 months (85%)
- 85% of matters disposed of in less than 1 year (100%)
- Clearance ratio* – 95%

Equal Opportunity Division (other than review matters)

- 77% of matters disposed of in less than 1 year (80%)
- 85% of matters disposed of in less than 2 years (100%)
- Clearance ratio* – 106%

Professional Disciplinary Decisions (includes Legal Services Division and General Division cases)

- 66% of matters disposed of in less than 9 months (90%)
- 75% of matters disposed of in less than 1 year (100%)
- Clearance ratio* – 48%

Appeals (Internal Appeals from appealable decisions of the Tribunal and External Appeals)

- 76% of matters disposed of in less than 6 months (80%)
- 90% of matters disposed of in less than 1 year (100%)
- Clearance ratio* – 94%

*Clearance ratio is the percentage of cases disposed of divided by cases lodged over the last 12 months.

Appendices

Appendix F: Rule Subcommittee Membership

Administrative Decisions Tribunal Subcommittees of the Rule Committee – Membership (section 97 Administrative Decisions Tribunal Act 1997)

General Division

1. Divisional Head: Judge Kevin O'Connor
2. Judicial member: Simon Rice
3. Non judicial member: Mary Bolt
4. Community/special interest member: Wayne Kosh, Ombudsman's Office
5. Community/special interest member: Simon Moran, Public Interest Advocacy Centre
6. Community/special interest member: Brad Row, Law Society's Standing Committee for Government solicitors

Community Services Division

1. Divisional Head: Anne Britton
2. Judicial member: vacant
3. Non judicial member: Jennifer Green
4. Community/special interest members: Robert McLachlan, Law Society's Standing Committee on Children's Legal Issues; representative, National Children's and Youth Law Centre; representative, Commission for Children and Young People.

Equal Opportunity Division

1. Divisional Head: Magistrate Nancy Hennessy
2. Judicial member: Graham Ireland
3. Non judicial member: Louise Nemeth de Bikal
4. Community/special interest members (including additional co-opted members): Teena Balgi, Kingsford Legal Centre; Mark MacDiarmid and Meredith Osborne, Blue Mountains Community Legal Centre; Julie Burton, Crown Solicitors Office; David Hillard (or his nominee), Clayton Utz.

Retail Leases Division

1. Divisional Head: Acting Judge Michael Chesterman
2. Judicial member: vacant
3. Non judicial member: Betty Weule
4. Community/special interest members: Ken Carlsund, Retail Tenancy Unit; Bill Healey, Executive Director, Australian Retailers' Association; Lexia Wilson, Property Council of Australia.

Legal Services Division

1. Divisional Head: Acting Judge Angela Karpin
2. Judicial member: vacant
3. Non judicial member: Dr Michael Costigan
4. Community/special interest members: Steve Mark, Office of the Legal Services Commissioner, Ray Collins, Law Society, Peter Garling, Bar Association.

