



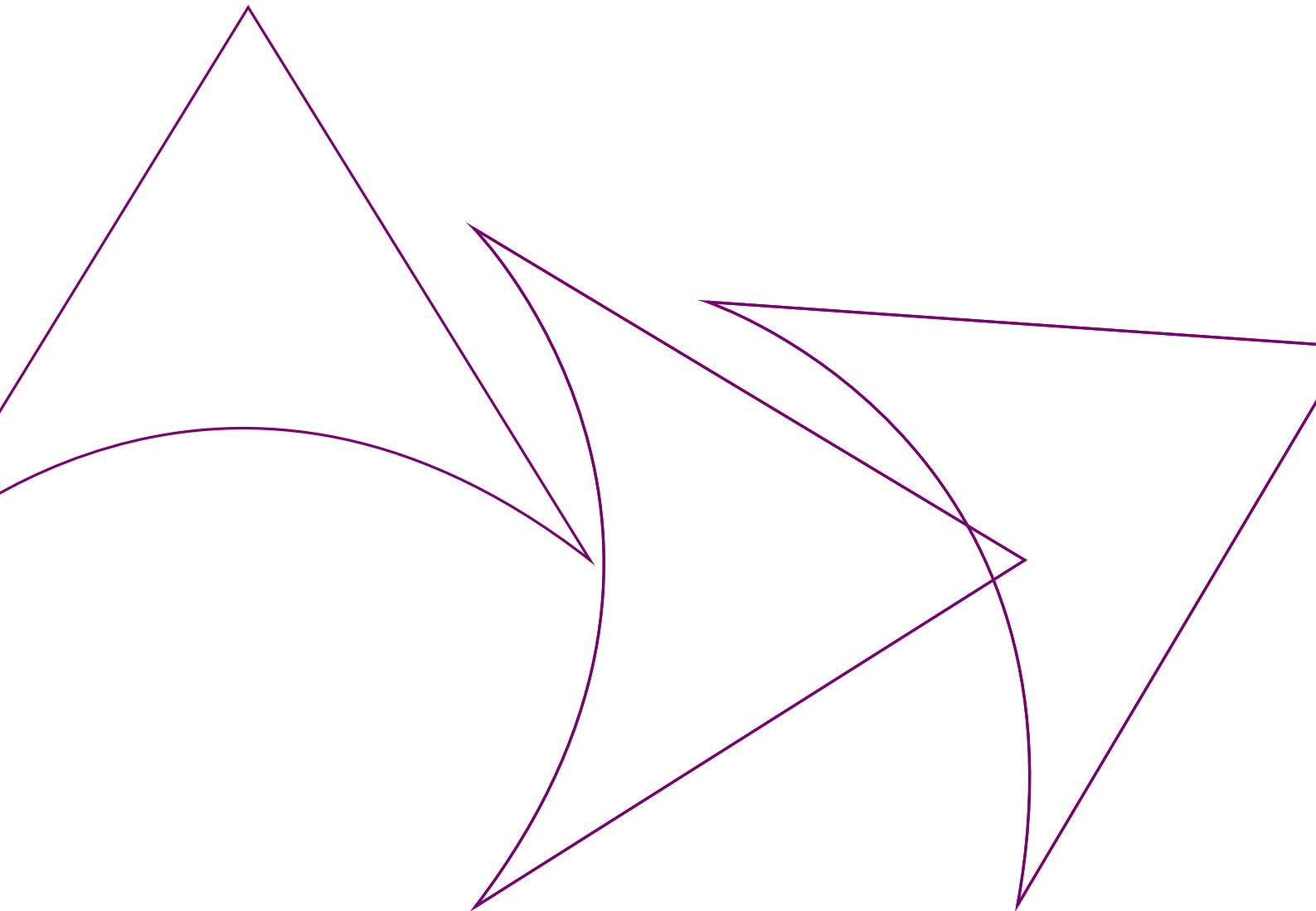
Administrative Decisions Tribunal
New South Wales

Annual Report
2002~2003



Administrative Decisions Tribunal

New South Wales





Administrative Decisions Tribunal
New South Wales

The Hon. Bob Debus MP
Attorney General
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 fifth annual report of the Tribunal, covering the period 1 July 2002 to 30 June 2003.

Yours sincerely,

Judge KEVIN O'CONNOR AM
President

10 September 2003

Contents

The Year in Review	4
Our Objectives	6
Services to our Users and Community Relationships	7
Membership	9
Our Divisions and the Appeal Panel	12
General Division	13
Revenue Division	16
Community Services Division	17
Legal Services Division	19
Other Professional Discipline Functions of the Tribunal	22
Equal Opportunity Division	24
Retail Leases Division	27
Appeal Panel	29
Supreme Court	31
Practice and Procedure	33
Case Management	35
Registry and Budget	36
Parliamentary Report	37
Appendices	
Appendix A List of Members	38
Appendix B Legislation	40
Appendix C List of Speeches	42
Appendix D Financial Information	42
Appendix E Statistics	43
Appendix F Case Load, Time Standards	50
Appendix G Parliamentary Inquiry	52
Appendix H Rule Subcommittee Membership	55

The Year in Review

In last year's overview, I referred to the continuing discussion over the desirability of merging tribunals into larger multi-jurisdictional tribunals, sometimes called 'super tribunals'.

In New South Wales a Parliamentary Committee reported in November 2002 on the jurisdiction and operation of this Tribunal. Its principal recommendation was that there be further legislation to merge separate tribunals into the ADT 'unless there are clear reasons why such inclusion would be inappropriate or impractical'. The Committee added: 'with particular consideration being given to merging all professional disciplinary tribunals with the ADT, as part of a separate professional disciplinary division.'

Other common law jurisdictions are moving in the same direction. On 24th June 2003 the Western Australian Government introduced into Parliament a Bill to establish a State Administrative Tribunal. The SAT is to have three categories of jurisdiction: a review jurisdiction (town planning, licensing and other administrative decisions); an original jurisdiction (guardianship and administration, equal opportunity and strata title matters; retirement villages; commercial credit matters); and an 'original vocational jurisdiction' (wide range of disciplinary functions over 23 professions, occupations and businesses). The Bill has passed the Legislative Assembly and is awaiting consideration by the Upper House. This is the most extensive tribunal amalgamation in the country, especially in relation to the integration of professional disciplinary jurisdictions.

In the United Kingdom on 11th March 2003 the Government announced a new united tribunals service. The service will provide a common administrative organisation for the 10 largest tribunals which cover areas such as employment, pensions, immigration, criminal injuries,

compensation, mental health, social security, benefits, tax and disability. This announcement adopts a key recommendation of the Leggatt report referred to in last year's overview. The Government has not as yet responded on the question of whether some of the major tribunals will themselves be merged.

One major new jurisdiction was conferred on the Tribunal during the year. The Appeal Panel is now responsible for hearing appeals from decisions and orders of the Guardianship Tribunal. The General Division is responsible for review of decisions of the Protective Commissioner made under financial management orders, and of the Public Guardian made under guardianship orders. The Guardianship Tribunal appeals jurisdiction commenced in February 2003. The protective Commissioner review jurisdiction commenced in May 2003. The Public Guardian review jurisdiction is yet to commence.

These arrangements supplement the inherent protective jurisdiction of the Supreme Court.

In addition there is presently underway a Ministerial review of the Tribunal. Section 147 of the *Administrative Decisions Tribunal Act 1997* requires the Attorney General to review the Act within 5 years of its enactment 'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives'. The Attorney General's Department is conducting the review on behalf of the Minister, and it called for submissions in November 2002. The final report may include responses to the Parliamentary Committee recommendations.

One of the many themes that the Parliamentary report addressed concerned the balance between full-time and part-time membership in the Tribunal.

From 1998 to 2001, the Tribunal had no full-time members in the strict sense of the term.



My time was split between this Tribunal and the then Fair Trading Tribunal, where I was also head of jurisdiction. All other members of this Tribunal were part-time with one, Deputy President Hennessy sitting on a virtually full-time sessional basis. In March 2001, as reported last year, Deputy President Hennessy became a full-time member; and with the dissolution of the Fair Trading Tribunal (now merged into the Consumer, Trader and Tenancy Tribunal) in November 2001, I was available full-time to this Tribunal.

The Tribunal therefore does much of its work through the services of an outstanding group of part-time lawyers and part-time community and specialist members (formally known as 'judicial' and 'non-judicial' members).

I am pleased to report that Deputy President Hennessy was appointed a Magistrate on 11 November 2002, and is to remain full-time at the Tribunal. This means that our two most senior (and full-time) offices are filled by tenured judicial officers. This demonstrates a commitment on the part of the Government to furnishing this Tribunal with a degree of independence that places it apart from the usual position that applies in tribunals. A persistent theme of the debate around tribunals has had to do with the perception that tribunal members might not be as fearless in making decisions that impact adversely on government (or other powerful interests) when their reappointment to the tribunal depends on the decision of government.

This report contains detailed information relating to the operation of the Tribunal during the year. There are two features that I should single out in this foreword; the first is to note that there has been an increase of 10 per cent in filings this year. The second is that there has been a 25 per cent improvement in the time for completion of matters. To have achieved a significant improvement in the completion rate



Judge Kevin O'Connor AM

when filings were also increasing significantly is a tribute to the efforts put in by the Registry and members during the year, for which I thank them.

There have also been a number of changes in Divisional Head arrangements during the year. Acting Judge John Nader RFD QC, took over from Caroline Needham SC as Divisional Head of the Legal Services Division in September 2002. Acting Judge and Emeritus Professor Michael Chesterman took over from Professor Chris Rossiter as Divisional Head of the Retail Leases Division in June 2003. Deputy President and Magistrate Nancy Hennessy took over from Judge Megan Latham as Divisional Head of the Equal Opportunity Division in October 2002. I would like to thank the outgoing Heads for their contribution.

A handwritten signature in black ink that reads "Kevin O'Connor". The signature is fluid and cursive, written in a professional style.

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 our Users and Community Relationships



The Tribunal is committed to accessibility and transparency.

Its physical accommodation seeks to demonstrate a commitment to accessibility through hearing room designs which are formal but not intimidating. The design has incorporated disability access features. Information materials are written in a simple and practical way.

Transparency is achieved in a number of ways. In keeping with the principle of open justice, all hearings are open to the public unless special orders are made to close them. Importantly, the Tribunal publishes all its reserved decisions and illustrative *ex tempore* decisions. This contributes to a key policy reason for establishing the Tribunal – the development of normative standards and values in the areas of jurisdiction for which it is responsible.

The Tribunal is also seeking to develop its user group framework. There are long-standing user group arrangements dealing specifically with Freedom of Information and Privacy. At present a Professional Discipline Advisory Group is being established. The Rule Subcommittees, dealt with later in the report, also provide a user group facility for each of the Divisions.

Hearing rooms and Regional sittings

The Tribunal's hearing rooms and registry are at a single location, Level 15, 111 Elizabeth Street, Sydney. There are four major rooms used for hearings and there are three smaller rooms used only for planning meetings and conferences. In regional New South Wales, the Tribunal usually sits at the local court. During the last year the Tribunal sat outside its Sydney location including Goulburn, Mudgee, Coffs Harbour, Ballina, Dubbo, Lismore, Tweed Heads and Lord Howe Island.



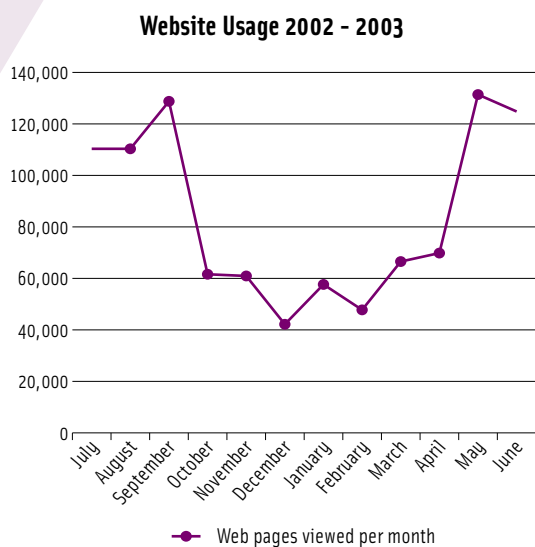
Tribunal website

The Tribunal's website is located at www.lawlink.nsw.gov.au/adt. It is the primary source of information about the Tribunal and is managed by the Attorney General's Department.

The site provides information about the ADT legislation and rules, including the daily law list and all published decisions. It also provides information about each Division.

All practice notes and standard forms are available on the website. Practitioners may also subscribe by email to the daily Tribunal hearing list.

In the 2002 calendar year there were 286 Divisional decisions and 44 appeal decisions published in this way. These decisions may be reached via a link on the ADT website, or by direct access to the CaseLaw NSW website. The Tribunal's decisions are also available on the Australasian Legal Information Institute site (AUSTLII).



The average number of pages viewed per month during the last year was 88,000. The website's usage has continued to grow.

In the year covered by this report (1 July 2002 - 30th June 2003) there were 320 Divisional and 43 Appeal Panel decisions published.

CaseLaw NSW

The CaseLaw service has highly developed, user friendly search facilities. The CaseLaw site's ADT section is used heavily. This is a major point of contact between the profession and the work of the Tribunal.

Information brochures

The Tribunal has a range of brochures and information sheets, the latest titles being -

- *Review of NSW Government Decisions by the ADT*
- *Prohibited Employment Declarations in the ADT*
- *Mediation Conducted by the ADT*
- *Discrimination Complaints at the ADT*

Public presentations

The President, Divisional Heads and other members of the Tribunal are invited to give presentations about the work of the Tribunal, usually to professional audiences. This occurred several times throughout the year and a list of significant speeches and presentations given by the President is included in Appendix C. Copies of these papers may be obtained from the Tribunal.



Membership

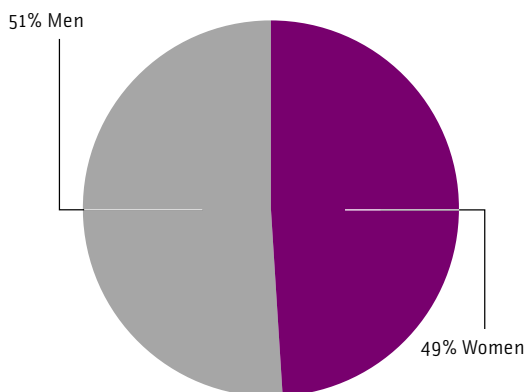


During the year the Tribunal's membership comprised 67 presidential or judicial members and 73 non-judicial members. The list with appointment information appears in Appendix A.

Members are assigned to specific Divisions. The assignment is contained either in the instrument of appointment or following appointment by instrument issued by the President. Some members have appointments to two or more Divisions. There are several judicial members holding cross-assignments to two or more Divisions. It is rare for non-judicial members to hold assignments outside their home Division.

It will be seen that the distribution of men and women is close to equal across the Tribunal. Of the judicial members, there are 41 men and 26 women. Of the non-judicial members there are 30 men and 43 women. Three Divisions have a high proportion of men – the Legal Services Division (reflective of the ratio found among senior barristers), the Revenue Division and the Retail Leases Division.

Tribunal Membership by Gender 2002-2003



Changes in Membership

New Members: There were 4 new presidential or judicial members appointed to the Tribunal (this includes new Deputy Presidents Nader, Chesterman and Hogan) and 5 non-judicial members (4 being veterinary surgeons).

Retirements: During the year 12 presidential or judicial members and 8 non-judicial members retired or resigned from the Tribunal following completion of their term of appointment. Further details are given in Appendix A.

Appointments to Bench: Two members of the Legal Services Division were appointed judges during the year: Mr Henric Nicholas QC was appointed a Supreme Court judge, sworn in on 5 February 2002. Mrs Annabelle Bennett SC was appointed a Judge of Federal Court of Australia, sworn in on 5 May 2003.

Advertisements for New Members: During the year, the Tribunal advertised for judicial members of the Community Services Division and Retail Leases Division; and non-judicial members of the Equal Opportunity Division. The Tribunal also advertised for judicial and non-judicial members for the Guardianship and Protected Estates List of the General Division.

Deputy Presidents: In addition to the new Divisional Heads already mentioned in the President's foreword, Mr Alan Hogan (formerly an Acting Judge of the District Court) joined the Tribunal in October 2002 as a part-time Deputy President. Deputy President Hogan has had a distinguished career as a solicitor, as a founder of practical legal training courses for law graduates, as a Supreme Court Master (in the ACT) and as an acting judge. He has mainly sat in the Legal Services Division, the Revenue Division and presided in appeals arising from those Divisions.

Members' Professional Development Day

The main professional development event each year is the annual training day. We have had many distinguished speakers at this day, which also serves as the one day each year when most of the members come together at the one time. Otherwise email contact is used to keep members informed of case law and procedural developments relevant to their responsibilities. It is also the case that many members have a relatively occasional involvement with the Tribunal (only called on when a matter within their area of speciality arises) while others are used on a regular basis (the key part-time judicial members of the General Division, for example). This is a pattern which is to an extent inevitable in a tribunal that places importance on retaining specialist approaches, but obviously creates complexity from the viewpoint of professional training and the like.

On 8 November 2002, the Tribunal held its fourth annual professional development day at the Australian Museum. The theme for the day was "Maintaining Quality, Providing Access".



Dr Ian Freckleton, Judge O'Connor, Justice Susan Kenny and Emeritus Professor Dennis Pearce.

Topics addressed included:

- *Avoiding Legal Error in the Tribunal Environment* – Justice Susan Kenny of the Federal Court of Australia
- *Contemporary Trends in Statutory Interpretation* – Emeritus Professor Dennis Pearce
- *Expert Evidence in Tribunals* – Ian Freckleton
- *Difficult Litigants* – Professor Paul Mullen

The final session comprised a panel on "Speed, Informality and Quality: Managing the Mix in Tribunals" comprising Justice Paul Stein of the Court of Appeal, Michael Sexton SC, Solicitor General and Megan Greenwood, Registrar of the Land and Environment Court.

The day also included break out sessions with Andrew Lang, a retail leases expert addressing the Retail Leases Division; Michael Sassella, Senior Member of the Administrative Appeals Tribunal, addressing the General Division; Sarah Pritchard, international human rights law expert, addressing the Equal Opportunity Division and Amanda Adrian, the Health Care Complaints Commissioner addressing members of the Legal Services Division and the Veterinary Disciplinary Panel.



Magistrate Nancy Hennessy, Justice Paul Stein, Michael Sexton SC and Megan Greenwood.

Good Decision Writing: package of videos and training material

A professionally produced set of videos of the seminar on Good Decision Writing, together with the relevant papers, are available from the Tribunal. The package is available to incoming members to assist them in decision writing. It has been acquired by many tribunals, other organisations such as government authorities with statutory decision-making responsibilities and university law schools with special courses relating to tribunals. The Tribunal has received feedback praising the quality of the seminar and the materials from experienced members of other tribunals. The videos are available at a reasonable cost to interested people or organisations.

Council of Australasian Tribunals

There is great value in tribunal members and tribunal heads meeting to discuss common concerns in the operation of tribunals. In last year's annual report the progress of the initiative to establish a Council of Australasian Tribunals (COAT) was outlined. During the year a steering committee convened by the President of this tribunal, and comprising Commonwealth tribunal heads with head offices in New South Wales and State tribunal heads developed a draft State Chapter constitution and a strategy for establishing a State Chapter of COAT.

On 24 February 2003, the New South Wales State Chapter held an inaugural event at the New South Wales Parliament House comprising a keynote address on a topic of interest to tribunals and an outline of the proposed State Chapter. The event was well attended, with over 120 members drawn from various State and Federal Tribunals. The keynote speaker was Justice Keith Mason, President of the New South Wales Court of

Appeal who spoke on 'The Bounds of Flexibility in Tribunals'. On 22 May 2003 the State Chapter was founded. The meeting took place after an afternoon seminar held by COAT in co-operation with the Australian Institute of Administrative Law (AIAL). Mr Nick O'Neill, President, Guardianship Tribunal of New South Wales, is the founding convener of the Chapter's committee.

The annual national conference of tribunals was held in Sydney in June 2003. Almost all states reported that State Chapters of COAT had been established. The national executive of COAT was elected. Justice Garry Downes, President, Commonwealth Administrative Appeals Tribunal, is the founding Chair of COAT taking over from the interim Chair, who did so much to make this initiative a reality, Justice Murray Kellam of Victoria. Justice Downes has stated that a priority for the new National Executive is the development of a model national tribunals members manual.

Our Divisions and the Appeal Panel

The conceptual classification used by the ADT Act to define the work of the tribunal – ‘review of reviewable decisions’ and ‘original decisions’ – does not precisely capture the difference between that part of the business of the Tribunal that can be said to be of an ‘administrative’ or public law character (proceedings to which a private citizen and a government agency or a body exercising public power are parties), on the one hand; and that, on the other hand, which is of a ‘civil’ or private law character (disputes between private parties).

Three Divisions deal substantially or exclusively with administrative disputes between citizens and government. These are the:

- *General Division*: operative 6 October 1998. This Division hears most applications by citizens for the review of administrative decisions or administrative conduct.
- *Community Services Division*: operative 1 January 1999. This Division hears applications for review of various administrative decisions made in the Community Services, Disability Services and Ageing portfolios. Its main business at present involves the hearing of applications by citizens for exemption from prohibition on being engaged in child-related employment because of a past serious sex offence to which a government agency is the respondent.
- *Revenue Division*: operative 1 July 2001. This Division hears applications for review of various State taxation decisions.

The Legal Services Division is the fourth Division of an ‘administrative’ or ‘public law’ character as its ultimate duty is to the public interest, when considering whether a member of a profession should be removed from the public register and prohibited from continuing to practise.

- *Legal Services Division*: operative 6 October 1998. This division hears complaints referred under the *Legal Profession Act 1987* against legal practitioners and licensed conveyancers.

The Tribunal has disciplinary functions affecting other professions located in the General Division. A short report on them is given after the Legal Services Division report.

Two Divisions (Equal Opportunity and Retail Leases) are engaged in dealing with disputes of a ‘civil’ character.

- *Equal Opportunity Division*: operative 6 October 1998. This Division hears complaints of unlawful discrimination referred to it by the President, Anti-Discrimination Board under the *Anti-Discrimination Act 1977*.
- *Retail Leases Division*: operative 1 March 1999. This Division hears claims by parties to retail shop leases made under the *Retail Leases Act 1994*.

Appeal Panel

The Tribunal has an Appeal Panel, which hears internal appeals from decisions made by the Divisions of the Tribunal and external appeals from other decision-makers (presently only the Guardianship Tribunal), as prescribed by Chapter 7 of the ADT Act.

In the following presentation, the Divisions have been grouped according to the conceptual category into which their work mainly or wholly falls, i.e. ‘administrative review’, ‘professional discipline’ and ‘civil’.



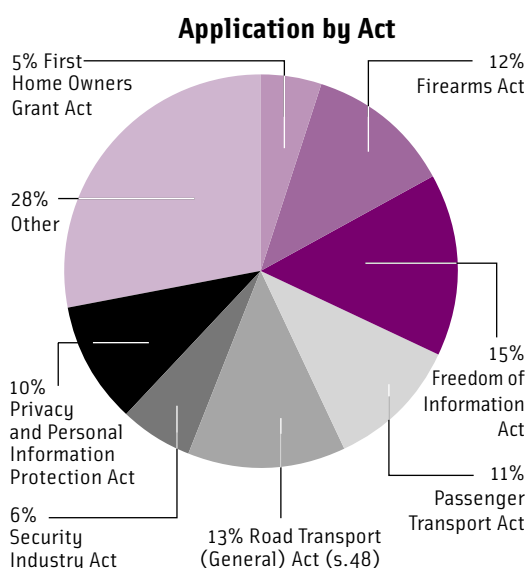
Deputy Presidents John Nader, Nancy Hennessy, Tom Kelly, Michael Chesterman, President Kevin O'Connor: Divisional Heads as at 30 June 2003.

General Division

The President, Judge Kevin O'Connor, is the Divisional Head of the General Division.

About 45 per cent of applications received by the Tribunal go to the General Division. There were 344 applications filed during the year compared to 294 last year.

The work of the Division has traditionally divided between review of occupational licensing decisions and, what might be called, information law reviews. Into the first category fall security industry, passenger transport and commercial fishing licensing decisions (and less exactly, firearms licensing reviews, as many of the citizens affected have firearms for recreational rather than occupational reasons). Into the second category fall review of determinations made by agencies under the *Freedom of Information Act 1989* (FOI Act) and review of the conduct of agencies under the *Privacy and Personal Information Protection Act 1998* (Privacy Act). The major increase in the General Division was mainly due to an increase in Privacy Act filings.



Structure and functions

Applications for review of administrative decisions or (in the case of the Privacy Act) review of administrative conduct are heard by a judicial member sitting alone unless there is a requirement to the contrary, as in school appeals and local government cases. There are two general directions days each month, presided over by the President or Deputy President Hennessy.

These directions days deal with all applications except in FOI and Privacy matters.

Usually the administrator will have given the review applicant a brief of the evidence on which it relies ahead of the directions day. Simple directions are then made for the applicant to put on evidence, and for the administrator to the reply and a date for final hearing is set for four to six weeks' time. At final hearing simpler matters are dealt with by ex tempore reasons, and in more difficult matters decisions are usually reserved.

All FOI and Privacy Act applications are first referred to a planning meeting, a type of preliminary conference. The planning meeting process is used to seek to identify the scope of the dispute and to ascertain the extent to which the dispute remains resolvable without going to hearing. It is common for FOI matters to be substantially reduced in their scope, though most ultimately reach a hearing. It is common, at this stage, for most Privacy Act matters to be entirely resolved through this process. These matters typically stay in the Tribunal longer than other types of review applications. Directions are made as required.

While most of the work of the General Division involves administrative review,

there are some other jurisdictions of importance allocated to the General Division. The most important is that of veterinary surgeons discipline; and another of significance is the determination of applications for dismissal from office of elected councillors made under the *Local Government Act*. Veterinary surgeons discipline is dealt with after the Legal Services Division section below.

Legislation

An important new review jurisdiction conferred during the year relates to administrative decisions of the Public Guardian and the Protective Commissioner, already discussed in the President's overview.

Guardianship and Protected Estates Legislation Amendment Act 2002. Guardianship Tribunal orders (now appealable to the Appeal Panel) will often confer responsibility for their implementation on two public offices, the Public Guardian and the Protective Commissioner. Decisions made by those offices are now reviewable decisions. Public Guardian reviews are yet to commence. Those reviews will be heard by members of the General Division, who have been assigned to a List to be known as the Guardianship and Protected Estates List. Similarly, at least two of the three members to sit on appeals from the Guardianship Tribunal will be drawn from that list. This is seen as an important means of ensuring that appropriate specialist understandings and knowledge are brought to this new and especially sensitive category of work.

Licensing and Registration (Uniform Procedures) Act 2002. This Act establishes uniform procedures with respect to the administration of licensing and registration schemes, and includes a right of review in respect of licensing decisions covered by the Act. New licence categories will fall under this Act, and be reviewable by the ADT.

Significant cases and themes

The General Division issued 157 published decisions, ranging across 30 enactments. It is not practical to seek to give an overview of all the published decisions that have emerged from the General Division during the year. (The General Division routinely gives ex tempore decisions that are not published on the internet, often after telephone hearing, in applications for review of instant suspensions from driving ordered by police officers after negative roadside breath tests. There were 48 decisions of that kind during the year).

Possibly the area of most significance during the year has involved the Privacy Act. In the year 2000-2001 there were three applications for review of the conduct of a public sector agency lodged under this Act. In 2001-2002 there were 11 applications lodged; in the present year there were 38 applications lodged. These applications are all referred to planning meetings before a judicial member belonging to the Freedom of Information and Privacy List. The practice, unless a party objects, is that this member will manage the case for its entirety, including hearing.

The Privacy Commissioner is notified of applications, and has a right to appear and be heard. A staff member of the Privacy Commissioner's office routinely attends planning meetings.

It is not uncommon for there to be two (and sometimes more) agencies also represented at the meeting. Often the complaint will involve more than one agency as, for example, where it is alleged that there has been an unlawful disclosure of personal information from one public sector agency to another public sector agency.

Every attempt is made at these planning meetings to generate options for resolution of the complaint. Often the applicant will be satisfied if the respondent agency

acknowledges some fault on its part, gives an apology and makes a credible promise to alter practices in future so as to ensure that the problem does not occur again.

Since the commencement of the jurisdiction to 30 June 2003, there have been 9 published General Division decisions and 1 Appeal Panel decision, 8 of them this year.

The main issues so far dealt with in the 10 decisions have been:

(i) those of a preliminary kind

- Scope of exclusions from the meaning of 'personal information' and therefore from the rights given by the Act; exclusions considered - 'information or an opinion about an individual's suitability for appointment or employment as a public sector official' (Tribunal ruled exclusion covered adverse comment contained in the report of a management review that examined the applicant's work performance); 'information about an individual that is contained in a publicly available publication' (held to apply to a newspaper article in which a journalist records some negative information about an individual).
- Effect of failure to seek internal review within period fixed by Act on right to apply to Tribunal (held absolute time bar, no jurisdiction).
- What is the time limit on making an application to the Tribunal after the internal review has been completed (held no clear time limit applies).
- Whether the Office of Ombudsman may be the subject of an application for review of its conduct, or is protected from action by an immunity from civil suit found in its enabling legislation (held immunity not applicable, judicial review proceedings pending in Court of Appeal).

(ii) those of a substantive kind

- Whether authorisation clause in enrolment form sufficient to permit collection by the enrolling University of academic record information from a previous University attended by the applicant (held did not contravene Act, appeal dismissed by Appeal Panel).
- Whether a previous University orally disclosing academic history information to the University where its former student was now seeking enrolment contravened the Act by not holding an appropriate consent or other authorisation from the former student for the disclosure (held that the University had contravened the Act's requirements relating to disclosure of personal information; appeal to Appeal Panel pending).
- Whether Corrective Service's practice of retaining ex-inmate records in its main prisoner records system and its controls in relation to access to workstations from which this information could be read contravened the Act's requirements in relation to security and retention of personal information (held that in the circumstances contraventions ought not be found, but noted if the agency failed to implement new security controls on ex-inmate records in the timeframe promised (12 months) a different view might be taken if the question arises again).
- Whether the Health Care Complaints Commission had contravened Act in sending correspondence, referring to alleged misconduct of a sexual nature by the health practitioner, to a business address that was not the main business address of the practitioner (held no contravention).

Revenue Division

The Revenue Division commenced operation on 1 July 2001. A Divisional Head has not been appointed. The President continues to handle the relevant responsibilities. The Division hears applications for review of taxation decisions made under various statutes by the Chief Commissioner of State Revenue.

Structure and functions

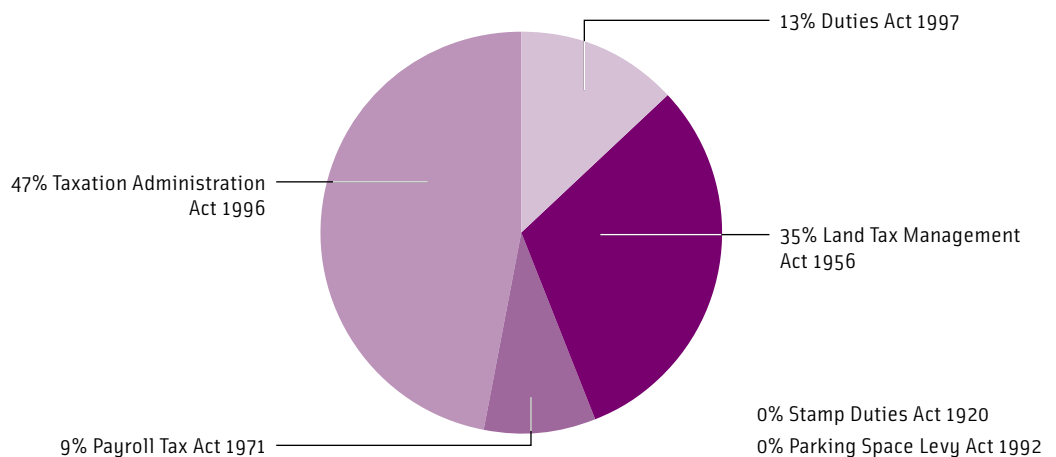
A judicial member sitting alone hears applications for review. Initially, a directions hearing is held. Often the parties will agree to the matter being heard 'on the papers' having regard to written legal submissions, as the underlying facts are usually not in dispute. The judicial members appointed or assigned to this Division all have substantial tax law expertise.

Case load and significant themes

During this year there were 55 filings compared to 48 in the previous year. There were 42 decisions with 40 published.

The Division has dealt with issues such as: meaning of principal place of residence for land tax purposes; whether a transfer was pursuant to the terms of a will and therefore exempt from usual duty; scope of discretion to exempt from land tax; whether duty payable if transfer proves to be incapable of execution; whether a Commissioner's opinion constitutes a reviewable decision; and whether Commissioner precluded from exercising statutory duty to levy tax in respect of past years because of change of position by taxpayer.

Appeals by Act 2002-2003



Community Services Division

The Divisional Head is Mr Tom Kelly, Deputy President who serves on a part-time basis.

Structure and functions

The Community Services Division has both a merits and original decisions role. At present most of the applications are for original decisions being applications by persons for exemption from the provisions of the *Child Protection (Prohibited Employment) Act 1998* (CPPE Act) so that they can work with persons under the age of 18 years.

The review applications relate to decisions about custody and guardianship of state wards; disability funding; alleged failure of the Department of Community Services to act on certain recommendations of the Community Services Commission; and the failure of the Community Services Commission to consider certain complaints. When hearing a merits review application the Tribunal sits as a three member panel, comprising a judicial member and two non-judicial members who have experience or knowledge directly relevant to the subject matter of the proceedings.

Case load

There were 57 applications filed during the year, of which 48 (84%) were original applications under the CPPE Act. There were 82 decisions issued, with 23 being published. (This compares with 70 filings last year of which 59 were CPPE matters). The number of review applications continues to be static. The fall in applications under the CPPE Act can be attributed to amendments to the *Child Protection Legislation Amendment Act 2002* which were proclaimed in February 2003. This legislation gives an applicant the option of making an application the Commission for Children and Young People or to Tribunal. Applications to the Commission are dealt with administratively and a dissatisfied applicant can still make an application to the Tribunal or the New South Wales Industrial Relations

Commission. The intention of this amendment was to divert the less serious matters away from the Tribunal.

Legislation

The *Community Services Legislation Amendment Act 2002* commenced on 1 December 2002. This Act substantially amends the *Community Services (Complaints, Reviews and Monitoring Act 1993* (the CS (CRM) Act). The *Community Services Legislation Amendment Act 2002* abolishes the Community Services Commission and transfers the functions of that organisation to the Ombudsman. The functions of the Ombudsman under the CS (CRM) Act include:

- Reviewing the situations of persons (including children) or groups of persons in care
- Reviewing the deaths of certain children and people with a disability in care
- Co-ordinating Community Visitors
- Monitoring, reviewing and setting standards for the delivery of community services.

The Tribunal does not have any right to review decisions of the Ombudsman under the CS (CRM) Act. This represents only a minor change from the old legislation. Under that legislation, there was a right of review of a decision of the Community Services Commission to investigate a complaint, being an investigation that was beyond its powers and a right or review of a decision of the Community Services Commission that was beyond its powers.

The *Adoption Act 2000* commenced operation on 1 February 2003. This Act repeals the *Adoption Information Act 1990* and the *Adoption of Children Act 1965*. Decisions under the *Adoption Act 2000* are reviewed by the Community Services Division. The types of decisions that can be reviewed and the review process is detailed in Chapter 10. Generally, the types of decisions that can be reviewed fall into the following categories:

- The accreditation of adoption service providers including imposition of conditions of accreditation, revocation and suspension of accreditation
- The failure or refusal to supply adoption information such as the original birth certificate or birth records
- The failure or refusal to enter the name of any person in a prescribed register e.g. Advance Notice Register, Contact Veto Register and the Reunion & Information Register
- The failure or refusal to arrange a reunion
- The failure or refusal to contact a person who has lodged a contact veto.

Significant cases and themes

Individuals who have been found guilty of a 'serious sex offence' (a broadly defined matter) are not allowed to work in child-related employment unless they obtain an exemption from the Tribunal. The Commission for Children and Young People (CCYP) appears as respondent and indicates its view to the Tribunal. It often obtains a psychological report on the applicant.

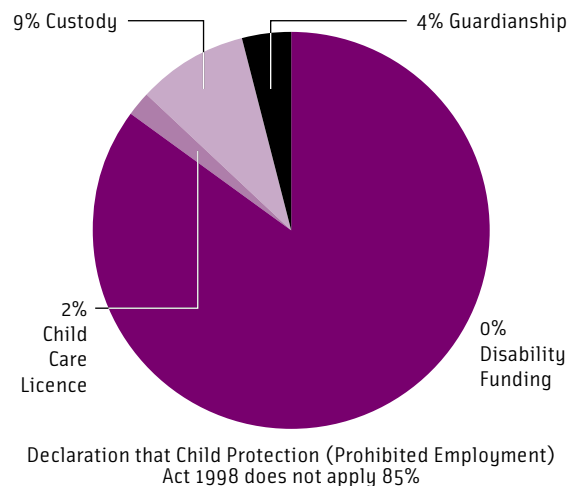
During the year the Supreme Court dismissed an appeal by the CCYP challenging the way the Tribunal and the Industrial Relations Commission have been interpreting the CPPE Act when assessing whether an applicant was a risk to persons under the age of 18 years: *Commission For Children and Young People v AG* [2002] NSWSC 949. This decision is covered in more detail later in this report.

The child custody disputes that come before the Tribunal are usually both difficult and complex. A typical matter was *Mr & Mrs HA v Minister For Community Services* [2003] NSWADT 149. This was an application by grandparents against the removal of their long standing care of their 12 year old grandchild, who was ward of the Minister, following contentious allegations of mistreatment by

the child against the grandfather. At the time of the Tribunal hearing the child was in the custody of the Department of Juvenile Justice as the result a criminal conviction. The child had severe behavioural problems and had been in police custody on numerous occasions for a variety of alleged offences. After 5 hearing days the Tribunal dismissed the grandparents' application but made a number of recommendations in respect of the short term and long term placement of the child as well as suitability of the grandparents as foster parents.

In one case during the year, the relevant Minister raised a complex jurisdictional question before the Appeal Panel. The review applicants, who were respondents to the appeal, were unrepresented foster carers of several children who were wards of the Minister. Unrepresented applicants face great difficulty in effectively putting a case on such issues. It was pleasing to find that the Bar Association arranged for them to be given *pro bono* representation. The Appeal Panel delivered its decision in *Minister for Community Services v Mrs A* (CSD) [2002] NSWADTAP 32 on 29 August 2002.

Applications by Type 2002 - 2003



Legal Services Division

The Divisional Head is the Honourable John Nader RFD QC, Deputy President and Acting Judge who serves on a part-time basis. He took up his appointment as Divisional Head on 1 September 2002.

Deputy President Nader has had a distinguished career in the law. He practised at the Sydney Bar from 1962 to 1982 ultimately specialising in criminal law. He served as a Justice of the Supreme Court of the Northern Territory from 1982 to 1992. Since his return to New South Wales, he has been an Acting Judge of the District Court; a Hearing Commissioner with the Human Rights and Equal Opportunity Commission; Chairman, Parole Board; and Commissioner of Inquiry into allegations made by the Hon. Franca Arena. Ms Caroline Needham SC, the founding Divisional Head of the Legal Services Division, resigned from her position as Divisional Head on 31 August 2002.

Structure and functions

The Legal Services Division is the successor to the Legal Services Tribunal. The Division is one of three mechanisms available for dealing with misconduct by legal practitioners. Most importantly, the Supreme Court has an inherent jurisdiction to remove a legal practitioner from the roll of practitioners (confirmed by the *Legal Profession Act 1987* (LPA), s 171M). The Division's jurisdiction is conferred by the LPA. Like the Supreme Court it has a range of sanctions for misconduct and may order deregistration. The third mechanism is the powers recently given to the Bar Association and the Law Society to cancel or suspend practising certificates. Such decisions obviously affect the right to practise but do not involve removal from the roll. (See *Legal Profession Amendment (Disciplinary Provisions) Act 2001*).

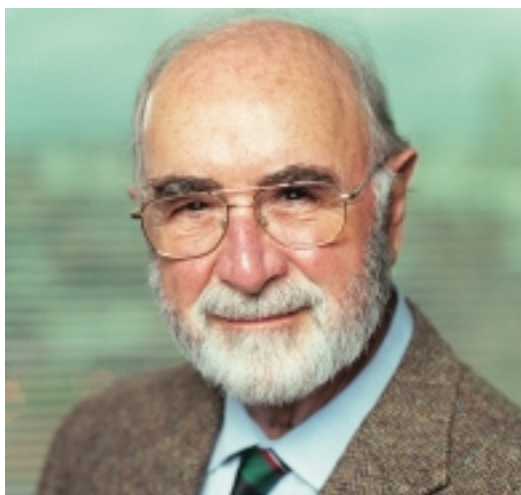
The right to take action in the Tribunal is given to the Legal Services Commissioner, the Bar

Association and the Law Society. The proceedings are initiated after investigation by an information which sets out the allegations and the degree of the misconduct alleged, being either unsatisfactory professional conduct or professional misconduct. Hearings are conducted by three-member panels, comprising two judicial members, who are solicitors or barristers member and a non-judicial members. There is a power to constitute a four member panel with a second non-judicial member. It has not as yet been exercised.

The Division at present also has jurisdiction over licensed conveyancers.

Case load

There were 18 informations lodged against legal practitioners in the last year, as compared to 38 in the previous year. Twelve alleged professional misconduct: 9 as to solicitors; 3 as to barristers. One information against a barrister alleged both professional misconduct and unsatisfactory professional conduct. There were 4 informations laid under ss 48I and 48K of the LPA. These provisions relate to the employment by legal practitioners of persons who are not fit and proper persons to be employed or paid in



Deputy President John Nader RFD QC

connection with a practice, who are disqualified persons, or who are persons who have been convicted of indictable offences.

There was one information laid against a licensed conveyancer, and it alleged professional misconduct.

The Tribunal dealt with 51 matters during the year. As a result the matters pending in the Division are down to 23 as compared to 56 a year ago. There were 42 published decisions.

As at 30 June 2003, there were 23 matters pending in the Division.

Legislative change

On 7 August 2003 Australia's Attorneys-General endorsed the concept of a national legal profession, and the adoption of uniform laws to achieve that end. Model draft provisions have been circulated for comment. The model provisions include definitions of misconduct and uniform rules as to such matters as trust accounts. There will be provision to ensure that disciplinary orders made in one jurisdiction are effective in all jurisdictions.

In November 2002 the Attorney General's Department released a report titled the *Legal Profession Act 1987: A Further Review of Complaints against Lawyers*. This report addressed substantive issues raised in the New South Wales Law Reform Commission report, *Complaints against lawyers: an interim report* released in August 2001. The report made numerous recommendations regarding the complaints handling process, including supporting nationally consistent standards for handling complaints between the State and Territories.

The Legal Practitioners' Disciplinary Register, maintained by the Office of the Legal Services Commissioner, commenced operation on 4 October 2002. The Register records the names of legal practitioners who have had

disciplinary action taken against them, including orders made by the Legal Services Division. The Register can be viewed on the Commissioner's website: <<http://www.lawlink.nsw.gov.au/olsc/nswdr.nsf/pages/index>>.

Significant cases and themes

During the year the Tribunal ordered that 14 solicitors be removed from the roll of legal practitioners.

In 3 cases practitioners were found not guilty. Lesser orders ranging from caution to suspension were imposed in the other cases. A table of the orders imposed by the Legal Services Division can be found in Appendix E. As was the case last year, most of the cases involved abuse of client trust in relation to financial matters. The majority of cases brought before the Tribunal affected more than one client of the solicitor.

The conduct which led to names of legal practitioners being removed from the roll included:

- A legal practitioner who agreed to invest the money of numerous clients on mortgage. The sum misappropriated was approximately \$1.5 million.
- A solicitor practising on her own account failed to keep a trust account and kept no records at all. The money held on behalf of clients was used for other purposes.
- Misappropriation of trust moneys from numerous clients to meet personal debts, including misuse for personal purposes by the solicitor of damages received by his daughter after a car accident.
- A legal practitioner was found to have forged a client's signature on consent orders and then falsely attested to the client having signed the orders in her presence.

The Tribunal emphasised the importance of the duty of candour. A failure to be candid may be found to constitute misconduct. In one instance the practitioner had informed the Law Society of a problem with alcohol, but failed to disclose a problem with cocaine. This problem became known when he was convicted for possession of a prohibited drug. Another case involved lack of candour as between practitioners. The Tribunal found that a practitioner had knowingly misled another practitioner in stating that a defence had been filed. The Tribunal noted that such conduct undermines the trust reposed by the community in legal practitioners, namely, that what one practitioner says to another as to steps that have been taken can be accepted without question.

In two cases, each legal practitioner was appearing for the third time before the Tribunal. Having found similar conduct again proven, the Tribunal ordered that the solicitors be struck off.

The Law Society agreed to the dismissal of several of its informations as they were affected by procedural shortcomings that deprived the Tribunal of jurisdiction as identified by the High Court in *Barwick v Law Society of NSW* [2000] HCA 2. There had been some doubt as to whether the Tribunal could enter an order for dismissal if it was found not to have jurisdiction, now resolved in *Law Society of NSW v Carver* [2003] NSWADT 158 (27 June 2003). The Tribunal held that it had jurisdiction to make an order of dismissal in such cases but that there was no power to make any order as to costs.

In a decision handed down on 7 March 2003, *Law Society of NSW v ET* [2003] NSWADT 41, the Tribunal found that a 16 year old junior clerical assistant did not fall within the meaning of the term "clerk" as used in s 481 of the LPA when regard was had to the historical usage and role of a solicitor's clerk. Accordingly, the Tribunal

was not competent to make disciplinary orders against the young woman.

Supreme Court: In order to provide a rounded account of the discipline of legal practitioners during the year, it is desirable to refer briefly to the work of the Supreme Court.

A number of cases have involved appeals from decisions affecting practising certificates made by the professional bodies. The nature of the powers conferred on the professional bodies, and the relevant statutory provisions, were examined in *New South Wales Bar Association v Murphy* (2002) 55 NSWLR 23; [2002] NSWCA 138 (28 June 2002). See also *Doherty v The Law Society of NSW* [2003] NSWSC 105 (28 February 2003); *Wardell v New South Wales Bar Association* [2002] NSWSC 548 (3 July 2002) and *New South Wales Bar Association v Stevens* [2003] NSWCA 95 (24 April 2003).

The Supreme Court exercised its inherent jurisdiction in two cases. One, unusually, involved an application by the practitioner to have his name removed for misconduct; and the Court so ordered: *Symrnis v Legal Practitioners Admission Board* [2003] NSWCA (2 April 2003). In another case the Court conducted an inquiry into whether a practitioner should be considered fit to continue to practise in New South Wales in light of a disciplinary order made against him after the time he had commenced practice in New South Wales by the jurisdiction in which he had previously practised (a State in the United States). The Court was satisfied that the misconduct found against him in the US involved extraordinary circumstances, was unlikely to be repeated and that his record of practice in New South Wales was without blemish. He was found to be fit to continue to practise: *Gersten v The Law Society of NSW* [2002] NSWCA 344.

Other Professional Discipline

Functions of the Tribunal

Legislative Developments. The Tribunal will lose part of its jurisdiction in relation to licensed conveyancers. The *Conveyancers Licensing Act 2003* was assented to May 2003, but is yet to commence. Disciplinary proceedings against licensed conveyancers formed part of the original jurisdiction of the Legal Services Division. This Act transfers responsibility for original disciplinary decisions to a public servant, the Director General of the Department of Fair Trading. The Director General may make disciplinary orders ranging from caution to cancellation of licence. The conveyancer may apply for review by the Tribunal.

During the year the Tribunal acquired a disciplinary review jurisdictions, in respect of surveyors. Under the *Surveying Act 2002*, the Tribunal is empowered to review disciplinary orders made by the Surveyors Board involving findings of professional incompetence or professional misconduct. These review functions are to be exercised in the General Division.

Veterinary Surgeons Discipline: The Veterinary Surgeons Act 1986 confers jurisdiction on the Tribunal constituted as a Veterinary Disciplinary Panel to conduct disciplinary inquiries in relation to practitioner conduct referred to it by the Veterinary Surgeons Investigating Committee, and to hear review applications from practitioners whose conduct has been dealt with in the first instance by orders of the Committee (it can make orders in less serious cases).

Four inquiries relating to the same practitioner that commenced in 1999 were the subject of decisions as to liability during the current year. They have yet to proceed to the making of final orders due to various appeals. The decisions deal with a range of

factual and legal issues, including the important question of what activities of a veterinary surgeon belong to the sphere of professional conduct, and accordingly can give rise to findings of professional misconduct where there is a transgression of standards. The decision in one of the inquiries has been set aside on the basis that the Tribunal was without jurisdiction to hear the matter because of omissions in the procedures followed by the statutory body responsible for the initial investigation of the case, the Veterinary Surgeons Investigating Committee: *Lloyd v Veterinary Surgeons Investigating Committee* [2003] NSWADTAP 19. In that case the Panel had found that professional procedures had not been followed in relation to the diagnosis of a skin condition in a cat.

The other inquiries, also subject to appeals, made adverse findings against the practitioner in relation to the diagnosis and treatment of a horse which died while in care, as well as in relation to burial practices adopted by the practitioner and his conduct towards the owner of the horse; in relation to the surgery undertaken on an injured dog; and in relation to the diagnosis and treatment of a dog that died while in care: all titled *Veterinary Surgeons Investigation Committee v Lloyd* [2003] NSWADT 95 (Inquiry 1, the injured dog); [2003] NSWADT 96 (Inquiry 2, the deceased horse); and [2002] NSWADT 285 and [2003] NSWADT136 (Inquiry 3, the deceased dog).

In another inquiry a Panel found proven several complaints against an experienced practitioner, most importantly, that he had issued a false certificate vouching for the freedom from disease of ram semen intended for export to New Zealand for use in connection with artificial insemination; and that explanations given and laboratory

reports as to the certificate were false. The original complaint had been made by the Department of Agriculture who expressed concern over the effect of such conduct on Australia's international standing in an important area of trade in agricultural products. The practitioner was deregistered for two years. An appeal has been lodged and is yet to be determined. The Appeal Panel refused an application to stay the operation of the order for deregistration. See *Veterinary Surgeons Investigating Committee v Howe* [2002] NSWADT 191; [2003] NSWADT 156; before Appeal Panel as to stay, [2003] NSWADTAP 14.

There were no cases involving applications for review of Committee disciplinary orders during the year.



Left to Right: Dr Tanya Stephen, Dr Timothy Crisp, Dr Richard Jane and Dr Garth McGilvray, Veterinary Disciplinary Panel, Professional Development Day, 8 November 2002.

Equal Opportunity Division

Structure and functions

The Equal Opportunity Division (EOD) hears disputes between parties involving alleged breaches of the *Anti-Discrimination Act 1977*. The Divisional Head is Deputy President Magistrate Hennessy. Deputy President Hennessy is a full-time member of the Tribunal and sits on matters in Divisions other than the Equal Opportunity Division.

A complainant must first lodge a complaint with the President of the Anti-Discrimination Board (ADB). If the complaint cannot be conciliated or it cannot be resolved for some other reason, it may be referred to the Tribunal.

Case load

The President of the ADB referred 149 new complaints to the Tribunal during the financial year. The Tribunal also has a limited jurisdiction to review decisions of the President of the ADB. During this financial year one application to review a decision of the President to decline to entertain a complaint was filed in the Tribunal but was subsequently withdrawn by the applicant. One hundred and fifty one matters (150 complaints, one review) were

disposed of during the year and 105 matters remained pending at the end of the year. There were 48 published decisions.

The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation before the matter proceeds to hearing. Of the 150 original complaints that were finalised during the year mediation was conducted in 53 matters. Of those 53 matters, 47 settled at or after mediation and 6 proceeded to a hearing. Of the balance (103) 61 were resolved in other ways, and a total of 42 matters proceeded to a hearing. Of those, 26 were dismissed either summarily or after a hearing.

A complaint may allege more than one ground of discrimination. The most frequently alleged grounds of discrimination were disability (51), sex (37); race (34); and sexual harassment (32). The President of the ADB also referred 22 complaints of age discrimination, 10 complaints of homosexuality discrimination and 9 complaints of discrimination on the ground of a person's responsibilities as a carer. There were 3 complaints of homosexual vilification referred and only 1 complaint of racial vilification. The remaining complaints comprised 2 complaints of transgender discrimination and 1 of marital status discrimination.

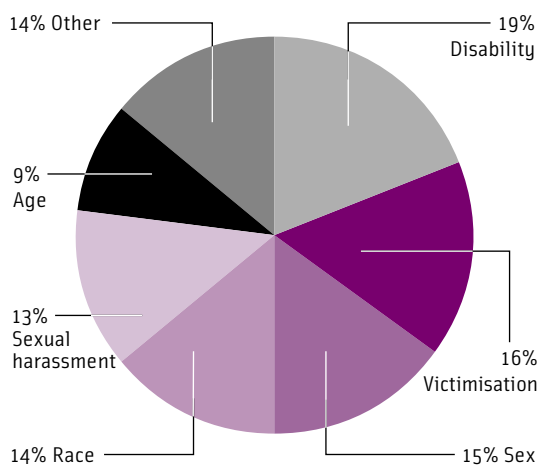
In the Equal Opportunity Division the time standards for disposal of matters is that 80% of matters should be finalised within 12 months and 20% within two years. In November 2002, the Deputy President introduced a timely decisions policy to the Division which sets out the expectations in relation to the time a presiding member will take to hand down a decision. The timeliness of decisions has improved significantly since the implementation of this policy. Of the 151 cases disposed of during the year 111



Magistrate Nancy Hennessy

(74%) were disposed of within 12 months and 40 (26%) in more than 12 months. While these figures do not yet meet the time standards set as a target by the Tribunal, they compare favourably with the previous financial year when 60% of matters were disposed of within 12 months and 40% in more than 12 months.

Applications by Ground of Discrimination



Significant cases and themes

Eleven of the cases that went to hearing resulted in findings substantiating the complaints, and orders were made against the respondents. Three of those cases related to disability discrimination, five to racial discrimination and one each to sex discrimination, sexual harassment and victimisation.

Some representative examples with summaries of the discrimination proven follow:

- **Disability Discrimination:** inadequate provision of audio loop system by the Government in the Supreme Court thereby discriminating against a party to proceedings with a hearing disability – *Bradley v State of New South Wales (No 2)* [2003] NSWADT 94. Award of \$6,379 damages.

- **Racial Discrimination:** refusal to lease house on ground of race to an Aboriginal person. There was evidence from five witnesses as to the owner making derogatory remarks about Aboriginals when dealing with the complainant. *Sheather v Daley* [2003] NSWADT 51. Award of \$10,000 damages.

- **Sex Discrimination:** against male who wore earring at work and was dismissed from job. *Bree v Lupevo Pty Ltd* [2003] NSWADT 47. Award of \$16,956 damages.

- **Sexual Harassment:** female apprentice hairdresser the subject of repeated inappropriate comments and conduct of a sexual nature from her employer to whom she was indentured. *Tabbouch v Noyeaux* [2003] NSWADT 6. Award of \$5,709 damages.

The highest award of damages during the year was the maximum amount possible for a single complaint – \$40,000 in *Peck v Commissioner of Corrective Services* [2002] NSWADT 122. The Commissioner rejected Mr Peck’s application for employment as a catering supervisor and cook on the ground that due to a minor knee impairment he had a loss of agility that meant he did not meet the requirements for entry as a prison officer. The Tribunal was satisfied that he was fit for the position and that the rejection of his application amounted to discrimination on the ground of disability.

The costs rule is that the Division does not make orders against unsuccessful parties unless it is of the opinion that there are ‘circumstances that justify it doing so’: *Anti-Discrimination Act 1977*, s 114(2). This year there were several findings of circumstances justifying costs awards being made against respondents.

In *Borg v Commissioner, Department of Corrective Services & Anor* [2002] NSWADT 42 (decided during 2001-2002) the Tribunal found complaints of sexual harassment proven and awarded the complainant \$47,500 in damages. The case involved a large amount of evidence and proceeded over several days. The complainant's legal costs exceeded \$77,000. The question of whether the applicant should be awarded costs was dealt with this year. The Tribunal decided to award costs: *Borg v Commissioner, Department of Corrective Services & Anor* [2003] NSWADT 35. One reason the Tribunal ordered the respondents to pay the applicant's costs was that the matters raised in the case were matters of public importance. They concerned the rights of correctional officers to work in an environment free from harassment and the corresponding obligations of the Department to provide such an environment. The Tribunal said that, 'The public interest aspect of the case assumes even greater significance when it is recognised that the prevailing "prison culture" inhibits Correctional Officers from making formal complaints against their supervisors.'

The respondent was also ordered to pay the complainant's costs in *Peck v Commissioner of Corrective Services No. (2)* [2002] NSWADT 244. The Tribunal has also awarded costs against unsuccessful applicants especially where the applicant has caused the proceedings to be far more prolonged than was reasonable to air and dispose of the application: see, for example, *Battenburg v Chief Executive Officer & Secretary, Union Club* [2002] NSWADT 219.

For the first time, the Tribunal appointed a person pursuant to s 71(4) of the *Administrative Decisions Tribunal Act 1997* to represent an applicant in the

proceedings. Section 71(4) provides that 'If it appears to the Tribunal that a party is an incapacitated person, the Tribunal may appoint any other person it thinks fit to represent the party...' The Tribunal found that the applicant has a mental disability which makes him incapable of conducting his own case. (See *EM -v- Commissioner of Police, New South Wales Police Service* [2002] NSWADT 268.) The Tribunal has a list of persons who are suitable to be appointed under s 71(4) as a guardian for a person who is incapacitated.

In *MM & AM v State of NSW, Department of Community Services* [2002] NSWADT 256 the Tribunal held that the Minister and the Director-General of the Department of Community Services provide "services" within the meaning of sections 49M(1) and 47 of the AD Act when determining applications by people to become 'foster parents'. This means that any determination of such applications in a discriminatory manner will be unlawful. The respondent appealed, and the Appeal Panel has referred this question to the Supreme Court for its opinion pursuant to s 118D of the *Administrative Decisions Tribunal Act 1997*.

Retail Leases Division

Structure and functions

The Division has operated since 1 March 1999, taking over the jurisdiction from the (now dissolved) Commercial Tribunal. It hears applications made by retail shop lessees or retail shop lessors pursuant to the *Retail Leases Act 1994* (RLA).

The former Divisional Head, Professor Christopher Rossiter, stood down in June 2003 but will continue as a part-time Deputy President of the Tribunal. The new Head is Deputy President Michael Chesterman, an Emeritus Professor of the University of New South Wales whose present appointments include Acting Judge of the District Court. Deputy President Chesterman has had a distinguished academic career which included 22 years as a professor in the Faculty of Law at the UNSW with 5 years' service as Dean. He has been active in law reform work, and in 16 of the past 20 years has held appointments as a member of either the Australian Law Reform Commission or the NSW Law Reform Commission.

Under the RLA as originally enacted the Tribunal could hear one type of claim, a retail lease claim alleging breach of a requirement of the RLA or the general law. Following amendments made in 1998 on 12 October 2001 a second type of claim became possible – an unconscionable conduct claim alleging breach of a new statutory obligation placed on lessors and lessees that of not engaging in 'unconscionable conduct'. Relevant factors are listed in s 62B.

There are special constitution provisions relating to the hearing of unconscionable conduct claims. The presiding member must sit with two non-judicial members with an industry background who act as advisers (if they are available). The presiding member must meet special qualification requirements in relation to experience. If, as

is common, the applicant makes both a retail leases claim and an unconscionable conduct claim in relation to the one chain of conduct the Tribunal must be constituted on a multi-member basis and restrict its choice of presiding member. This gives rise to considerable administrative difficulties for the Registry and impedes the ability of the Tribunal to bring on and deal with urgent applications. Such applications are not uncommon in this Division, especially in a lock-out situation or where consents to assignment are being withheld to the detriment of a deal to sell a business. These and a number of other issues will be taken up by the Tribunal in the context of the Government's review of the RLA currently underway.

During the year, most of the preliminary and main hearings in 'pure' retail tenancy claims were conducted by one of five judicial members, each of whom is a highly experienced practising senior solicitor with expertise in commercial leasing. In most cases, the members actively seek to generate options for early resolution. A similar approach is taken in relation to unconscionable conduct claims usual listed before the President or the Divisional Head.



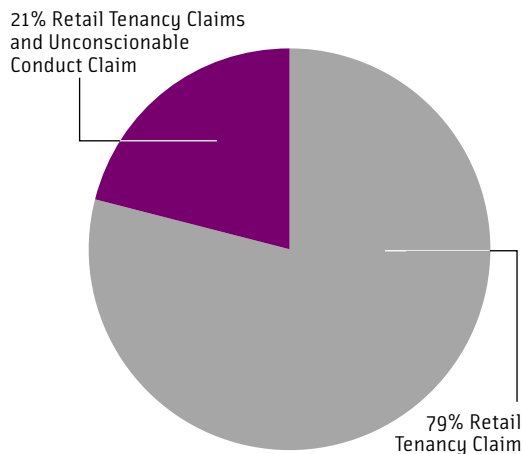
Deputy President Michael Chesterman

Case load

There were 84 applications pending at the beginning of the year, 142 applications filed during the year, and 159 disposed of, leaving a pending number of 67. The average numbers of applications disposed per month this year was 13.25. Many matters settle. Often a matter will return to directions on several occasions. This is tolerated if there is evidence that the parties are seeking to resolve their dispute without going to hearing.

Final orders after hearing were made in 34 cases. There were 40 published decisions, several relating to interim applications. Approximately 21 per cent of filings give rise to final hearings. There is therefore a 79 per cent settlement rate after lodgment in the Tribunal. This statistic points to the effectiveness of the work done by members at directions – no doubt assisted by the preparedness of respondents in particular (often major shopping centre owners) to take a commercial approach to the dispute.

Applications by Type 2002 - 2003



Significant cases and themes

The issues dealt with in the 34 decided cases this year included:

- Representations by lessor in relation to future developments at shopping centre
- Interference with lessee's use of shop caused by demolition and construction work taken as part of refurbishment and redevelopment of shopping centre
- Failure to satisfy terms of mediation agreement intended to resolve all matters in dispute
- Whether premises predominantly used for a purpose that brings them within the scope of the RLA
- Unconscionable conduct by lessor in inducing a prospective purchaser of the lessee's business to deal direct with the lessor thereby denying the lessee the opportunity of a sale (lessor ordered to pay damages \$6000)
- Whether lessee entitled to display signs at the entrance to the shopping centre advertising business, and relevance of past practice
- Scope of permitted use in relation to takeaway items
- Whether premises fall within the size restrictions as to what types of shops can be the subject of proceedings under the RLA

There were again a number of decisions dealing with whether there were special circumstances justifying an award of costs to one of the parties.

Appeal Panel

The President has overall responsibility for the Appeal Panel's operation.

Structure and functions

For internal appeals, the Appeal Panel must comprise a presidential member, a judicial member and a non-judicial member. The non-judicial member must come from the Division under appeal, as well as one of the other two members. In the case of internal appeals, the Panel must also be constituted by a presidential member, a judicial member and a non-judicial member. In the case of guardianship and protected estates appeals, the non-judicial member must have been appointed by the responsible Minister and have experience in dealing with persons who have a disability. The Tribunal will follow the practice of ensuring that the judicial member is drawn from the Guardianship and Protected Estates List.

The convention is for the Divisional Head to preside on internal appeals from their own Division, unless it a decision of the Divisional Head sitting at first instance that is being appealed.

Legislative change

As noted in the President's overview the division of the Appeal Panel's business into internal appeals and external appeals derives from amendments to guardianship and protected estates legislation. The Appeal Panel may hear appeals against certain decisions of the Guardianship Tribunal, and in relation to orders of Magistrates and the Mental Health Review Tribunal under the *Protected Estates Act 1983*. (See *Guardianship and Protected Estates Legislation Amendment Act 2002*).

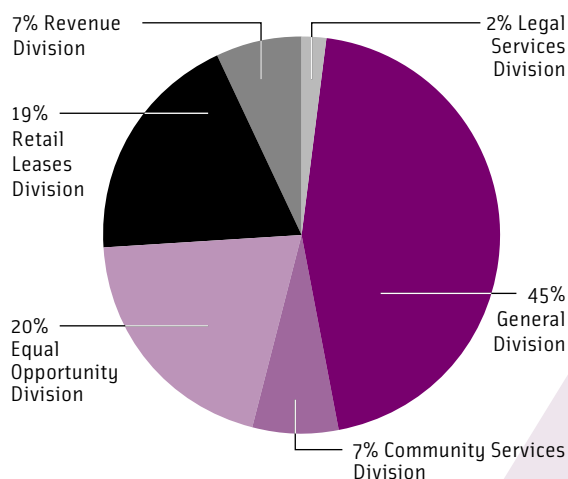
Case load

There were 72 appeals filed this year, compared to 61 last year. The distribution of appeals broadly reflects the underlying distribution of business in the Tribunal. More detailed statistics about the Appeal Panel are provided in Appendix E. The increase in appeals matches the rate of increase in underlying applications lodged.

One external appeal has been filed so far.

During the year the Appeal Panel determined 67 appeals. Fourteen were upheld in whole or in part,

Applications lodged by Division



36 dismissed and 8 withdrawn or discontinued. Some of the decisions were delivered ex tempore with the giving of short oral reasons.

Forty-three Appeal Panel decisions were published on the CaseLaw NSW site, the cases being numbered [2002] NSWADTAP 23 to 44; and [2003] NSWADTAP 1 to 22. They were all internal appeals. As at 30 June 2003 one external appeal had been lodged, and was at the directions stage. The 43 published appeals for this year were divided as follows: General Division, 14; Equal Opportunity Division, 14; Retail Leases Division appeals, 7; Legal Services Division, 4; Community Services Division, 2 and the Revenue Division, 2. The presiding members in these appeals were: President, 20; Deputy President Hennessy, 12; Deputy President Latham, 4; Deputy President Needham, 2; Deputy Presidents Nader, Hogan, Kelly, Rossiter and Chesterman, 1 each.

There are 4 appeals pending in the Supreme Court. One Appeal Panel decision from May 2002 was set aside (*Tu v University of Sydney* [2003] NSWCA 170) and the other three appeals remain pending.

Significant cases and themes

The Appeal Panel dealt with a range of issues, most of which were procedural or jurisdictional in character. The following is a cross-section of the main issues that arose in appeals during the year.

Jurisdiction:

- (1) *Commercial Fishing Licences*: The Appeal Panel held, reversing the Tribunal, that the jurisdiction of the Tribunal under the relevant legislation did not extend to reviewing decisions to revoke licences or endorsements, even though there was clear power to review cancellations and suspensions: *Minister for Fisheries -v- Oliver & Thomson; Minister for Fisheries -v- Rouse; Minister for Fisheries -v- Picton* [2002] NSWADTAP 43. (In subsequent judicial review proceedings, *Rouse v Minister of Fisheries* [2003] NSWSC 700, the decision in issue was set aside as being manifestly unreasonable).
- (2) *Pre-Condition to Jurisdiction in Professional Discipline*. The Appeal Panel held, reversing the Panel, that a Veterinary Disciplinary Panel did not have jurisdiction to hear and determine an inquiry as the statutory procedures for investigating a complaint had not been strictly followed by the investigating body prior to the inquiry being referred to the Tribunal: *Lloyd v Veterinary Surgeons Investigating Committee (GD)* [2003] NSWADTAP 19.
- (3) *Pre-Condition to Jurisdiction in Retail Leases Claims*. The Appeal Panel upheld a Tribunal decision that a mediation agreement operates as a bar to the commencement of proceedings in the Retail Leases Division: *Dimizantos and Anor v Deutsche Property Funds Management Ltd (RLD)*(2003) NSWADTAP 13.

Costs Discretion:

- (1) *Substantial Failure to comply with Directions*: In *Tu v University of Sydney (No. 2)* (EOD) [2003] NSWADTAP 25 (set aside by Supreme Court on other grounds) the Appeal Panel awarded costs against an appellant after a substantial failure on his part to co-operate with directions and respond to them in a timely way.
- (2) *Serious and Baseless Allegations*. In *Harding v Vice Chancellor, University of New South Wales* (EOD) [2002] NSWADTAP 36, costs were

awarded against an unsuccessful appellant who made serious and baseless allegations of professional misconduct against the respondent's legal representative during the hearing of the appeal.

- (3) *Lack of Any Merit*. Costs awarded by Appeal Panel as appeal was 'entirely without merit': *Murphy v David Jones Limited* [2002] NSWADTAP 42.
- (4) *Conduct of Agent*. Power to award costs against agent discussed. In this case the agent had filed a retail leases matter without first attempting mediation, company client was in liquidation, no clear evidence that liquidator had authorised proceedings, the claim was for the maximum amount and not particularised: *Kondos & Anor v Citadin Pty Limited (RLD)* [2003] NSWADTAP 7. (The issue of costs against a witness was discussed in a Divisional decision: *Locaputo v Director General, Department of Fair Trading (No 2)* [2003] NSWADT 108).

Other Veterinary Surgeons Discipline: Review of Minor Disciplinary Orders: The nature of the Tribunal's powers to review minor disciplinary orders made by the investigating body is considered in *Veterinary Surgeons Investigating Committee -v- Hopwood* (GD) [2003] NSWADTAP 11.

Freedom of Information: Exclusion. The Appeal Panel, upholding the Tribunal, held that the immunity conferred on a 'tribunal' by s 10(2) of the FOI Act applies to the Victims Compensation Tribunal in respect of documents relevant to its determinative functions: *N v Director-General, Attorney-General's Department (GD)* [2002] NSWADTAP 41.

Equal Opportunity: Burden of Proof. In *Dutt v Central Coast Area Health Service; Central Coast Area Health Service v Dutt* (EOD) [2003] NSWADTAP 3, the Appeal Panel addressed the applicability of the "Briginshaw principle" to anti-discrimination cases.

Supreme Court

Under s 119 of the ADT Act, Appeal Panel decisions may be appealed on a question of law to the Supreme Court. Under s 118 an Appeal Panel may refer a question of law to the Supreme Court for its opinion. As noted in last year's report, this power is occasionally used in relation to issues where a speedy, authoritative resolution of the question is desirable. The Tribunal or the Appeal Panel may also be the subject of review proceedings in the Supreme Court, by way of a summons. There are some instances where a Divisional decision of the Tribunal is not appealable to the Appeal Panel but is appealable to the Supreme Court. Examples are found in the Local Government and Child Protection legislation.

During the last year the Supreme Court dealt with 5 statutory appeals, one referral and 2 reviews by way of summons.

Appeals

(1) *Termination of Custody of Children: In YG & GG v Department of Community Services* [2002] NSWCA 247 the Court upheld the Appeal Panel's decision reversing a decision of the Community Services Division of the Tribunal. The Appeal Panel had found errors of law, set that decision aside and went on to determine the merits. The Appeal Panel, disagreeing with the Division, affirmed the Department's decision to terminate a long term foster care placement affecting two children. The Court of Appeal decision is significant in relation to: the need for the Tribunal to make a current assessment of what is the 'correct and preferable' decision; the approach to be taken to determining the best interests of the child; what the relevant standard of proof is in relation to allegations of mistreatment of the child in this context; consideration of the High Court decision in *M v M* (1988) 166 CLR 69; and if abuse is found, but restoration of children considered desirable, the nature of the obligation falling

on the Tribunal to give reasons. Both the Appeal Panel and the Court were critical of the way the Department dealt with the foster parents in relation to the removal of the children; and the failure to put to them the nature of the allegations; and over delays. These concerns led the Court to make no order as to costs.

- (2) *Sex Offenders and Child Related Employment*: The Court dealt with the issue of the proper approach to be taken to the exercise of the discretion to exempt persons who have committed serious sex offences from the prohibition on working with children. In *Commission for Children and Young People v V* [2002] NSWSC 949 the Court emphasised that the focus should be the original crime and the person's current character. Once that is examined the decision is to be made as to whether the person does or does not pose a risk to the safety of children. If a person establishes that he or she does not pose a risk to the safety of children, then the Tribunal has a discretion as to whether or not it will make an order. It noted that the applicant bears the onus of establishing that he or she was not a risk and that was 'to a high standard'.
- (3) *Freedom of Information: Amendment of Health Assessment*: In *Crewdson -v- Central Sydney Area Health Service* [2002] NSWCA 345 a former employee had been given access to a health assessment that had been taken into account as part of process leading to the termination of his employment. He sought to amend the record under the rights given by the FOI Act. The Appeal Panel set aside the decision of the General Division allowing the applicant to have the record amended, primarily on the basis that a record expressing a professional opinion should ordinarily only be permitted to be amended if there is professional opinion in support of such a step accepted by the Tribunal. That had

not occurred. There were also rulings on the way relevant provisions of the Act were to be interpreted. The Court dismissed the appeal.

(4) *Election - Irregularity – Necessary Order:*

The Tribunal decided to dismiss a councillor from civic office pursuant to s 329 of the *Local Government Act 1993* on the basis of irregularities in the manner of his election. Having found the case proven, the Tribunal considered that it was obligated to order dismissal even though the relevant provision stated that the Tribunal 'may' make such an order. The dismissed councillor appealed. The Court dismissed the appeal, agreeing with the Tribunal that in this statutory context the word 'may' did not confer a discretion once the case was proven. *Roberts v Jeffery & 4 Ors* [2003] NSWSC 162.

(5) *Reconstitution of Tribunal:*

In *Lloyd v Veterinary Surgeons Investigating Committee* [2002] NSWCA 224 the Court of Appeal dealt with the interpretation of s 79 of the ADT Act which deals with reconstitution of the Tribunal when a member becomes unavailable. The Court held that, properly construed, the section required that the Tribunal sitting as a whole, not the President alone, should have made orders as to the procedure to be followed after reconstitution of the Tribunal in a part-heard matter. It set aside the Appeal Panel's decision upholding the President's exercise of power, and the orders made. The Court of Appeal also made observations on the issue of the extent of flexibility available to the Tribunal in relation to how to proceed with a part-heard matter where there has been a reconstitution.

Reviews by Summons

(1) *Tribunal Procedure: Issuance of Proposed Orders:* Bias and Procedural Fairness. The Court of Appeal upheld a decision of a single Judge who had dismissed an appeal against a procedure adopted by the Tribunal involving

the publication of proposed orders before the making of final orders. The appellant, a veterinary surgeon who had been the subject of an inquiry alleging professional misconduct, claimed that the procedure gave rise to an apprehension of bias which disqualified the Tribunal from making final orders. *Howe v Administrative Decisions Tribunal of New South Wales & Ors* [2003] NSWSC 157, Dunford J, 13 March 2003; *Howe v Administrative Decisions Tribunal of New South Wales* [2003] NSWCA 120, Gyles JA, 12 May 2003.

(2) *Appeals from Appeal Panel or Tribunal constituted by a Judge.*

In line with earlier Supreme Court decisions the Court ruled that the proceedings should be referred to the Court of Appeal rather than remain in the List before a single Judge of the Supreme Court and referred to s 48 of the *Supreme Court Act 1970* despite the existence of a power to retain it in the List under s 51: *The Ombudsman v Robert Koopman & Anor* [2002] NSWSC 1203, Dunford J (13 December 2002).

Referred Questions

The Tribunal referred one question of law to the Supreme Court during 2002-2003. The question arose in the matter of *MM & AM v State of NSW, Department of Community Services* [2002] NSWADT 256 (discussed above in the Equal Opportunity Division section of this report).

The Court of Appeal also handed down judgment in *Commissioner of Police v Estate of Russell* (2002) 55 NSWLR 232 on 20 August 2002. This was an appeal from a decision of a Supreme Court judge on a referral on a question of law from the Equal Opportunity Division: *Commissioner of Police v Estate of Russell* [2001] NSW 745. These decisions were discussed in the 2001-2002 Annual Report.

Practice and Procedure

The practice of the Tribunal is formally documented in its Practice Notes and Rules. The general approach that the Tribunal has adopted has been to set out its practice on matters in practice notes, wherever possible, rather than formally-made rules. This approach enables the Tribunal to take a flexible approach to dealing with practice issues, and making to amendments quickly if needed. 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 President has issued four further Practice Notes this year. These are:

- PN 9 General Division : Licence Suspensions under Fair Trading Act 1987: Procedures relating to Applications for Review
- PN 10 All Divisions : Access to the Tribunal - Use of Telephone and Video Links
- PN 11 External Appeals : Procedures for External Appeals to the Appeal Panel of the Tribunal
- PN 12 Costs

The Rule Committee

The ADT Act provides for the establishment of a Rule Committee. The Tribunal's Rule Committee comprises the Tribunal's President and Divisional Heads together with Justice Alwynne Rowlands (founding President, Victorian Administrative Appeals Tribunal, presently Family Court Judge), Professor Margaret Allars (barrister and administrative law expert) and Mark Robinson (barrister and judicial member of the Tribunal).

During the year the Committee examined

issues such as the Divisional Subcommittees' reports, the commencement of the Guardianship and Protected Estates List, the Attorney General's five year statutory review of the ADT Act and various Practice Notes issued by the President.

The Rule Committee also examined the recommendations made by the Parliamentary Inquiry conducted by the Committee on the Office of the Ombudsman and the Police Integrity Commission under section 146 of the *Administrative Decisions Tribunal Act 1997*, into the operation and jurisdiction of the Tribunal. The Parliamentary Committee's Report was tabled in November 2002 and the Tribunal will report, in its annual report, progress in implementing the recommendations that are practice and procedure related. That report is at Appendix G.

Divisional Rule Subcommittees (see Appendix H) can make recommendations to the Rule Committee about practice and procedure. The subcommittees are scheduled to meet at least twice each year. The constitution of the subcommittees is prescribed by the ADT Act to include members of the Tribunal from the relevant Division and three people that represent community and relevant special interests in the area. The minutes of each Subcommittee are considered at the next Rule Committee meeting and any recommendations made are debated.

The subcommittees also provide a valuable avenue for the Tribunal to gain feedback on its performance.

Alternative dispute resolution

Alternative dispute resolution is used widely in several Divisions of the Tribunal.

Mediation is conducted extensively in Equal Opportunity Division matters as well as in some Community Services, privacy and freedom of information matters. Mediations

are conducted by suitably qualified members of the Tribunal. The Tribunal is conducting a review of its mediation process commencing in June 2003.

Prior to cases in the Retail Leases Division being lodged, parties are required to attend the Retail Tenancy Unit of the Department of State and Regional Development for mediation.

A variety of early-case-management practices is used in the various Divisions to explore settlement possibilities or narrow the issues requiring hearing and determination by the Tribunal. In the Equal Opportunity Division most matters are listed for a case conference before a judicial member prior to the hearing. In privacy and freedom of information applications planning meetings are conducted to explore settlement options and manage the progress of the matter. In other Divisions matters are listed for a directions hearing.

The ADT Act also allows for the appointment of assessors and the use of early neutral evaluation. The Tribunal has yet to use these facilities.

Case Management

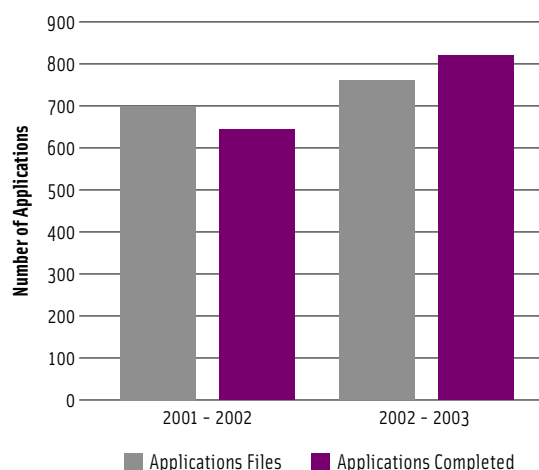
The stages through which an application passes are: directions/conferences, (sometimes) interim order applications, filing of submissions and statements, final hearing and publication of reasons.

General position

As noted in last year's report an organisation that is demand driven, such as this Tribunal, should seek to clear as many matters over a year as it receives by way of new filings.

That avoids a build-up in matters on hand – a growing back-log. In the period from October 1998 (when the Tribunal commenced) to June 2002, there was a small but steady growth in the back-log, due possibly to new incoming jurisdictions and, during the year 2001-2002 to a shortage of hearing room space while renovations occurred. It is pleasing to report that during the current reporting year there has been a substantial improvement. Last year at year's end there were 433 matters pending as compared to 695 filings during that year, a proportion of 62 percent. This year the position is that there are 382 matters pending as compared to 766 filings during the year, a proportion of 50 percent. The raw number of matters pending has declined significantly. There have been 175 more clearances than in the previous year.

Case Load Comparison



The average time across the Tribunal for dealing with an application is just under 6 months (the pending number divided by the number of filings for the year expressed as a proportion of the year) down from 7.5 months a year ago.

Specific time standards which seek to acknowledge the variation that exists between the nature of the matters dealt with in each Division have been developed for each Division.

Divisional time standards

Four Divisions have adopted the same general standard, i.e. that 85 per cent of applications be completed within 6 months of lodgment; and all within 12 months. Standards of this kind are not necessarily capable of achievement in all cases. Ultimately external factors beyond the control of the Tribunal can intrude. For example, appeals may be taken. The proceedings may be stayed in consequence. There may be aspects of the orders made that require a matter substantially completed to remain before the Tribunal, though the Tribunal seeks to avoid practices which have that result. There may be difficulties relating to the obtaining of evidence that stand in the way of completion within the stated periods. The time standards are seen as goals to be worked towards.

There are separate standards for the other two Divisions, the Equal Opportunity Division and Legal Services Division, and there are also different standards for Professional Discipline matters (such as veterinary surgeons); and for Appeal Panel matters.

Appendix F contains more detailed statistics on case load; and on performance as compared to the time standards.

Registry and Budget

The Registry provides the following services: responding to enquiries, registration of applications and all formal papers relating to a matter, 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.

Staff

The Registry has a position of Registrar, Deputy Registrar and nine Tribunal officers. The Registrar position is filled by two staff who job share. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills staff are rotated between the teams.

A separate position of Research Associate to the President of the Administrative Decisions Tribunal provides legal and research support to assist the President and full-time Deputy President in their deliberations, and keeps members of the Tribunal abreast of current issues.

Projects

Staff in the Registry continue to engage in team based projects designed to improve service delivery to the Tribunal's users. Current projects include a review of case management practices in the Registry; continuing to raise the profile of the Tribunal in the community by way of effective web design, brochure



development and presentations at conferences; and, developing a survey of registry users.

A high number of parties appearing before the Tribunal are unrepresented, except in professional disciplinary matters. The Registry continues to incorporate improvements to services to litigants in person in all its projects.

Staff development

Staff receive training through the Attorney General's Department Corporate Development and Training Unit and attendance at relevant conferences.

Additionally, staff have received in house training on new legislation and procedural changes. This year special attention has been paid to providing registry staff with the skills necessary to accommodate the Tribunal's new jurisdiction in guardianship and protected estates matters.

Performance planning and development is used as a tool to identify opportunities for individual staff 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 which, 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 solicitor's clients' funds held in compulsory trust account deposits under the *Legal Profession Act*. Appendix D provides a picture of the expenditure incurred by the Tribunal in the reporting period.

Parliamentary Report

As noted in the President's overview the Parliamentary Committee on the Office of Ombudsman and the Police Integrity Commission completed an inquiry into the jurisdiction and operation of the Tribunal during the last year. The inquiry was required by s 146 of the *Administrative Decisions Tribunal Act 1997*. The inquiry presented its final report in November 2002.

The Chair of the Committee, Mr Paul Lynch MP, said that the Committee's examination of operational issues was directing at ensuring achievement of the following goals:

- that the ADT's proceedings are informal, flexible and free from excessive legalism;
- that mediation and alternative dispute resolution are actively used, where appropriate;
- that there is adequate access for, and assistance to, applicants;
- consistent and transparent decision-making;
- there is adequate consultation of user groups in the ADT's rule-making process;
- a strong core full-time membership;
- appropriate panel composition and specialisation;
- open and transparent selection and appointment of tribunal members;
- improved standards of professional development and training for tribunal members; and
- adequate resources for the ADT to perform its functions.

The Chairman said that the Committee was pleased to report that the ADT had moved to implement recommendations that it had made in its March 2001 discussion paper. The Committee had noted that the ADT did not have a strong framework for consulting its users and, noting its diversity of jurisdictions and relative smallness, recommended that it develop an existing facility, the Rule Committee and Rule Subcommittee structure,

for that purpose. This has occurred.

The Committee made 11 formal recommendations as a result of its inquiry. The principal recommendation went to the question of merger of tribunals. The Committee recommended that there be further legislation to merge separate tribunals into the ADT 'unless there are clear reasons why such inclusion would be inappropriate or impractical'. The Committee added: 'with particular consideration being given to merging all professional disciplinary tribunals with the ADT, as part of a separate professional disciplinary division.'

The other recommendations of the Parliamentary Committee called for a systematic policy approach to conferring jurisdiction in respect of the review of governmental administrative decisions on the ADT, and to that end called on the Attorney General to establish principles, and recommended the establishment of a standing advisory committee to the Minister, the Administrative Review Advisory Council, modelled broadly on the lines of the Commonwealth Administrative Review Council.

Turning to the specific responsibilities of the President and Deputy Presidents of the ADT, the Committee recommended that the Act be amended to give them specific responsibilities for directing the professional development and training of tribunal members. The Committee referred to a number of administrative recommendations that it made in its discussion paper of March 2001 and recommended that the Tribunal report on them in its annual report. This is done at Appendix G of this report.

In a further development the Parliamentary Committee and the Health Care Complaints Commission has sought submissions on whether health professional tribunals should be moved to the ADT (discussion paper November 2002).

Appendices

Appendix A: List of Members

1 July 2002 to 30 June 2003

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 this 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. Some members held appointments to former tribunals. These 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 2004

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 2004

Assigned as set out below.

General Division

Expiry date

Divisional Head

Judge Kevin Patrick O'Connor AM, President 9.8.04

Deputy Presidents

Magistrate Nancy Louise Hennessy 7.3.04

Judge Megan Fay Latham 4.10.02

Caroline Anne Needham SC 24.11.02

Judicial Members

Reginald James Bartley AM 4.10.02

Anne Britton 29.7.05

Jennifer Louise Conley 2.6.05

Janice Margery Connelly 2.6.05

Bruce George Donald 28.2.05

Garry Frederick Foster 24.11.02

Robbert John Fox 25.11.05

Penelope Helen Goode 8.10.03

Eraine Elizabeth Grotte 2.6.05

Sigrid Higgins 14.5.04

Merryl Anne Lees 25.11.03

Peter Henry Molony 2.6.05

Stephen Henry Montgomery 14.5.04

Jane Annabel Darling Needham 2.6.05

Simon James Rice, OAM 25.11.03

Mark Anthony Robinson 28.2.05

Christopher Dominic Sidoti 2.6.05

Non-Judicial Members

Zita Rose Antonios 25.11.05

Clifford Douglas Blake AM 30.6.04

Mary Elizabeth Bolt 31.5.04

Keven William Mapperson 28.2.05

Michael John McDaniel 25.11.05

Annette Frances O'Neill 23.2.06

Anthony Pun OAM 19.4.04

Non-Judicial Members Appointed to Tribunal Pursuant to Schedule 2, Part 4, Division 3 of the Administrative Decisions Tribunal Act 1997 and the Public Health Act 1997

Annemarie Hennessy 19.4.04

Richard Matthews 19.4.04

Non-Judicial Members Appointed to Tribunal Pursuant to the Veterinary Surgeons Act

Fiona Jennifer Clark 5.8.05

Timothy Robert Crisp (23.7.02) 31.12.05

David Lachlan Evans (11.02.03) 31.12.05

Richard Eldred Jane (23.7.02) 31.12.05

Rosalie Jane Mayo-Ramsay 5.8.05

Garth Alexander McGilvray 31.12.05

Nicholas Charles Sangster 31.12.02

Tanya Lorraine Stephens (23.7.02) 31.12.05

Ruth Rosemary Thompson 31.12.05

Non-Judicial Members Appointed to Tribunal Pursuant to the Education Act

Terence Richard Burke 2.6.05

Jolyn Margaret Karaolis 2.6.05

Joseph Riordan AO 28.2.05

Equal Opportunity Division Current Expiry Date

Divisional Head

Magistrate Nancy Louise Hennessy

- Divisional Head from 11.11.02 7.3.04

Judge Megan Fay Latham, Deputy President 4.10.02

Deputy Presidents

Acting Judge Michael Rainsford Chesterman

(3.10.02) 2.10.05

Caroline Anne Needham SC 24.11.02

Judicial Members

Reginald James Bartley AM	4.10.02
Larissa Yasmin Behrendt (26.11.02)	25.11.05
Michael Charles Biddulph	4.10.02
David Lee Bitel	8.10.03
Anne Britton	29.7.05
Jennifer Louise Conley	2.6.05
Janice Margery Connelly	2.6.05
Penelope Helen Goode	8.10.03
Phillipa Jane Gormly	8.10.03
Eraine Elizabeth Grotte	2.6.05
Graeme Gordon Innes AM	25.11.05
Graham Reginald Ireland	25.11.05
Merryl Anne Lees	25.11.03
Chrissa Tereasa Loukas	8.10.03
Jane Annabel Darling Needham	2.6.05
Neil Robert Rees	8.10.03
Simon James Rice OAM	25.11.03
Christopher Dominic Sidoti	2.6.05

Non-Judicial Members

Merilyn Alt	8.10.03
Zita Rose Antonios	25.11.05
Mary Elizabeth Bolt	31.5.04
Stevie Clayton	25.11.05
Renia Douglas Cox	8.10.03
Kellie Edwards	4.10.02
Lolita Farmer OAM	4.10.02
Karen Greenhill	8.10.03
Susan Lee Harben	4.10.02
Richard Frederick Jones	8.10.03
Tina Louise Jowett	4.10.02
Lawrence Kok Loong Lau	4.10.02
Michael John Mcdaniel	25.11.05
Owen Michael Mcdonald OAM	8.10.03
Laura Clare Mooney	21.8.03
Louise Nemeth De Bikal	8.10.03
Anthony Pun OAM	19.4.04
Cleonie Dorothy Quayle	30.4.04
Anthony Nicholas Silva	4.10.02
Jane Strickland	4.10.02
Lucy Taksa	25.11.05
Doreen Toltz	8.10.03
Betty Lorraine Weule	14.5.04

Community Services Division **Current Expiry Date****Divisional Head**

Thomas Joseph Kelly, Deputy President	31.5.04
---------------------------------------	---------

Judicial Members

Anne Britton	29.7.05
Ben Ami Gelin	31.5.04
Phillipa Jane Gormly	8.10.03

Non-Judicial Members

Mary Elizabeth Bolt	31.5.04
David Edwin Dobell	31.5.04

Jennifer Green	23.8.05
Denny Groth	31.5.04
Lynn Mary Houlahan	23.8.05
Alan John Kirkland	31.5.04
Meredith Martin	23.8.05
Jan Mason	31.5.04
Linda Marilyn Monaghan-Nagle	31.5.04
Jeanette McDonald Moss AM	23.8.05
Clarita Norman	31.5.04

Legal Services Division **Current Expiry Date****Divisional Head**

Acting Judge John Anthony Nader RFD QC, Deputy President (1.9.02)	31.8.05
Caroline Anne Needham SC, Deputy President - Divisional Head to 31.8.02	24.11.02

Deputy Presidents

Acting Judge Alan Eugene Hogan (3.10.02)	3.1.04
Acting Judge Michael Rainsford Chesterman (3.10.02)	2.10.05

Barrister Members

Annabelle Claire Bennett SC	4.5.03*
John Sebastian Coombs QC	24.11.02
Garry Frederick Foster	24.11.02
Robert Bruce Scott Macfarlan QC	16.12.05
John Anthony McCarthy QC	16.12.05
Linton Mearns Morris QC	24.11.02
William Henric Nicholas QC	24.11.02
Sharron Norton SC	16.12.05
David Peter Forbes Officer QC	16.12.05
Bruce Clifford Oslington QC	24.11.02
Lionel Philip Robberds QC	16.12.05
Wendy Louise Robinson QC	16.12.05
Barry Michael Toomey QC	24.11.02
John Norman West QC	16.12.05

Solicitor Members

Michael James Barnes	30.4.04
John William Francis Brennan RFD	16.12.05
Joseph John Catanzariti	24.11.02
Roger James Clisdell	16.12.05
Rosemary Cox	16.12.05
John Sydney Currie	16.12.05
Andrea Durbach	16.12.05
Robbert John Fox	25.11.05
Christine Anne Gailey	16.12.05
Julie Louise Greenwood	16.12.05
Sandra Neryl Hale	16.12.05
Jennifer Margaret Mattila	16.12.05
Graham Brian Molloy	25.11.05
Johanna Pheils	30.4.04
Conrad Gerard Staff	16.12.05
Cedric Bohrsman Vass	16.12.05

Appendices

Licensee Members

Pauline Ellen Curraey	30.4.04
Janice Louise Hedison	30.4.04

Non-Judicial Members

Carl Donald Bennett	30.4.04
Leshia Olga Bubniuk	30.4.04
David Charles Brehe	23.2.06
Michael Eugene Costigan	23.2.06
Barrie Drummond Dyster	23.2.06
Kersti Elliott	23.2.06
Ross Andrew Edward Fitzgerald (24.2.03)	23.2.06
Jennifer Anne Geddes	23.2.06
Ray Gietzelt AO	30.4.04
Elaine Hayes	30.4.04
Davies Hoareau	23.2.06
Alan Kennedy	23.2.06
Elisabeth Wilma Kirkby	30.4.04
Deborah Klika	30.4.04
Denis Mahon	23.2.06
Ann Marie Mara	23.2.06
Annette Frances O'Neill	23.2.06
Cleonie Dorothy Quayle	30.4.04
Lucy Taksa	25.11.05

Retail Leases Division

Divisional Head

Acting Judge Michael Rainsford Chesterman (3.10.02) - Divisional Head from 25.6.03	2.10.05
Christopher John Rossiter Deputy President - Divisional Head to 24.6.03	5.12.04

Deputy Presidents

Magistrate Nancy Louise Hennessy	7.3.04
Alan Eugene Hogan (3.10.02)	3.1.04

Judge Megan Fay Latham	4.10.02
Acting Judge John Anthony Nader RFD QC, Deputy President (1.9.02)	31.8.05
Caroline Anne Needham SC	24.11.02

Judicial Members

Bruce George Donald	28.2.05
Robbert John Fox	25.11.05
Margaret Colleen Hole	14.5.04
Graham Brian Molloy	25.11.05
Stephen Henry Montgomery	14.5.04

Non-Judicial Members

Neil Fagg	5.12.04
Roger Kenneth Fairweather	5.12.04
Garth Warren Griffiths	5.12.04
Annette Frances O'Neill	23.2.06
Barry Thomas Owens	5.12.04
Robert Vaughan Ward	5.12.04
Betty Lorraine Weule	14.5.04
Lexia Gai Wilson	5.12.04

Revenue Division

Current Expiry Date

Divisional Head

Divisional Head Yet To Be Appointed

Judicial Members

Julian Block	30.6.04
Margaret Colleen Hole	14.5.04
Joanne Christine Seve	30.6.04
Amarjit Singh Verick	30.6.04

Non-Judicial Members

Clifford Douglas Blake AM	30.6.04
Carl Donald Bennett	30.4.04
* Resigned	

Appendix B: Legislation

Principal Legislation

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

Primary Statutes

Adoption Act 2000
Agricultural Livestock (Disease Control Funding) Act 1998

Animal Research Act 1985
Anti-Discrimination Act 1977
Apiaries Act 1985
Architects Act 1921
Births Deaths and Marriages Registration Act 1995
Boxing and Wrestling Control Act 1986
Charitable Fundraising Act 1991
Child Protection (Offenders Registration) Act 2000
Child Protection (Prohibited Employment) Act 1998
Children (Care and Protection) Act 1987
Children and Young Persons

(Care and Protection) Act 1998
Community Justices Centres Act 1983
Community Services (Complaints, Appeals and Monitoring) Act 1993
Community Services (Complaints, Appeals and Monitoring) Regulation 1996
Conveyancers Licensing Act 1995
Co-operative Housing and Starr-Bowkett Societies Act 1998
Dangerous Goods Act 1975
Disability Services Act 1993
Education Act 1990
Electricity Supply Act 1995
Entertainment Industry Act 1989
Environmental Planning and Assessment Act 1979
Fair Trading Act 1987
Farm Debt Mediation Act 1994
Fertilisers Act 1985
Firearms Act 1996
Firearms (General) Regulation 1997
First Home Owners Grant Act 2000
Fisheries Management Act 1994
Food Act 1989
Food Production (Safety) Act 1998
Food Production (Dairy Food Safety Scheme) Regulation 1999
Food Production (Meat Food Safety Scheme) Regulation 2000
Food Production (Seafood Safety Scheme) Regulation 2001
Forestry Act 1916
Freedom of Information Act 1989
Game and Feral Animal Control Act 2002
Gas Supply Act 1996
Guardianship Act 1987
Guardianship And Protected Estates Legislation Amendment Act 2002
Home Building Act 1989
Hunter Water Act 1991
Impounding Act 1993
Legal Profession Act 1987
Legal Profession Regulation 1994
Licensing and Registration (Uniform Procedures) Act 2002
Local Government Act 1993
Motor Dealers Act 1974
Motor Vehicle Sports (Public Safety) Act 1985
Mount Panorama Motor Racing Act 1989
Native Title Act 1994
Non-Indigenous Animals Act 1987
Nursing Homes Act 1988
Occupational Health and Safety Act 2000
Ombudsman Act 1974
Passenger Transport Act 1990
Pawnbrokers and Second-hand Dealers Act 1996
Pesticides Act 1999
Petroleum Product Subsidy Act 1997
Plant Diseases Act 1924
Police Act 1990
Privacy and Personal Information Protection Act 1998
Private Hospitals and Day Procedure Centres Act 1988
Protected Estates Act 1983
Protected Estates Regulation 1995
Public Health Act 1991
Public Lotteries Act 1996
Rail Safety Act 2002
Registration of Interests in Goods Act 1986
Retail Leases Act 1994
Road and Rail Transport (Dangerous Goods) Act 1997
Road Transport (General) Act 1999
Road Transport (Safety and Traffic Management) Act 1999
Security Industry Act 1997
Shops and Industries Act 1962
Stock (Artificial Breeding) Act 1985
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
Veterinary Surgeons Act 1986
Veterinary Surgeons Regulation 1995
Vocational Education and Training Accreditation Act 1990
Weapons Prohibitions Act 1998
Workplace Injury Management and Workers Compensation Act 1998
Youth and Community Services Act 1973



Appendices

Appendix C: List of Speeches

Judge Kevin O'Connor, President

Papers

27 September 2002

'An Overview of the Areas Covered by the Administrative Decisions Tribunal including Professional Discipline Matters'
Presentation to Wardell Chambers, 15 Floor
New South Wales Bar Association's Continuing Professional Development Scheme.

25 March 2003

'Administrative Law in Practice'
Indonesian Judicial Training Program
Judicial Commission of New South Wales, Sydney.

28 March 2003

'Introduction to Justice Michael Kirby'
Privacy Issues Forum
Wellington, New Zealand.

23rd April 2003

'The Administrative Decisions Tribunal'
District Court of New South Wales
Annual Conference, Terrigal.

14 May 2003

'Practice and Procedure in the Administrative Decisions Tribunal'
New South Wales Young Lawyers CLE Program.

Appendix D: Financial Information

Financial Information as at 30 June 2003¹

Administrative Decisions Tribunal & Legal Services Division

	ADT			LSD ³	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (Including Crown Liabilities)	1,484,898	1,122,373	(362,525)	14,377	1,499,275
Property Items	367,799	491,240	123,441		367,799
Other Operating	1,119,624	1,454,325	334,701	362,274	1,481,898
Depreciation	68,436	53,792	(14,644)	68,436	
Total Expenditure	3,040,757	3,121,730	80,973	376,651	3,417,408
Total Revenue²	(691,012)	(627,215)	63,797	(376,651)	(1,067,663)
Net Cost Of Services	2,349,745	2,494,515	144,770	0	2,349,745
Less Depreciation	(68,436)	(53,792)	14,644	0	(68,436)
Less Crown Liabilities	(229,635)	(166,653)	62,982	0	(229,635)
Controlled Net Cost Of Services	2,051,674	2,274,070	222,396	0	2,051,674

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. Revenue

The Tribunal received \$1,067,663 in revenue. Of this \$1,017,717 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.

3. Legal Services Division

The Legal Services Division is funded by the Public Purpose Fund. A global amount is contributed towards the operating costs of the Tribunal.

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.

Appendix E: Statistics

General Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	New Applications filed	Disposals	Pending as at 30 June 2003
129	344	332	141

2. Applications by type 2002-2003

Applications for Original Decision	Applications for review	Professional Discipline
3	340	1

3. Applications by Act 2002-2003

Subject by Act	
Apiaries Act	2
Boxing & Wrestling Act	0
Births Deaths and Marriages Act	1
Conveyancers Licensing Act	0
Dangerous Goods Act	0
Education Act	1
Environmental Planning & Assessment Act	1
Fair Trading Act	8
Firearms Act	46
First Home Owners Grant Act	19
Fisheries Management Act	13
Freedom of Information Act	58
Home Building Act	12
Impounding Act	2
Local Government Act (Original Decision)	0
Motor Dealers Act	4
Motor Vehicle Repairs Act	2
Passenger Transport Act	41
Pawnbrokers & Second Hand Dealers Act	0
Privacy & Personal Information Protection Act	38
Protected Estates Act	1
Public Health Act	3
Road Transport (General) Act (s.48)	48
Security Industry Act	24
Tow Truck Industry Act	11
Travel Agents Act	7
Veterinary Surgeons Act	0
Vocational Education & Training Accreditation Act	1
Question of Jurisdiction	0

4. Outcomes in Review matters 2002-2003

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
117	158	38	7	7

* For statistical purposes the outcome of the review of conduct under the Privacy and Personal Information Protection Act 1998 has been counted as affirmed where no contravention of the Act has been found by Tribunal and set aside where a contravention of the Act has been found by the Tribunal.

Appendices

5. Outcomes in Original matters 2002-2003

Application withdrawn dismissed/ No appearance dismissed/ Agreement reached dismissed	Application granted	Application refused
0	3	0

6. Outcomes in Professional Discipline 2002 -2003

Dismissed	Orders made	No jurisdiction
0	1 - Removed from register	1

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

No. disposed of in under 6 months	234
No. disposed of in under 12 months	61
No. disposed of in over 12 months	33
No. disposed of in over 2 years	4

Community Services Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	New Applications filed	Disposals	Pending as at 30 June 2003
37	57	82	12

2. Applications by type 2002-2003

Applications for original decision	Applications for review
48	9

3. Applications by Subject 2002-2003

Subject	Number
Child care licence	1
Custody	5
Disability funding	0
Guardianship	2
Powers of Community Services Commission	1
Declaration that Child Protection (Prohibited Employment) Act 1998 does not apply	48

4. Outcomes - Reviewable Decisions 2002-2003

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
8	1	1	1	4

5. Outcomes- Original Decisions 2002-2003

Application withdrawn dismissed/ No appearance dismissed/ Agreement reached dismissed	Declaration made	Declaration Refused	No Jurisdiction
11	31	7	18

6. Mediation 2002-2003

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

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

No. disposed of in under 6 months	60
No. disposed of in under 12 months	15
No. disposed of in over 12 months	6
No. disposed of in over > 2 years	1

Revenue Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	Applications filed	Disposals	Matters pending as at 30 June 2003
21	55	42	34

2. Applications by Type 2002-2003

Subject by Act	
Duties Act 1997	7
Land Tax Management Act 1956	17
Parking Space Levy Act 1992	0
Payroll Tax Act 1971	5
Stamp Duties Act 1920	0
Taxation Administration Act 1996	26

3. Outcomes 2002 - 2003

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
22	14	4	2	0

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

No. disposed of in under 6 months	22
No. disposed of in under 12 months	16
No. disposed of in over 12 months	4
No. disposed of in over 2 years	0

Appendices

Legal Services Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	Applications filed	Disposals	Pending as at 30 June 2003
56*	18	51	23

* Pending as at 30 June 2002 is different from that shown in previous annual report due to manual reconciliation of files

2. Applications by type 2002-2003

Applications for original decision	18
------------------------------------	----

3. Applications by subject 2002-2003

Type of Practitioner	Type of conduct**	Number
Solicitor	PM	9
Barrister	PM	3
Barrister	PM & UPC	1
Conveyancer	PM	1
S.48I & 48K Applications		4

**PM - professional misconduct, UPC - Unsatisfactory professional conduct

4. Outcomes 2002-2003

Withdrawn Dismissed	5
No Jurisdiction	2
Dismissed after hearing	3
Penalty imposed by type	
Removed from Roll	9
Removed from Roll and Fined	1
"Removed from Roll and Compensation ordered"	4
Suspended from Practice, Reprimanded and Legal Education Course	1
Fined	1
Legal Education Course	1
Legal Education Course and Fined	1
Reprimanded and Fined	6
"Reprimanded, Fined and Legal Education Course"	1
Reprimanded and Compensation ordered	3
Reprimanded	6
S.48I & 48K Orders (convicted persons)	1
Total***	45

***Total outcomes do not match total no. of disposals because some files heard together

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

No. disposed of in under 6 months	4
No. disposed of in under 12 months	19
No. disposed of in over 12 months	23
No. disposed of in over 2 years	5

Equal Opportunity Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	New Applications filed	Disposals	Pending as at 30 June 2003
106	150	151	105

* Pending as at 30 June 02 is different from that shown in previous annual report due to manual reconciliation of files

2. Applications by Type 2002-2003

Applications for original decision	Applications for review
149	1

3. Applications by Ground 2002-2003

Head of discrimination**	Number
Race	34
Racial vilification	1
Sexual harassment	32
Sex	37
Transgender	2
Marital status	1
Disability	51
Carer's responsibilities	9
Homosexuality	10
Homosexual vilification	3
Compulsory retirement	0
HIV/Aids vilification	0
Age	22
Victimisation	39
Aiding and Abetting	9
Review of decision of President ADB	1

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

4. Outcomes Original Decisions 2002-2003

Withdrawn Dismissed/ Settled Dismissed/ No Appearance Dismissed	Summary dismissal under section 111	Dismissed after hearing	Orders made
108	7	19	16

5. Outcomes - Reviewable Decisions 2002-2003

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
1	0	0	0	0

6. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
53	27	20	6

Appendices

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

No. disposed of in under 6 months	65
No. disposed of in under 12 months	46
No. disposed of in over 12 months	20
No. disposed of in over 2 years	20

Retail Leases Division 1/7/2002 - 30/6/2003

1. Case flow 2002-2003

Matters pending at 30 June 2002	Applications filed	Disposals	Pending as at 30 June 2003
84	142	159	67

2. Applications by Type 2002-2003

Relevant provision of Retail Leases Act 1994

Section 71	112
Section 71A - unconscionable conduct	0
Combined section 71 and section 71A	30

3. Outcomes 2002-2003

Withdrawn/Discontinued/ Dismissed without hearing	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction
103	16	3	34	3

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

No. disposed of in under 6 months	98
No. disposed of in under 12 months	39
No. disposed of in over 12 months	22
No. disposed of in over 2 years	0

Internal Appeals to Appeal Panel

1. Case Flow 2002 -2003

	Appeals Pending as 30 June 2002	New Appeals filed	Disposals	Pending as at 30 June 03
General Division	14	33	25	22
Community Services Division	3	2	4	1
Equal Opportunity Division	15	15	21	9
Retail Leases Division	3	14	10	7
Revenue Division	0	5	1	4
Legal Services Division	6	3	6	3
Total	41	72	67	46

2. Outcome of Internal Appeals 2002 - 2003

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	No Jurisdiction	Total
General Division	7	13	5	0	25
Community Services Division	0	4	0	0	4
Equal Opportunity Division	4	14	3	0	21
Retail Leases Division	2	5	3	0	10
Revenue Division	0	1	0	0	1
Legal Services Division	1	2	2	1	6
Total	14	39	13	1	67

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

No. disposed of in under 6 months	41
No. disposed of in under 12 months	17
No. disposed of in over 12 months	4
No. disposed of in over 2 years	5

External Appeals to the Appeal Panel

1. Case Flow 2002 - 2003

	Appeals Pending as 30 June 2002	New Appeals filed	Disposals	Pending as at 30 June 03
Guardianship Tribunal	0	1	0	1
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	0	0	0
Total	0	1	0	1

Appeals to the Supreme Court

1. Case Flow 2002 - 2003

	Appeals Pending as 30 June 2002	New Appeals filed	Disposals	Pending as at 30 June 03
General Division	3	3	5	1
Community Services Division	4	1	5	0
Equal Opportunity Division	1	4	2	3
Retail Leases Division	0	0	0	0
Revenue Division	0	0	0	0
Legal Services Division	0	1	0	1
Total	8	9	12	5

Appendices

2. Outcome of Appeals 2002 - 2003

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued referral	Orders made following s118
General Division	1	4	0	0
Community Services Division	0	3	2	0
Equal Opportunity Division	0	1	0	1
Retail Leases Division	0	0	0	0
Revenue Division	0	0	0	0
Legal Services Division	0	0	0	0
Total	1	8	2	1

Appendix F: Case Load, Time Standards

Case Load

	All Divisions			Appeal Panel		
	Applications Lodged	Applications Completed	Applications Pending	Appeals Lodge	Appeals Completed	Appeals Pending
1998-1999	625**	234	394*	8	2	6
1999-2000	568	619	343*	44	20	31*
2000-2001	666	629	380	53	45	39
2001-2002	695	642	433*	61	59	41
2002-2003	766	817	382	73	67	47
Total	3264	2921		238	191	

* Pending figures as reported in previous annual reports adjusted following manual reconciliation of files and/or changes to data recording.

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

Rates of Appeal

Many of the appeals during 2002-2003 were related to decisions made in the previous period. Nonetheless, for the sake of obtaining a broad overview of the rate of appeals from various Divisions, the following statistics compare the distribution of appeals between Divisions for 2002-2003 with the distribution of cases between Divisions (excluding for that purpose CPPE Act decisions in the Community Services Division which are not appealable) in 2002-2003. The comparisons are necessarily therefore inexact as they compare the appeals lodged this year with the intake of the Divisions for this year, whereas appeals will often arise from the previous year's intake.

It is also the case that an appeal can be made against any decision made in the course of proceedings, not just final decisions. So the number of potentially appealable decisions is greater than the number of cases that lead to final orders. Obviously most appeals do relate to cases in which there are final orders. For the purpose of statistical comparisons cases finalised is used as the reference point.

The comparison is as follows:

Division	No. of Appealable Filings	%	No. of Appeals	%
General Division	344	48%	33	46%
Community Services Division	9	1%	2	3%
Revenue Division	55	8%	5	7%
Legal Services Division	18	3%	3	4%
Equal Opportunity Division	150	21%	15	21%
Retail Leases Division	142	20%	14	19%

Time Standards

The following standards commenced operation on 1 March 2001.

General Division (other than professional discipline matters)

Community Services Division

Revenue Division

- 85% of matters disposed of in less than 6 months
- 100% of matters disposed of in less than 1 year

Equal Opportunity Division (other than review matters)

- 80% of matters disposed of in less than 1 year
- 100% of matters disposed of in less than 2 years

Professional Discipline Decisions

Legal Services Division

General Division

- 90% of matters disposed of in less than 9 months
- 100% of matters disposed of in less than 1 year

Appeals

Internal Appeals from appealable decisions of the Tribunal and External Appeals

- 80% of matters disposed of in less than 6 months
- 100% of matters disposed of in less than 1 year

As at 30 June 2003 the Tribunals performance against those standards was:

General Division (other than professional discipline matters)

Community Services Division

Revenue Division

- 82% of matters disposed of in less than 6 months
- 95% of matters disposed of in less than 1 year
- Clearance ratio* 102%

Equal Opportunity Division (other than review matters)

- 80% of matters disposed of in less than 1 year
- 91% of matters disposed of in less than 2 years
- Clearance ratio* - 101 %

Professional Discipline Decisions

Legal Services Division

General Division

- 36% of matters disposed of in less than 9 months
- 48% of matters disposed of in less than 1 year
- Clearance ratio* - 279 %

Appeals

Internal Appeals from appealable decisions of the Tribunal and External Appeals

- 83% of matters disposed of in less than 6 months
- 89% of matters disposed of in less than 1 year
- Clearance ratio* - 92%

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

Appendices

Appendix G: Parliamentary Inquiry

Final Recommendations

The *Report on the Jurisdiction and Operation of the Administrative Decisions Tribunal* was released by the Committee on the Office of the Ombudsman and Police Integrity Commission in November 2002.

Recommendation 1

Legislation should be brought forward to merge separate tribunals with the ADT, unless there are clear reasons why such inclusion would be inappropriate or impractical, with particular consideration being given to merging all professional disciplinary tribunals with the ADT, as part of a separate professional disciplinary division.

Recommendation 2

- a. Explicit criteria for determining those classes of administrative decisions which would appropriately fall within the external merits review jurisdiction of the ADT should be developed by the Attorney General, in consultation with the ADT, in the first instance, as an interim measure pending the establishment of an Administrative Review Advisory Council.
- b. The Attorney General's Department should consult all departments and agencies to identify those classes of administrative decisions which currently meet such criteria and which should, therefore, be subject to external merits review by the ADT, having regard to the work done by the Commonwealth Administrative Review Council in this area.
- c. Legislation should be introduced to confer review jurisdiction on the ADT in respect of those decisions which currently meet the agreed external review criteria.

Recommendation 3

There should be a presumption in future that all classes of administrative decisions provided for under new legislation, so long as they meet the criteria developed by the Attorney General should be subject to external merits review by the ADT.

Recommendation 4

The *ADT Act* should be amended to provide for the establishment of an Administrative Review Advisory Council with the following functions:

- a. to further develop explicit criteria for determining the classes of administrative

decisions which would appropriately fall within the ADT's external merits review jurisdiction

- b. ongoing review of the ADT's jurisdiction with particular focus on the assessment of tribunals and similar bodies in New South Wales, for the purpose of recommending whether they can appropriately be merged with the ADT
- c. oversight of the administrative law system in New South Wales, through performing functions analogous to those of the Administrative Review Council under Part V of the *Administrative Appeals Tribunal Act 1975* (Clth).

The Committee further recommends that the proposed Administrative Review Advisory Council, where necessary, should be able to make general observations and provide advice on the practices and procedures of the ADT in relation to its handling of applications and case disposals. The ADT should continue to report to the Attorney General on matters of operational efficiency, effectiveness and performance, and relevant information should be included in the ADT's Annual Report.

Recommendation 5

The proposed Administrative Review Advisory Council should, in particular, monitor the progress achieved in merging existing tribunals with the ADT and also have an ongoing role in the further review and development of criteria for defining the appropriate extent of the ADT's merits review jurisdiction.

Recommendation 6

The membership of the proposed Administrative Review Advisory Council should comprise a President, two ex officio members (the Ombudsman and the President of the Law Reform Commission), and at least three members with special qualifications.

A person appointed in the special qualifications category should have:

- a. extensive experience at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government;
- b. or extensive knowledge of administrative law or public administration;
- c. or direct experience, or direct knowledge, of the needs of people, or groups of people, significantly affected by government decisions.

Recommendation 7

- 7a The proposed Administrative Review Advisory Council should report to the Attorney General, who in turn should present each of the Council's reports to Parliament within fifteen sitting days of receiving the report.
- 7b The proposed Administrative Review Advisory Council should prepare an annual report on its operations to the Attorney General for tabling in Parliament.

Recommendation 8

- 8a Pending the establishment of the proposed Administrative Review Advisory Council (ARAC), the Attorney General should assume responsibility for the performance of the functions recommended for ARAC.
- 8b The Committee further recommends that to assist the Attorney General in this role the proposed membership of the ARAC should be convened as a Working Group, pending the establishment of the ARAC.
- 8c The NSW Law Reform Commission (LRC) conduct a review of existing tribunals and similar bodies in New South Wales, with a particular focus on disciplinary tribunals, to determine whether it is feasible and appropriate to merge them with the ADT.
- 8d The Committee further recommends that the LRC report to the Attorney General on the outcome of the review and that the Attorney General table the report in Parliament upon its receipt.

Recommendation 9

The statutory functions of the President and Deputy Presidents of the NSW ADT should be amended, in terms similar to s.30 of the *Victorian Civil and Administrative Tribunal Act 1998*, to include responsibility for directing the professional development and training of tribunal members.

Recommendation 10

That the *ADT Act* be amended to provide:

- the ADT is to be constituted for the purposes of any particular proceedings by 1, 2 or 3 members
- if a Tribunal panel is constituted at a proceeding by one member only, that member must be a legal practitioner
- if a Tribunal panel is constituted by more than one member, at least one must be a legal practitioner

- the President, or relevant Divisional Head, should determine how the ADT is to be constituted for the purposes of each proceeding.

Recommendation 11

In relation to Proposals 5-9, 12 and 14-15 of the Discussion Paper, which do not require legislative action, the Committee recommends that the ADT report on any initiatives taken towards implementing the proposals and related outcomes in its Annual Report.

Tribunal Report further to Recommendation II

The following response refer to action taken by the Tribunal. Some of the proposals raised issues that are likely to be resolved as part of the further statutory review being undertaken at present by the Attorney General; while others are likely to be the subject of a miscellaneous amendments bill soon to be introduced into Parliament relating to the practice and procedure of the Tribunal (and some elements of the substantive law) especially in the Equal Opportunity Division and the Legal Services Division. The following report in relation to the proposals is divided by topic.

Membership of the Administrative Decisions Tribunal

Discussion Paper Proposal 12: That the ADT Act be amended to provide for some full-time members of the ADT and that the appropriate resources be provided.

Discussion Paper Proposal 14: That an examination of the membership structure of the ADT be conducted, focussing on the extent of part-time membership, with particular reference to the Legal Services Division

Status Report:

These proposals were made in March 2001. In November 2001 when the President ceased to be Chairperson (part-time) of the Fair Trading Tribunal, his time became available completely to the ADT. In March 2001 Deputy President Hennessy became full-time. There have been no further full-time positions created. There has been a small reduction in the number of part-time members attached to the Legal Services Division.

User Consultation

Discussion Paper Proposal 7: A consultative mechanism be put in place whereby the ADT will

Appendices

regularly consult with user groups, and periodically survey representative samples of users of the Tribunal, to identify any problems experienced in the operation and possible procedural improvements.

Status Report:

The Rule Committee Divisional sub-committees now meet more regularly, at least twice a year. In addition there is a Freedom of Information and Privacy Users Group. The President has decided to establish a Professional Discipline Advisory Group. Professions affected by the disciplinary jurisdictions of the Tribunal have nominated members for the group, including consumer members. This group will function as a user group and one of its tasks will be seek to develop common professional discipline rules, perhaps using the existing Legal Services Division rules as a basis. It will commence meeting in February 2004.

Aspects of the Rules and Practice of the Tribunal

Discussion Paper Proposal 8: The Rule Committee have an ongoing responsibility to consider:

- a) the scope for further standardisation of rules applying in the various divisions of the ADT;
- b) whether the rules are able to further encourage the use of alternative dispute resolution techniques; and
- c) whether the rules provide the maximum appropriate support encouraging accessibility and informality of proceedings.

Discussion Paper Proposal 9: That consideration be given to implementing some form of duty solicitor scheme, limited to proceedings where a government agency is the respondent, on a pilot basis as a trial solution for resolving the issue of access to legal representation.

Status Report:

Proposal 8 has been referred by the Rule Committee to the Divisional sub-committees. The sub-committees have yet to report back.

A duty solicitor scheme operates for the Equal Opportunity Division. A counsel assisting facility is being developed for guardianship and protected estates matters, in liaison with the Office of Legal Representation of the Attorney General's Department. The Tribunal does not have an budgetary capacity to fund a duty solicitor scheme.

Resources

Discussion Paper Proposal 15: That a review be conducted of the total resources available to the ADT to perform its full range of functions across all

divisions including in respect of research and library needs.

Status Report:

The broad issue of the Tribunal's resources is under consideration in the Attorney General's statutory review. The Tribunal has established an additional position of Research Associate to the President. The position commenced in November 2001. This position is responsible, among other things, for the preparation of research bulletins, maintenance of the members' manual, management of the Tribunal library and assistance to members in relation to special research requests and general research support to the President and the full-time Deputy President. The library needs of the Tribunal are being examined at present by the review of library services being undertaken by the Attorney General's Department.

The Legal Services Division

Discussion Paper Proposal 5: The Rule Committee of the ADT conduct a review of the rules of the Legal Services Division, involving consultation with representatives of the major users of this Division, in particular the Office of the Legal Services Commissioner, the Bar Association and the Law Society.

Discussion Paper Proposal 6: The Rule Committee examine the feasibility of amending the rules of the Legal Services Division to provide for a period of three months between the formal decision to take disciplinary proceedings against a practitioner and filing in the ADT.

Status Report:

The question of review of the LSD rules has been referred to the Divisional sub-committee. There have been no substantial recommendations for change. It will also be taken up by the Professional Discipline Advisory Group in 2004.

The time for filing informations is a legislative issue.

Appendix H: 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, Representative from PIAC
6. Community/special interest member: Brad Rowe Representative from Law Society's Standing Committee for Government solicitors

Community Services Division

1. Divisional Head: Tom Kelly
2. Judicial member: Anne Britton
3. Non judicial member: Jenny Green
4. Community/special interest member: Robert McLachlan, Law Society's Standing Committee on Children's Legal Issues
5. Community/special interest member: Robert Ludbrook, National Childrens & Youth Law Centre
6. Community/special interest member: Craig Waricker, Representative from Commissioner for Children and Young People

Equal Opportunity Division

1. Divisional Head: Nancy Hennessy
2. Judicial member: Graham Ireland
3. Non judicial member: Owen MacDonald
4. Community/special interest member: Representative from the Legal Aid Commission
5. Community/special interest member: Raoul Salpeter, Crown Solicitors Office
6. Community/special interest member: David Hillard (or his nominee), Clayton Utz

Retail Leases Division

1. Divisional Head: Acting Judge Michael Chesterman
2. Judicial member: Bruce Donald
3. Non judicial member: Betty Weule
4. Community/special interest member: Ken Carlsund, Retail Tenancy Unit
5. Community/special interest member: Bill Healey, Australian Retailers Association
6. Community/special interest member: Lexia Wilson, Representative of the Property Council of Australia

Legal Services Division

1. Divisional Head: Acting Judge John Nader QC
2. Judicial member: David Officer
3. Non judicial member: Dr Michael Costigan
4. Community/special interest member: Steve Mark, Legal Services Commissioner
5. Community/special interest member: Ray Collins, Law Society
6. Community/special interest member: Peter Garling, Bar Association



