



# Administrative Decisions Tribunal

New South Wales

Annual Report  
2010-2011

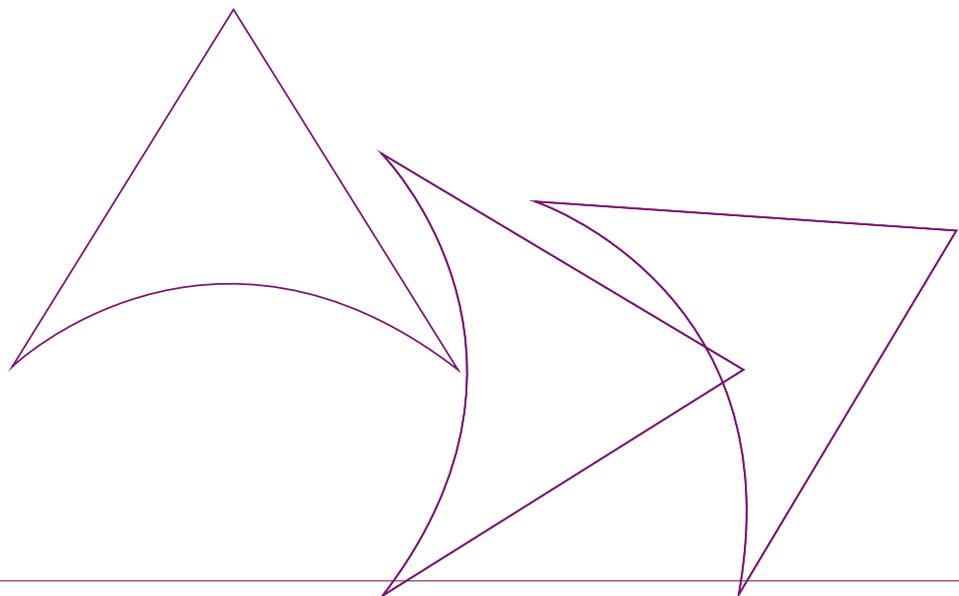


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New South Wales

## Annual Report

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Administrative Decisions Tribunal  
New South Wales

The Hon. Greg Smith, SC MP  
Attorney General and Minister for Justice  
Parliament House  
SYDNEY NSW 2000

Dear Attorney

In accordance with section 26 of the *Administrative Decisions Tribunal Act 1997*, I am pleased to present the 13th annual report of the Tribunal, covering the period 1 July 2010 to 30 June 2011.

Yours sincerely,

Judge KEVIN O'CONNOR AM

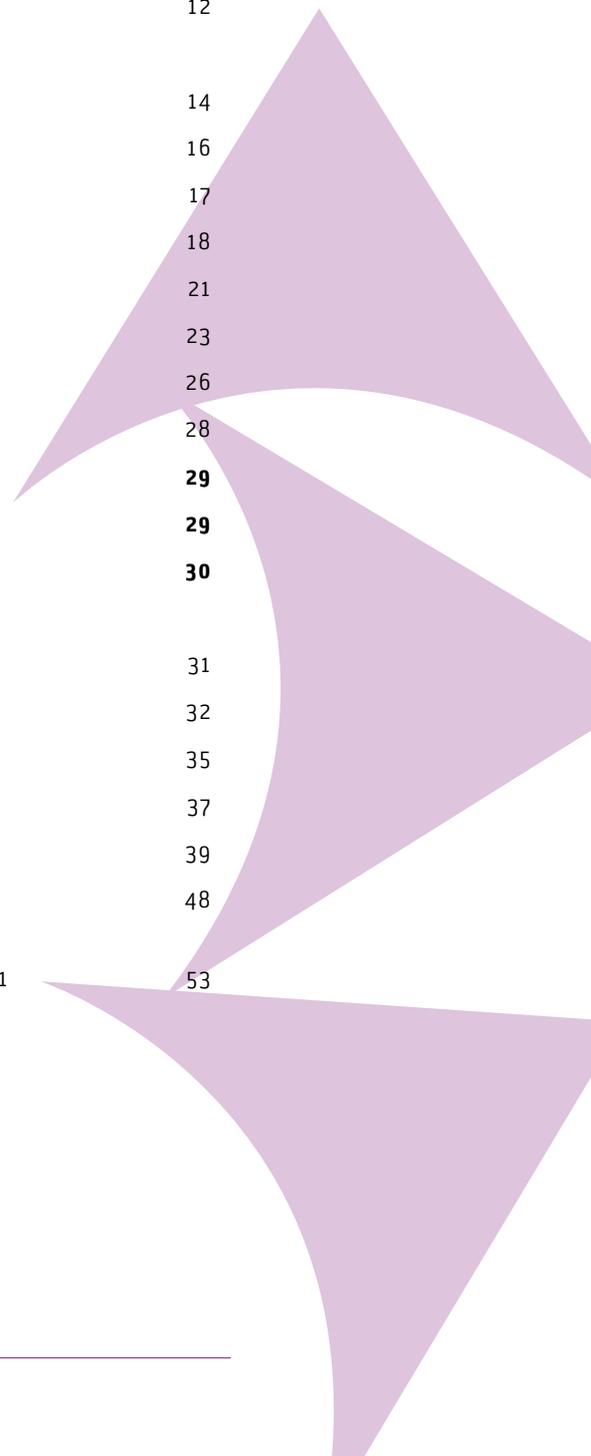
President

21 October 2011

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# Table of Abbreviations

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ADA	<i>Anti-Discrimination Act 1977</i>
ADB	Anti-Discrimination Board
ADT	Administrative Decisions Tribunal
ADT Act	<i>Administrative Decisions Tribunal Act 1997</i>
CCYP Act	<i>Commission for Children and Young People Act 1998</i>
COAT	Council of Australasian Tribunals
CSD	Community Services Division
EOD	Equal Opportunity Division
FHOG Act	<i>First Home Owners Grant Act 2000</i>
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1989</i>
GIPA	<i>Government Information (Public Access) Act 2009</i>
GD	General Division
GT	Guardianship Tribunal
HRIPA	<i>Health Records and Information Privacy Act 2002</i>
LPA	Legal Profession Act 2004
LSD	Legal Services Division
OPC	Office of the Protective Commissioner
OPG	Office of the Public Guardian
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
RD	Revenue Division
RLA	<i>Retail Leases Act 1994</i>
RLD	Retail Leases Division
SCA	<i>Supreme Court Act 1970</i>



# The Year in Review

This is the 13th annual report of the Tribunal, and covers the period 1 July 2010 to 30 June 2011.

For the second year running, the disposal rate of the Tribunal has exceeded the intake rate, with the result that there has been a further lowering of the average disposal time for applications. In the last two years there have been 1735 first instance filings and 1921 disposals. The average disposal time across all Divisions is now 28 weeks (6.5 months), the second best result in the 13 year history of the Tribunal (the figure for 2002 - 2003 was 26 weeks). Appeals declined significantly, from 105 last year to 70 this year.

As I did last year, may I again thank members for their contribution to this result. As noted last year, the disposal rate is slowest in the Legal Services Division. I am considering the introduction of procedures which divide the list into those cases where the practitioner respondent is no longer practising pending disposal of the disciplinary proceeding, and those where the respondent remains in practice. My aim is to see the cases where the respondent remains in practice (and especially where the respondent is the subject of an application for a strike off order) managed in as speedy a way as possible. Clearly there is a risk to the public interest in having allegations of serious failure to adhere to professional standards left unresolved for any extended period.

I noted last year the Parliament's Freedom of Information reforms with a key feature the creation of the Office of Information Commissioner. The Government Information (Public Access) Act 2009 took effect on 1 July 2010. In the period to 30 June 2011, there were 38 applications for review filed in the Tribunal under the new Act. It is too early to judge what the long-term trend may be, but this figure suggests that there may be a lowering in the number of review applications as compared to the position under the previous law, consistent with the more liberal access philosophy of the new law.

I referred in last year's annual report to the heavy reliance of the Tribunal on the work of part-time sessional members, and the fact that the remuneration had remained unadjusted for more than six years. Several months later action was taken. On 2 March 2011 the then Attorney General issued a new determination. The new scale was in the nature of a 'catch up' adjustment, of the order of 30%. There was no response to my further recommendation that these matters be in future addressed on an annual basis via the independent State remuneration tribunal, as applies already to a number of other tribunals in NSW.

There should be no distinction drawn between the way part-time tribunal members have their remuneration reviewed and adjusted as compared to full-time public office holders. My office should not be drawn into a relationship of special pleading with the Minister of the day around these issues. The present arrangement affecting this Tribunal is antiquated and in need of overhaul.

Following the change of Government in March, the new Attorney, the Hon Greg Smith SC MP, has visited the Tribunal. In a major speech given to an Australian Institute of Administrative Law conference in August, he referred to a number of important issues affecting the administrative law framework in NSW: the simplification of judicial review rights; and the role of the two major merits review jurisdictions - this Tribunal and the Land and Environment Court (in respect of planning decisions). He referred to the interstate developments in respect of merger of tribunals. I have referred in previous annual reports to those developments. Today as I finalise this report, the Government announced a parliamentary committee of inquiry into the consolidation of tribunal functions with a view



Judge Kevin O'Connor AM  
President

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to a report early in 2012. This is a welcome development.

Over the past two years we have had a significant turnover of members especially in the non-judicial member ranks. This has been, largely, a function of a policy under which, ordinarily, a non-judicial member should only expect to serve for three terms (nine years). It is important to refresh the pool. Expressions of interest processes are now the usual method of recruitment to the Tribunal. We have seen many splendid members retire after nine years' service who joined the Tribunal in its early years, and equally we have seen appointed many new members of the highest quality. Our lay membership ranks include people who have held high statutory offices at State and Commonwealth level, and others who have served in very senior positions in departments and universities, as well as leaders from the community sector, the private sector

and the professions. The Tribunal is greatly strengthened by the involvement of these people in its judicial processes.

Finally, may I thank all members and the Registry staff for the quality of their work over the last year.



Judge Kevin O'Connor, AM  
President

21 October 2011

# Our Objectives

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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) ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings before the Tribunal to be determined in an informal and expeditious manner,
- (d) to provide a preliminary process for the internal review of reviewable decisions before the review of such decisions by the Tribunal,
- (e) to require administrators making reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for their decisions on request,
- (f) to foster an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs,
- (g) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

# Services to Users

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

## **Location and Facilities**

As at the close of the present reporting year, the Tribunal remained located at Level 15 St James Centre, 111 Elizabeth Street, Sydney. It is relocating on 24 October 2011 to the 10th floor of the John Maddison Tower, 86 Goulburn Street, Sydney.

The floor area of the Goulburn Street premises is marginally larger than the previous premises. There has been no increase in hearing rooms, either in number or area, or in the area of the Registry. The design includes two rooms suitable for mediation or case conference purposes of better scale than the previous ones. Natural light amenity is poorer at Goulburn Street, so the design has sought to incorporate internal windows and glass walls to improve the flow of light.

On the other hand, the accommodation for part-time members has been improved. Four of our part-time judicial members are present at the Tribunal around three to four days a week, and they will have use of the private offices.

The new premises have improved security for members, with separate lifts and secure entrances to hearing rooms; as well as separate toilet facilities for the use of members and staff (except if disabled).

## **Remote Users and Regional Access**

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

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

While the Tribunal does not keep specific statistics, it estimates that a telephone link is used by at least one party in about one-third

of the business of the Tribunal at the directions and interlocutory stages. Often both parties are contacted by telephone. Suburban and country residents and legal practitioners welcome this facility.

The Tribunal rarely uses video links.

Where an applicant requests it, and it is justified, the Tribunal will sit at a location outside Sydney. In the last year the Divisions of the Tribunal sat at twenty locations in regional New South Wales. The usual venue for remote sittings is at the local courthouse. The Tribunal has sat at Albury, Armidale, Ballina, Bathurst, Casino, Coffs Harbour, Dubbo, Goulburn, Griffith, Katoomba, Lismore, Newcastle, Nowra, Orange, Tamworth, Taree, Tweed Heads, Wagga Wagga and Yass. On occasions the Tribunal has sat at the Industrial Relations Commission premises.

## **Access by persons with disabilities**

In previous annual reports the access arrangements for the Elizabeth Street premises have been recorded. The new Goulburn Street premises has the following features:

- Lifts equipped with voice announcements. (No Braille lift buttons in contrast to Elizabeth Street.)
- waiting area that is compliant (the position in relation to hearing rooms will be advised in next year's report)
- Infra-Red Listening System (Hearing Loop);
- telephone typewriter (TTY); and
- Auslan interpreters.



### **Access to Tribunal Information, Tribunal Proceedings and Tribunal Decisions**

The Tribunal's website is located at [www.lawlink.nsw.gov.au/adt](http://www.lawlink.nsw.gov.au/adt). The site has links to ADT legislation and rules, daily law lists and published decisions. It also provides information about each Division such as Guidelines and Practice Notes, standard forms and brochures. It contains the electronic versions of all Annual Reports hidden behind the box on the Home Page, 'Policy Documents and Tabled Documents'.

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

Most hearings are conducted without restriction and are not affected by considerations relating to anonymisation or suppression.

The Annual Report for the year ending 30 June 2006 under the heading 'Open Justice' gave a brief outline of the Tribunal's practice in relation to anonymisation of the identity of parties or witnesses, and material that is suppressed either by statute or specific order. The policy is being reviewed.

The Tribunal's policy is to publish all reserved decisions and selected oral decisions on the Internet. In this way the rulings of the Tribunal can be disseminated widely, promoting a good understanding of the Tribunal's approach.

All decisions are published on the DAGJ CASELAW NSW website at <http://www.caselaw.nsw.gov.au/admin/index.html>. A comprehensive service is also provided by AUSTLII (Australasian Legal Information Institute) at [www.austlii.edu.au](http://www.austlii.edu.au). A number of specialist reporting services cover the decisions of the Tribunal in areas of interest to the service.

During the reporting period, there were 66 Appeal Panel decisions published, together with 308 Divisional decisions, total 374. The

Divisional decisions were spread as follows: General Division, 116; Equal Opportunity Division, 60; Retail Leases Division, 60; Legal Services Division, 38; Revenue Division, 28; Community Services Division, six.

### **New CASELAW System**

In 2011 a new CASELAW system came into operation. So far, it has not produced the improvements expected as against the system that it replaced. The old system (which operated from 1999 - 2010) included important features that are missing from the new system. Most significantly, the old system gave a clearer picture of the work of the ADT by showing the published decisions in lists per Division and per the two sides of the Appeal Panel (internal and external). The new system simply shows an undifferentiated list of first instance decisions and an undifferentiated list of appeal decisions, and nothing more. The useability of the site has deteriorated significantly. This is a particular problem for the ADT with a number of highly specialist jurisdictions and specialist user communities. The Department has promised to fix the problem but no estimate as to when has been provided. (Appendix G provides a table of the ADT's decision from 01.01.11 - 15.08.11 presented in the old differentiated way.)

There have also been significant problems with the stability and search functionalities of the new system.

The ADT is represented on the CASELAW Governance Committee, an advisory committee to the Department, in relation to the system and the difficulties which have arisen. That Committee includes representatives of the jurisdictions whose decisions are published on the site.

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### **Registry report**

The Registry has 10 positions, including the Registrar and Deputy Registrar. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills, officers are rotated between the teams.

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

The Registry provides the following services: enquiries; registrations; management of listings; support services for part-time members and, if required, hearing room assistance; remuneration and other administrative support for part-time members; maintenance of the of the Tribunal's website; and preparation and uploading of written decisions.

### **Staff development**

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

### **Budget and Financial Information**

The Tribunal is an independent statutory body that for budgetary purposes is a business centre within the Department. The Tribunal has two sources of funds. One is government funding provided by a budget allocated by the Department and the other is funding allocated by the trustees of the Public Purpose Fund. The Public Purpose Fund is used primarily to meet the cost of operating the Legal Services Division of the Tribunal. The Public Purpose Fund comprises interest earned on solicitors' clients' funds held in compulsory trust account deposits under the *Legal Profession Act 2004* ("the LPA"). Appendix A provides a summary financial statement for the Tribunal in the reporting period. The Department's annual report will also include a budget report.

# Membership

As at 30 June 2011, the Tribunal had 99 members. Two are full-time judicial members, the President and a full-time Deputy President. The remainder of the membership is part-time, sessional.

There are nine presidential judicial members (including the two full-time members mentioned), 36 judicial members and 54 non-judicial members. The list with appointment details appears in Appendix B. The list also includes those whose terms expired during the year, and have not continued with the Tribunal, or resigned.

The gender division, overall, is 57 male, 42 female. The division within judicial members (including presidential judicial members) is 26:19; and within non-judicial members 31:23. This is the greatest gender imbalance for many years, and it will be kept in mind in forthcoming recruitment processes.

*New Members:* There were 12 new members appointed during the year, all non-judicial members. These appointments were primarily made to the General Division, the Equal Opportunity Division and the Retail Leases Division, following an expressions of interest process. We welcome the new members.

*Retirements:* The following members retired during the year upon expiry of their appointment, or resigned before the expiry of their appointment: Deputy President Olsson SC upon her appointment as a Judge of the District Court; Judicial Members: Grant, Grotte, Hirschhorn, Molloy, Smyth, Vass, Wilson; Non - Judicial Members: Blake, Bubniuk, Fagg, Griffiths, Hedison, Moss, Monaghan-Nagle, Riordan, Ward and Weule.

We thank them all for their distinguished service to the Tribunal. The history of service by some of these members extends back to the predecessor tribunals.

## Professional Development

We had a break from the Annual Members Conference in the present reporting year. There has since been another Annual Conference held 16 September 2011, opened by the new Attorney General, the Hon. Greg Smith SC MP,

with the keynote speaker Justice Alan Robertson of the Federal Court. This conference will be covered in more detail in next year's report.

There were two significant COAT events during the year which many of our members attended, referred to below.

The regular publication of online case law bulletins for members continued during the year. This task is one of the main responsibilities of the Research Associate to the President.

## Council of Australasian Tribunals

The President has been the Convenor of the State Chapter of COAT since September 2007. COAT NSW's major events each year are its annual conference held in May and the Whitmore Lecture held in September. The May 2011 conference was a great success attended by about 150 members of State and Commonwealth tribunals. The keynote speaker was the Hon Keith Mason AC, former President of the NSW Court of Appeal and Adjunct Professor of Law. The Whitmore Lecture 2010 was delivered by the Hon. Justice Ruth McColl AO of the NSW Court of Appeal on the subject, Freedom of Information - A New Paradigm.

## Other

In October 2010 the President attended the 78th meeting of Interpol's Commission for the Control of Interpol's Files (CCF) in his capacity as the CCF's alternate chair. (The President was the inaugural Australian Privacy Commissioner.) The CCF meets at Interpol headquarters in Lyon, France. Its work was described in last year's report. As required by the rules, the President's appointment has now expired after serving two terms. The Director General of Interpol attended the meeting to formally farewell him and thank him for his service.



# The Divisions and the Appeal Panel



From left: Deputy Presidents Michael Chesterman, Jane Needham, Nancy Hennessy, President Kevin O'Connor, Deputy President Sigrid Higgins. (Deputy President Wayne Haylen was unavailable.)

The ADT Act divides the work of the Tribunal into two categories:

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

A 'reviewable' decision is a decision made by a government agency or Minister that Parliament has declared in an enactment to be reviewable by the Tribunal.

The second category is less exact in its coverage. It covers any application to the Tribunal where the Tribunal makes the first binding decision (i.e. the 'original' decision).

Applications heard in the Equal Opportunity Division and the Retail Leases Division fall into this category. They are analogous to civil suits.

In the disciplinary jurisdictions, such as the Legal Services Division, sometimes the application is an 'original' one and other times it may be a 'review' one, by way of an appeal from a decision made by an internal disciplinary panel.

The ADT Act establishes six Divisions and an Appeal Panel.

Of the six Divisions, three have as their principal or only business the hearing of applications for review of 'reviewable decisions': General Division, Revenue Division and Community Services Division.

The Tribunal has a mixture of public and private law functions, a structure which is possible under State law but unconstitutional under Commonwealth law. Consequently the Tribunal has several jurisdictions which could at the Commonwealth level only be carried out by a 'court' made up exclusively of judges.

## ADMINISTRATIVE OR 'PUBLIC LAW' DIVISIONS

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

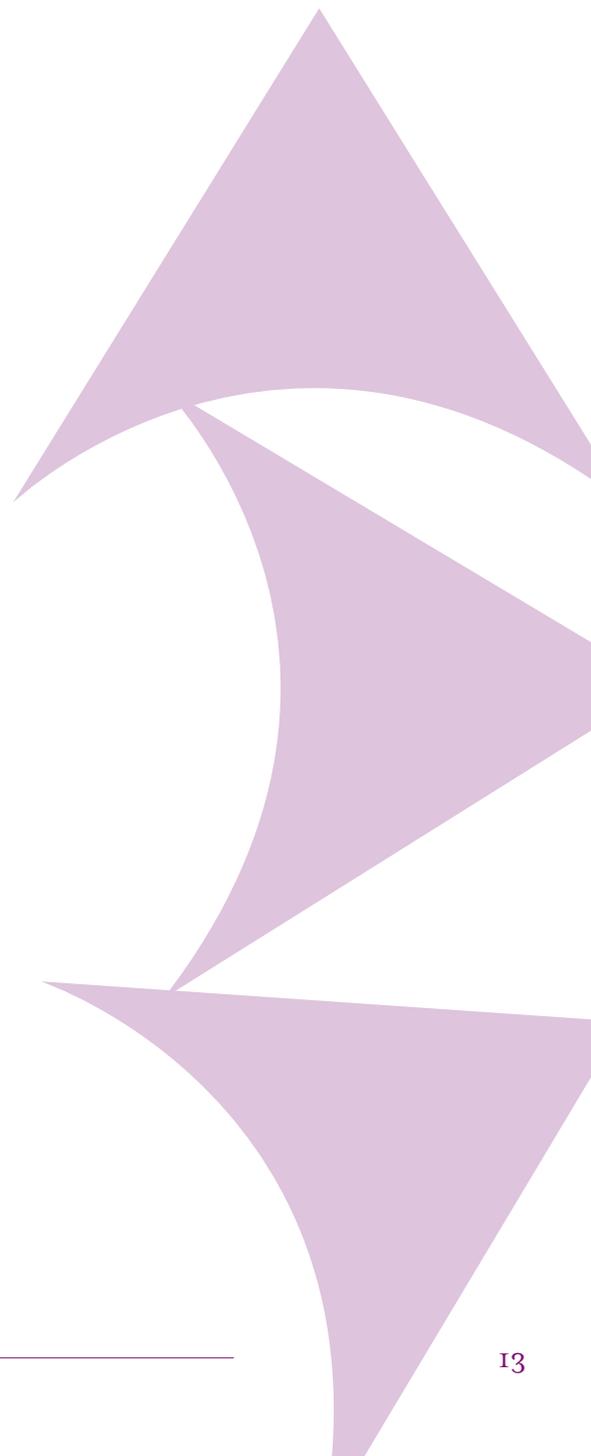
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## THE CIVIL OR 'PRIVATE LAW' DIVISIONS

- **Equal Opportunity Division:** operative 6 October 1998. Hears complaints of unlawful discrimination, harassment and vilification.
- **Retail Leases Division:** operative 1 March 1999. Hears claims by parties to retail shop leases.

### **Appeal Panel**

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



# The General Division

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The President is the Divisional Head of the General Division.

## **Case Load**

The GD is the main merits review division of the Tribunal. There were 344 new applications filed this year, an increase of 10 on last year (40% of the Tribunal's first instance business).

The Division's business falls into two main streams:

- reviews of adverse occupational and related licensing decisions; and
- reviews connected with the information-handling obligations of government agencies, access to government information and protection of personal data.

There were 200 filings in the occupational and related licensing stream, a decrease of 15 on last year. As in previous years, the dominant occupational licensing category involves public highway driver authorities, 68 public passenger authority cases (mainly taxi drivers) and 8 tow truck authority cases. There were 63 Commissioner of Police licence cases (mainly security and firearms); and 52 Fair Trading licence cases (mainly building trades and real estate agents).

In the 'Information Law' stream there were 101 filings, one more than last year. There were 57 in the FOI/GIPA category and 44 on the privacy side, comprising 43 under PPIPA and one under HRIPA.

We have now seen over the last four years a significant drop in FOI/GIPA filings from 117 in 07-08 to 57 this year. We attribute this largely to a relative absence now from the Tribunal of serial applicants in this area; and possibly also to the creation of the Office of Information Commissioner, with its alternative stream for the resolution of disputes.

The remaining 43 filings were across a

scatter of Acts, including 14 vocational and educational accreditation cases (relating mainly to the adequacy of compliance in tertiary colleges training overseas students) and six cases relating to births, deaths and names registrations.

The balance of the Division's work mainly relates to professional discipline (architects, veterinary practitioners, accredited certifiers) and reviews of administrative decisions made by the NSW Trustee and Guardian (each the subject of separate report: Other Professional Discipline Jurisdictions and the Guardianship and Protected Estates List reports).

## **Case Management**

Last year I noted the arrangements in relation to the Information Law stream. I also noted steps that were being taken to manage the vocational and educational training cases. Under intergovernmental arrangements there is now a national accreditation scheme managed by a new Commonwealth authority, the Australian Skills Quality Authority. As from 1 July 2011 new applications for external review of decisions affecting NSW accreditations will be heard by the Commonwealth Administrative Appeals Tribunal. The Tribunal is presently disposing of the last of the pre-1 July filings.

Again this year, we saw continued challenges by security industry licensees to the use by the administrator, the Commissioner of Police - and the Tribunal on review - as substitute administrator, of powers allowing decisions to be made based on confidential criminal intelligence information not revealed to the licensee. See further: Appendix F.

## **Timeliness**

We noted in last year's annual report a marked improvement in the GD disposal rate, from 33 weeks down to 26 weeks. There has been a further small improvement this year to 24.5 weeks, with 233 of the 357 disposals during

the year occurring in under 26 weeks (i.e. six months). May we thank the Members for their contribution to this outcome.

### Legislative Developments

There were no significant legislative developments affecting the role and work of the Division in the last year.

### Professional Discipline Jurisdictions other than Legal Services

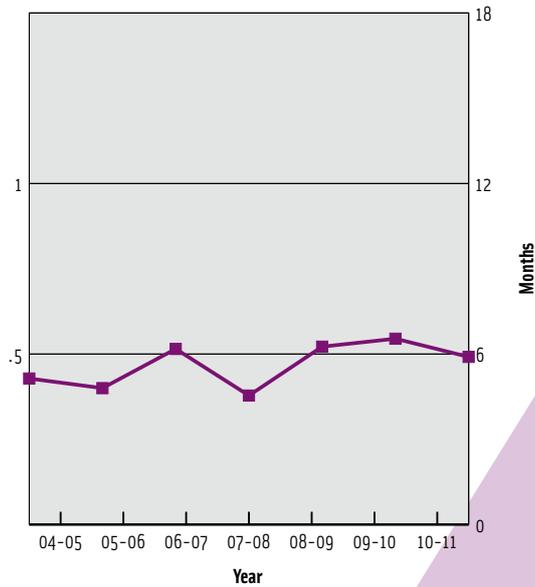
The Tribunal has professional discipline jurisdictions affecting registered architects, registered surveyors, veterinary practitioners, licensed conveyancers and accredited certifiers.

During the year there were two under the *Building Professionals Act 2005* (accredited certifiers) and none under the *Veterinary Practice Act 2003* or the *Architects Act 2003*.

As explained in earlier annual reports, the applications now tend to be review applications rather than ones brought by the regulatory body applying for original orders. In all of these areas the first instance decision-making is usually made by a statutory body, and the practitioner is given a right to apply for review to the Tribunal.

As also noted previously, in all professional discipline matters a multi-member panel is constituted. There are special provisions governing veterinary practitioner discipline requiring a three-member panel that includes special expertise.

General Division - Average Disposal Time



# Guardianship and Protected Estates List

Deputy President Hennessy manages the Guardianship and Protected Estates List.

The Tribunal has jurisdiction to hear appeals from certain decisions of the Guardianship Tribunal including the making and reviewing of guardianship orders and the making and reviewing of financial management orders. The Tribunal also has jurisdiction to hear appeals from decisions of the Mental Health Review Tribunal that a person's estate be subject to management.

These appeals are known as 'external appeals' because they are appeals from bodies other than the Tribunal.

The Tribunal also has a merits review jurisdiction to:

- review decisions made by the NSW Trustee in connection with the exercise of the NSW Trustee's functions when managing estates;
- review decisions made by the Public Guardian in connection with the exercise of the Public Guardian's functions as a guardian, and
- review decisions by the NSW Trustee in relation to the functions of a person appointed as a manager.

The external appeals and the review decisions make up the Guardianship and Protected Estates List. Members with specialist expertise in this area conduct the hearings.

## Case Load

### External Appeals

As at 30 June 2010, there were five external appeals pending. During the year 13 new appeals were lodged, all from decisions of the Guardianship Tribunal. Fourteen appeals were finalised, leaving four appeals pending at the end of the year. In five cases the appeal was upheld either in part or in full. Eight appeals were dismissed and one was withdrawn.

### Timeliness

The time standards for appeals is 80% to be finalised in six months and 100% in 12 months. These standards were very nearly met this year with 11 (79%) disposed of in under six months and a further three (100%) finalised in less than 12 months.

## Review Decisions

As at 30 June 2010, there were three review applications pending. During the year 20 applications were lodged (double the number lodged in the previous year) and 14 were finalised leaving nine review applications pending at the end of the year.

Of the 14 applications that were finalised, the administrator's decision was set aside or varied in four cases and affirmed in one case. In nine cases, the matter was dismissed for various reasons either with or without a hearing.

## Timeliness

The time standard for merits review decisions is that 85% should be finalised in less than six months and 100% in less than a year. Ten of the 14 matters (71%) took less than six months to complete; a further two (86%) took less than 12 months and one took over 12 months.

## Significant Cases

*WL v NSW Trustee and Guardian* [2011] NSWADTAP 22. Here the protected person, WL, appealed against a decision of the Guardianship Tribunal. WL had a damages fund of about \$200,000 that was being managed by the NSW Trustee and Guardian pursuant to a GT financial management order. He applied to the GT for revocation of the order, so that he could again have direct control of his fund. The GT refused to revoke the order, but varied it by giving him \$20,000 to spend or invest as he wished.

WL submitted to the Appeal Panel that he was both capable of managing his affairs and that it was in his best interests to do so. The Tribunal may only revoke a financial management order if either the protected person is capable of managing his or her affairs (the capacity test) or it is in the person's best interests for the order to be revoked (best interests test). WL said that the GT had taken at least two irrelevant considerations into account namely his decision not to have ongoing psychiatric treatment and the risk that the money would be lost or dissipated if he were to manage his money himself. The Appeal Panel decided that the WL's criticisms were unfounded, and the matters were relevant. It decided that none of the other grounds of appeal (they included procedural fairness) had been made out.

# Revenue Division



Deputy President  
Jane Needham SC

This is my last Annual Report as Divisional Head, as I am not seeking reappointment in November. I have enjoyed my time at the Tribunal and particularly as Head of the Revenue Division. - Jane Needham.

The Divisional Head is part-time Deputy President Jane Needham SC.

The Revenue Division has had a relatively steady year both in personnel and in the numbers of applications with comparison to previous years. One hundred and eight applications were filed and 102 disposed of during the year; thus, there are only six more applications outstanding at the end of the year than were commenced at the beginning.

This year has seen the 'settling in' of the preliminary conference system discussed in last year's Annual Report. The process has been the subject of continued review, with more matters being referred to conferences which are outside the Practice Note guidelines, with reasonable success rates. The input of the Crown Solicitor's Office, as well as of the Chief Commissioner of State Revenue and his staff, and that of the Registry in assisting the process to run smoothly is much appreciated.

The purpose of the conferences is to seek to narrow or clarify issues in dispute in revenue cases, thus resulting in a quicker, and therefore more cost-effective, resolution of the dispute (or part of the dispute). Since preliminary conferences commenced, 47 out of 129 disputed commenced were referred to the conferences. While the process may not be having a direct effect on resolutions, the consensus from persons concerned is that the process is a useful and constructive one.

## Statistics

Of the 102 matters disposed of, 48 (or just under half) were disposed of in under six months, and a further 32 in under 12 months. The remaining 22 matters generally had reasons explaining the delay – awaiting a Supreme Court or High Court judgment pertaining to the question at

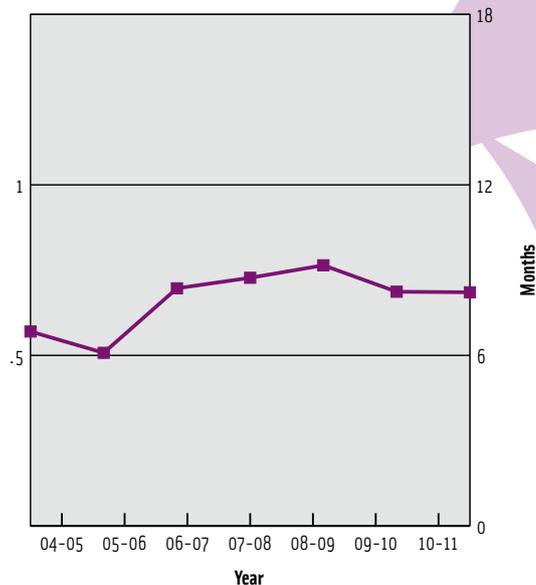
hand, or complex matters which underwent lengthy settlement proceedings while still being maintained in the List.

The detailed statistics for the year are set out in Appendix E. Almost 50% of the Division's business over the last year related to land tax (51 out of 108 matters). The other major categories are duties disputes (19 matters), payroll tax disputes (16) and first home owner grant disputes (15).

## Membership

Michelle Hirschhorn did not seek re-appointment at the end of her term. Her expertise and specialist knowledge were valued during her time in the Tribunal and we wish her well.

Revenue Division - Average Disposal Time



# Community Services Division



Deputy President  
Sigrid Higgins

The Divisional Head is part-time Deputy President Sigrid Higgins.

## Structure and Functions

The Division's non-judicial members come from across the spectrum of the community sector and have expertise in diverse areas including psychology, mental health, children's and disability services.

The Division has both a merits review and original decision-making function.

A panel of three members of the Division determine most of the merit review applications that are brought in the Division.

- In its merits review function the Division reviews decisions made by government and non-government agencies in the Community Services Sector. The type of decisions that can be reviewed by the Division include decisions:
- granting to or removing from an authorised carer (foster carer) the responsibility for the day-to-day care and control of a child or young person,
- authorising or not authorising a person to be an authorised carer,
- providing financial assistance where the provision of assistance does not conform with the objects and principles of the *Disability Services Act 1993*,
- accrediting or refusing to accredit an adoption service provider,
- failing to provide information or assistance under the *Adoption Act 2000*,
- de-register a family day care carer,

- granting or refusing to grant a licence to operate a children's service, such as a child care centre, and
- refusing to implement recommendations made by the Ombudsman.

The decisions reviewed by the Division in this year primarily concerned the granting to or removal of children from authorised carers.

Generally applications to review a decision to remove a child from an authorised carer are accompanied by an application to stay the decision of removal until the substantive application has been determined. These applications are listed at short notice. The substantive applications are also dealt with as quickly as possible and a guardian is appointed to represent the child/ren.

Under the *Children and Young Persons (Care and Protection) Act 1998* there is a requirement that any action or decision about a particular child or young person is to be administered under the principle that the safety, welfare and well-being of that child or young person is paramount. This requirement equally applies to the Tribunal in its merit review function.

The Division makes original decisions in applications made under the *Commission for Children and Young People Act 1998*.

A judicial member sitting alone determines applications that are brought under the CCYP Act.

That Act prohibits persons convicted of certain sex offences or offences involving the use of violence against a child from undertaking or continuing in child-related employment unless the person has obtained an order declaring that the Act does not apply in regard to the offences of which the person was convicted. The Act requires the Tribunal to be satisfied that the applicant does not pose a risk to the safety of children before granting an application.

## Case Load

In recent years the work of the Division has divided relatively equally into applications by prohibited persons for an exemption allowing them to engage in child-related employment and applications for review of community welfare decisions.

However this year review work predominated. There were 37 applications for review and 12 prohibited person applications. This was an overall increase on last year of 63%.

Most review applications are resolved without a full hearing. Mediation continues to be used to resolve disputes involving authorised carers. Six applications were referred to mediation and of these, three applications settled at mediation and two settled after the mediation.

Nine applications for an original decision were determined during the year. Of these three applications were withdrawn and dismissed, in five applications the Tribunal made a declaration as sought by the applicant and in one application the Tribunal found it had no jurisdiction to hear and determine the matter.

The Tribunal's website contains reported decisions of some of the determinations made during the year in regard to applications in this Division. This includes determinations on interlocutory matters. In some applications an oral decision and reasons for decision were given at the conclusion of a hearing. These decisions and reasons for decision are not on the Tribunal's website. A number of applications for review by authorised carers were resolved, prior to or during the course of a hearing, by the parties agreeing to consent orders. In such cases no reasons for decision are required.

## Appeals

Parties have a right to appeal to an Appeal Panel of the Tribunal, except in relation to decisions made under the CCYP Act where an appeal only lies to the Supreme Court.

No appeals were lodged against decisions of the Division in its review or its original decision making function.

### Case examples

In *AAC v Director-General, Department of Human Services, Community Services* [2010] NSWADT 319 the Tribunal examined the scope and purpose of the power to stay the reviewable decision under s 60 of the ADT Act.

The applicant (a former carer) had asked for a stay order to be made in relation to the decisions of the Department removing the child from care and placing the child with another carer. The Tribunal decided not to grant the application. It noted that the child had been removed from the care of the applicant some months prior to the application having been made and placed into the care of other carers. Another relevant factor was that there were ongoing proceedings before the Children's Court in regard to the child removed from the applicant's care. The Court had made an interim order granting interim parental responsibility of the child to the Minister. These proceedings were ongoing and the applicant being a party to the proceedings was able to exercise her rights in that forum.

*UY v NSW Commission for Children and People* [2010] NSWADT 283 illustrates the legal complexity that can sometimes affect applications for exemption from the prohibition on engaging in child-related employment.

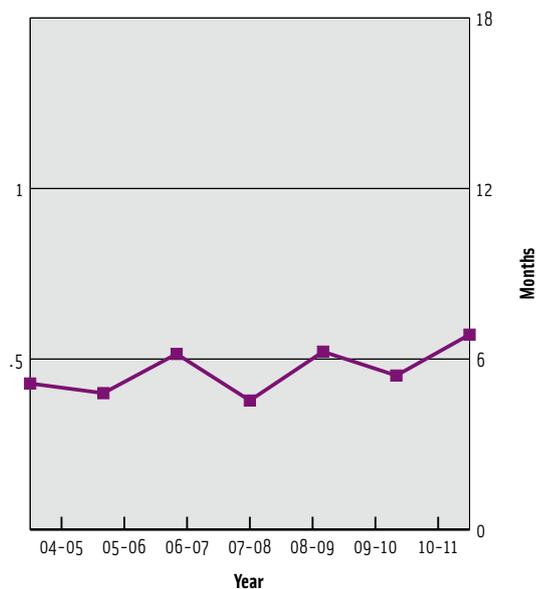
The sex offence had occurred when the applicant was 19 years and six months in Queensland. The offence was unlawful carnal knowledge of a girl under 17 years to which he had pleaded guilty and was fined \$100. This was a 'serious sex offence' within the meaning of the CCYP Act. The applicant's evidence was that the victim was his girlfriend at the time.

The first issue was whether the applicant fell into the class of persons entitled to apply for exemption. Section 33G(1) of the CCYP Act bars persons convicted of certain types of offences, including offences under s 66C of the *Crimes Act 1900* or a similar offence under any other law including an interstate law. The Tribunal held that the applicant's Queensland offence was such a similar offence.

The Tribunal has a power to grant leave to persons barred under s 33G subject to restrictions. The second issue was whether a restriction applied to his case preventing the Tribunal from considering the grant of leave.

The restriction is that leave can only be considered if the victim is not more than three years younger than the offender, and there were no circumstances of aggravation. On the basis of the material before the Tribunal found that the girl was not only under 17 but in fact under 16, and therefore it had no power to grant him leave to apply.

Community Services Division - Average Disposal Time



# Legal Services Division

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Deputy President, the Honourable Justice Wayne Haylen

The Divisional Head is part-time Deputy President the Hon. Justice Wayne Haylen of the Industrial Court of New South Wales.

## Structure and functions

The Division's main work belongs to the original jurisdiction of the Tribunal. The Division hears applications for disciplinary orders

made by the Law Society Council, the Bar Council or the Legal Services Commissioner in relation to alleged misconduct by legal practitioners. The Supreme Court's inherent jurisdiction is not affected. The Division, like the Supreme Court, has available to it a wide range of sanctions for misconduct.

The Division may also deal with client claims for compensation arising from misconduct and considers applications allowing employment by practitioners of persons convicted of a serious offence.

The Tribunal also has a review jurisdiction. Practitioners may apply to the Tribunal for review of disciplinary orders made by the Law Society Council or the Bar Council under the (lower tier) disciplinary powers vested in those bodies by the legislation.

Hearings in the Division are conducted by a panel of three members comprising two judicial members (being a judge, a retired judge, a barrister or a solicitor) and a non-judicial member from the general community. The senior judicial member presides and the hearings are normally conducted in public.

Divisional decisions are not appealable to the Appeal Panel. The right of appeal is direct to the Court of Appeal.

## Case Load

Detailed statistics are found in Appendix E.

In the current year, there were 37 new applications filed in the Division, slightly down on the previous year, which had been a high year. While 33 applications were finalised during the year, the pending business at year's end rose to 52.

The pending case load has varied up and down significantly in recent years, for example 23 for the reporting year ending 30 June 2003, to 42 a year later, down to 27 in 2006, up to 47 in 2007 and 48 last year. These fluctuations hide a variety of external factors. Often cases in the list are stalled, because of external appeals to the Supreme Court or due to factors personal to the respondent, such as health or the need to dispose first of related criminal charges.

Despite attempts at rigorous case management, the pending business figure is high although every case that was ready for a hearing received the earliest dates available to the Tribunal and the parties. In the coming year, as also noted by the President in his foreword, further consideration will be given to the means by which this list of outstanding cases is to be reduced to acceptable numbers.

The structure of the *Legal Profession Act 2004* is such that, prior to the matter commencing in the Tribunal, there has already been an investigation and an opportunity for the practitioner to respond to the matters raised against them. The filing of an application in the Tribunal is generally known to the respondent who should be well placed, in the normal case, to file a reply in accordance with the requirements of the Rules. In those circumstances, considerations of procedural fairness should not arise to prevent the prompt hearing of disciplinary matters brought to the Tribunal. The Tribunal expects that the representatives of the parties will co-operate to enable the matters to be dealt with and be concluded in a timely manner. The inability of the parties to permit the prompt hearing of matters will ultimately lead to the Tribunal adopting stricter case management measures.

### Disciplinary Outcomes

Disciplinary orders were made against four barristers and 27 solicitors. Twenty practitioners were the subject of reprimands, 10 were fined, seven were removed from the Roll and four were required to undertake and complete a course of further legal education. One practitioner had conditions imposed upon his practising certificate. It should be noted that a number of matters had more than one of the outcomes referred to above.

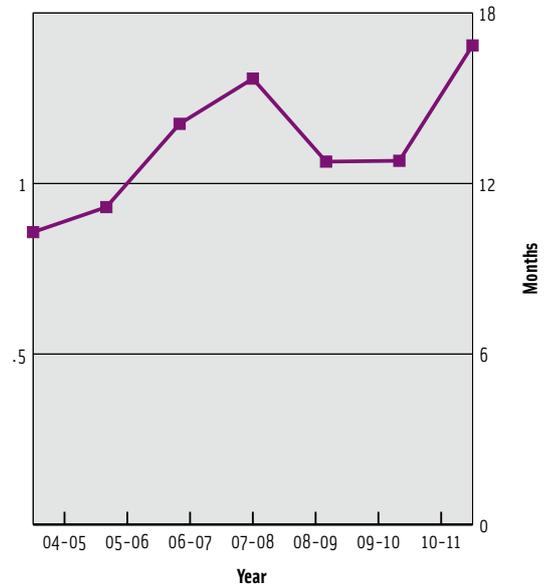
### Cases of Significance

*Multiple Billing:* Last year's report referred to the case of *Legal Services Commissioner v Bechara (No 3)* [2009] NSWADT 313 where the Tribunal held that the practitioner had overcharged three clients by levying three sets of costs where their cases had been heard in a joint hearing. The Court of Appeal dismissed the practitioner's appeal: *Bechara v Legal Services Commissioner* [2010] NSWCA 369.

The Court of Appeal has now dismissed the appeal. The practitioner is obliged to apportion time in these circumstances. The precise proportions may well vary. McClellan CJ at CL noted that the apportionment must pay due regard to the principle that one unit of time may not be charged more than once. If there are additional demands imposed on the practitioner as a result of his or her simultaneous handling of multiple related matters that may be the subject of an appropriate uplift on costs common to all matters.

*Appropriate Order for Proven Misappropriation by Solicitor:* The Tribunal cancelled the practising certificate of the solicitor for 12 months. The Law Society appealed on the ground that the order was inadequate, and that it should have struck his name off the roll. The Court of Appeal dismissed the appeal: see *Council of the Law Society of New South Wales v Doherty* [2010] NSWCA 177. The Court observed that misappropriations can vary widely in their nature and significance. The Tribunal was entitled to take account of mitigating circumstances, and to have regard to whether this had been a less serious situation than the usual order for proven misappropriation, striking off.

Legal Services Division - Average Disposal Time



# Equal Opportunity Division



Deputy President,  
Magistrate Nancy Hennessy

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

## Structure and Functions

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

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

- *referred complaints*: complaints of discrimination, harassment, vilification and victimisation that have been referred to it by the President of the Anti-Discrimination Board;
- *applications for leave*: when a complaint has been declined by the President of the ADB the applicant must obtain the Tribunal's leave or permission before the complaint can proceed;
- *applications for the registration of conciliation agreements made at the ADB*;
- *applications for interim orders*; and
- *reviews of exemption decisions*: the Tribunal can conduct a merits review of a decision made by the President of the ADB in relation to applications for exemption from the ADA.

## Membership

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

## Outcomes and Disposal Rates

The detailed statistics appear in Appendix E.

There were 112 matters pending at the beginning of the year. One hundred and twenty eight new applications were received. Of those, 102 (80%) were referred complaints and 24 (19%) were applications for permission to proceed. There was one application for the registration of a conciliation agreement and one application for an interim order.

The Division finalised 167 matters, 39 more than it received, leaving 73 applications pending at the end of the year. That figure is significantly less than the figure of 112 applications which were pending in the previous year.

The EOD's time standards for disposal of matters is 80% of matters to be finalised within 12 months and 100% within two years. This year 125 (75%) were finalised within 12 months and 148 (88%) within two years. The remaining 19 (12%) of matters were more than two years old when they were finalised.

The outcomes for each category of application are discussed briefly below.

## Referred complaints

If a complaint cannot be conciliated or it cannot be resolved for some other reason, the President of the ADB may refer it to the Tribunal. One hundred and two original complaints were referred this year.

Of the 142 referred matters finalised during the year, orders were made in the applicant's favour in 12 cases (8%), the application was dismissed after hearing in 18 (13%) of cases and four applications (3%) were summarily dismissed. One hundred and eight applications (76%) were dismissed for reasons including that they had been settled or withdrawn.

## Mediation

For referred complaints, the Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 142 referred matters which were finalised during the year, mediation was conducted in 59 matters (42%). Of those matters, 52 settled at or after mediation and seven proceeded to hearing. Consequently, 88% of referred matters which had a mediation were resolved at or after mediation and 12% proceeded to a hearing.

There is a significant incentive for parties to resolve complaints without having a hearing because of the time and cost considerations. In particular, if parties are legally represented, legal costs can consume a considerable proportion of any compensation that is ultimately awarded.

## Grounds of complaint

A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were race (30), disability (27), sex discrimination (nine) sexual harassment (eight) and age discrimination (eight). Smaller numbers of complaints of marital status, carers' responsibilities, homosexual vilification and discrimination, racial vilification, pregnancy discrimination and transgender vilification were also lodged.

## Applications for leave to proceed

Where a complaint is declined by the President of the ADB because, for example, it lacks substance or is frivolous or vexatious, the complainant may require the President to refer the complaint to the Tribunal. Once referred, the applicant must obtain the Tribunal's "leave" or permission before being allowed to proceed. One application for leave was pending at the beginning of the year and the Tribunal received 24 new applications. Of the 21 leave applications disposed of during the year, leave was granted

in five cases (24%) and refused in nine cases (43%). The applicant withdrew or settled the application in the remaining seven cases (33%). Six applications remained pending at 30 June 2011.

## Applications for the registration of conciliation agreements made at the ADB

The Tribunal has jurisdiction to register conciliation agreements made when complaints are still with the President of the ADB. The agreement, once registered, can be enforced as an order of the Tribunal. One new application for registration was made this year and one was finalised without a hearing.

## Applications for interim orders

The President of the ADB, or a party to a complaint, may apply to the Tribunal for an interim order to preserve the status quo between the parties, or the rights of the parties, pending determination of the complaint. This year one new application for an interim order was made and one was pending. Both applications were disposed of during the year. In one case the application for interim order was refused and in the other case the application was withdrawn.

## Significant Cases

*HIV Discrimination:* AMI Australia Holdings Pty Ltd refused a man treatment for erectile dysfunction because he was HIV positive, relying on the statutory defence that it was 'reasonably necessary' for the protection of public health. The Tribunal upheld the man's complaint. The risk of the procedure resulting in another person contracting HIV was minimal: *TU v AMI Australia Holdings Pty Ltd* [2010] NSWADT 290.

*Race Discrimination:* An insurance policy linked to a credit card protected repayments. It limited its availability to Australian citizens or people in Australia with 'protected' visas. The complainant was a non-citizen, a New Zealander lawfully living in Australia. He was refused cover on the basis that he fell into neither of the groups

covered. The Tribunal held that the insurer had engaged in indirect discrimination on the ground of his race: *Faulkner v ACE Insurance Ltd* [2011] NSWADT 36.

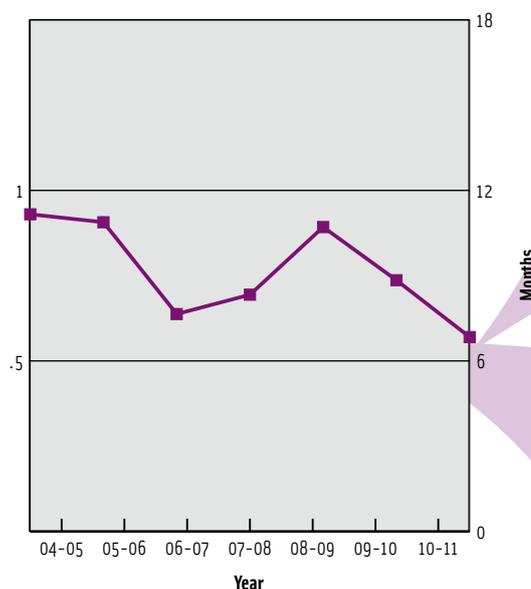
*Age discrimination against older and younger people:* The complainant was a tour guide and casual bus driver, and aged over 70. After an accident he was downgraded from his position as a full-time coach driver. After a second accident, he was dismissed. The Tribunal held that he had been more harshly treated than other drivers who had been involved in more serious incidents on account of his age. He was awarded damages for loss of income and for hurt, humiliation and injury to his feelings: *Talbot v Sperling Tourism & Investments Pty Ltd* [2011] NSWADT 67.

Another case involved age discrimination against a young person by a caravan park manager. The caravan park had a "noise curfew" from 10 pm to 8 am. Despite that policy, an 18 year old man, who was staying at the caravan park with his family, was stopped at around 9 pm when in the company of other teenagers. Although the man and his friends had not been making any undue noise, the manager told him that he could not move around the park because there had been problems with "teenage" behaviour. The Tribunal found that the caravan park manager had discriminated against the man on the ground of his age because he had treated him differently from the way he would have treated a person who he regarded as an adult.

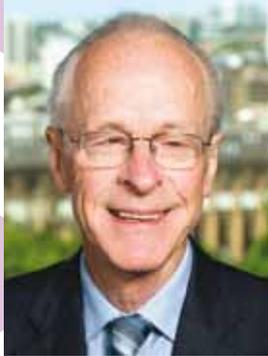
After complaining, his family's pre-booked holiday was cancelled. The owners of the park said that the cancellation was because of complaints that had been made about the family. The Tribunal was satisfied that the owners were victimising the man because he had made a complaint. The Tribunal awarded damages for age discrimination and victimisation: *Johnson v Free Spirit Management Pty Ltd (No 2)* [2011] NSWADT 29.

*Insurance Policy - Premium Discounts for Married Persons:* The ADA allows providers of goods or services to engage in a practice that would otherwise breach the ADA if they obtain an exemption from the President of the ADB or, on appeal after a refusal, from the ADT. The President refused the insurer an exemption under which a cheaper premium would be charged for motor accident insurance to married or cohabitating persons as against persons who did not have that marital status. The Tribunal rejected the insurer's appeal even though it had received a similar exemption from the Queensland tribunal in respect of the Queensland market. The Tribunal referred to the criteria required to be considered under the ADA, which differed from those in Queensland; and also the provision of expert evidence contesting the insurer's actuarial data. The Tribunal was not satisfied on either social policy grounds or on actuarial grounds that the exemption was justified: *Auto & General Insurance Company Limited v President, Anti-Discrimination Board* [2010] NSWADT 229.

Equal Opportunity Division - Average Disposal Time



# Retail Leases Division



Deputy President  
Michael Chesterman

The Divisional Head is part-time Deputy President Michael Chesterman, Emeritus Professor of Law.

## Structure and functions

The Retail Leases Division exercises jurisdiction conferred by the *Retail Leases Act 1994* ('RLA') to determine applications relating to 'retail shop

leases' as defined in this Act. The courts may also exercise jurisdiction in civil proceedings brought under this Act. But section 75(2) of the RLA establishes a general principle that retail tenancy disputes 'should be dealt with by the Tribunal rather than by a court'.

*Role of Mediation:* Section 68 of the RLA states that a dispute between parties to a retail shop lease 'may not be the subject of proceedings' before any court or tribunal 'unless and until' the Registrar of Retail Tenancy Disputes has certified that mediation has failed to resolve the dispute or the court or tribunal 'is otherwise satisfied that mediation is unlikely to resolve the dispute'. An exception to this rule is that the court or tribunal may grant an interim injunction or other interim relief even though no attempt at mediation has been made. Section 68 does not prevent a party from commencing court or tribunal proceedings even though mediation has not been attempted: *Fordham Laboratories Pty Ltd v Sor* [2011] NSWSC 706. But the court or tribunal may not actually hear and determine the dispute until the conditions stated in the section are satisfied. The Tribunal's established practice has reflected these principles. It will receive an application for a remedy even though mediation has not been attempted and deal with interim order issues, and then direct the parties to arrange mediation by the Retail Tenancy Unit.

The issue can arise of the extent to which statements or admissions made at mediation can be used before the Tribunal. The Appeal Panel recently confirmed that the statutory bar

found in s 69 applies, including in relation to applications for costs: *Wallis Lake Fisherman's Co-operative Ltd v ACN 079 830 595 Pty Ltd t/as Jolly Joe's Fish 'n' Chips (No 2)* [2011] NSWADTAP 29. The Appeal Panel noted the bar did not extend to mediations that were not conducted pursuant to arrangements made by the Registrar.

## Case load

A striking feature of the Division's case load this year is a significant decline, for the second year running, in the number of new applications being filed.

At the beginning of the year, 111 applications under the RLA were pending. During the year, the number of new applications filed was 198, compared with 209 in the preceding year and 255 in the year before that. Two hundred and forty two applications were disposed of, with the consequence that at the end of the year the number of applications pending, having decreased by as many as 44, was only 67. This is a welcome result. Both this year and last year, the Division has been able to dispose of significantly more applications than were filed.

Among the 198 new applications, 48 (24.2%) were applications for the appointment of a specialist retail valuer to determine the current market rent under a lease, or for the appointment of two valuers to review such a determination; 99 (50%) were retail tenancy claims in other categories; six (3%) were unconscionable conduct claims; and 45 (22.7%) were 'combined' claims, involving both retail tenancy claims and unconscionable conduct claims.

Of the 242 applications that were disposed of, the outcomes were as follows: 63 (26%) were withdrawn, dismissed on the ground of no appearance, or settled without orders being made; 72 (29.8%) were settled with consent orders being made; one (0.4%) was transferred to the Supreme Court; three (1.2%) were dismissed on the ground of lack of jurisdiction; 18 (7.4%) were dismissed after a hearing; and in 85 (35.1%), orders (non-consensual) were made.

The rate of disposal of claims (56.2%) without a determination by the Tribunal (other than a consent order) or a transfer to the Supreme

Court was higher than last year but lower than in earlier years.

During the year, Appeal Panels delivered nine decisions relating to appeals from first instance decisions within the Division. This number has varied very little in recent years. The only two appeals to be allowed in full concerned decisions on costs. In two other matters, the Panel allowed the appeal in part and set aside one of a number of orders made at first instance, substituting its own order or remitting the case for redetermination of the particular question involved. Each of the remaining five decisions involved confirmation by the Appeal Panel of the decision under appeal. Overall, the success rate achieved by appellants on substantive questions of retail tenancy law was unusually low.

#### Timeliness

According to time standards adopted by the Division, 85% of the applications made to it should be disposed of within six months and 100% within one year. As is frequently the case, it has not proved possible to adhere to these standards. Of the 242 applications disposed of in 2010-11, 165 (68.2%) were disposed of within six months and 196 (81%) within a year. These percentages are about the same as in the preceding year.

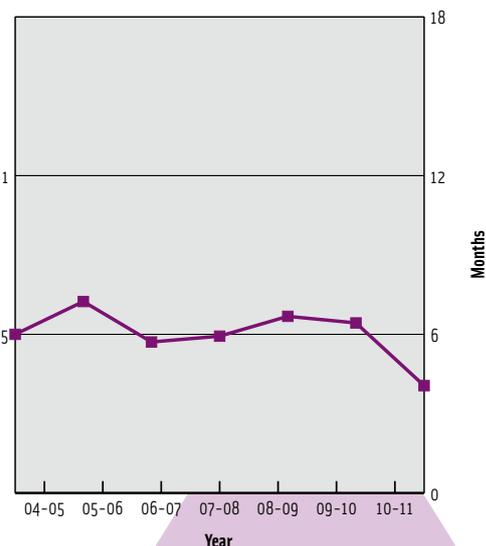
#### Significant themes

The many matters dealt with this year in the cases decided by the Division included:

- The requirements for creating a binding oral lease under the extended definition of 'lease' in section 3 of the RLA.
- General principles governing the interpretation of the terms of a written lease.
- Whether a lessee authorised by the lease agreement to sell accessories used for 'all types of music players' was thereby permitted to sell accessories for *iPhones*, on the ground that one of the numerous functions of an *iPhone* is the playing of music.
- The meaning of the phrase 'key money' in section 14 of the RLA.

- Whether the lessor or the lessee was responsible for obtaining council approval for the premises to be used in accordance with the permitted use stated in the lease.
- The law governing estoppel by convention.
- The requirements for exercising an option for renewal of a lease.
- The meaning of the phrase 'provides for rent to be changed to current market rent' in section 19(1) of the RLA.
- Whether a valuation of current market rent by a specialist retail valuer should be held not to be a 'valuation', and therefore not to bind the parties to the lease, when it does not contain 'detailed reasons' for the valuer's determination as required under section 19(1)(e) and section 31(1)(e) of the RLA.

Retail Leases Division - Average Disposal Time



#### Legislative developments

The *Retail Leases Amendment Regulation 2010* and the *Retail Leases Further Amendment Regulation 2010* both made changes to the form of lessor's disclosure statement set out in Schedule 2 to the RLA. Section 11 of the RLA requires that such a statement be given to the prospective lessee at least seven days before the lease is entered into. These two regulations came into force on 1 January 2011.

# Appeal Panel

The President manages the operation of the Appeal Panel and the listing of appeals.

## Structure and Functions

In its usual configuration, the Appeal Panel for internal appeals comprises a presidential member (i.e. the President or a Deputy President), a judicial member and a non-judicial member. The ADT Act requires that at least one of the first two members be from the Division giving rise to the appeal, and the third member always be from the Division giving rise to the appeal. In the case of external appeals, the usual configuration is a presidential member, a judicial member and a non-judicial member. The Act requires the non-judicial member to be a person endorsed as having experience in dealing with persons with a disability.

The usual listing practice in the case of internal appeals is for the President or the relevant Divisional Head to preside unless there is an impediment (such as one of those members having presided in the matter below). In the case of external appeals, the Deputy President responsible for managing the Guardianship and Protected Estates List usually presides.

A presidential member may preside alone to consider the grant of leave to appeal and dispose of the substantive appeal.

## Case Load

Detailed statistics are found in Appendix E.

There were 70 appeals filed (57 internal, 13 external), a significant decrease on last year (84, 20; total 104). During the year 76 appeals were finalised. The pending business as at 30 June 2011 was 35 (internal), four (external), total 39. The Appeal Panel published 66 decisions, 55 (internal) and 11 (external).

The new filings were distributed as follows - General Division (30), the Retail Leases Division 11, the Equal Opportunity Division (seven), the Revenue Division (eight); Guardianship Tribunal (13). The internal appeals distribution, broadly speaking, is similar to the ratio of underlying business in the various Divisions (the Legal Services Division is not appealable to the Appeal Panel).

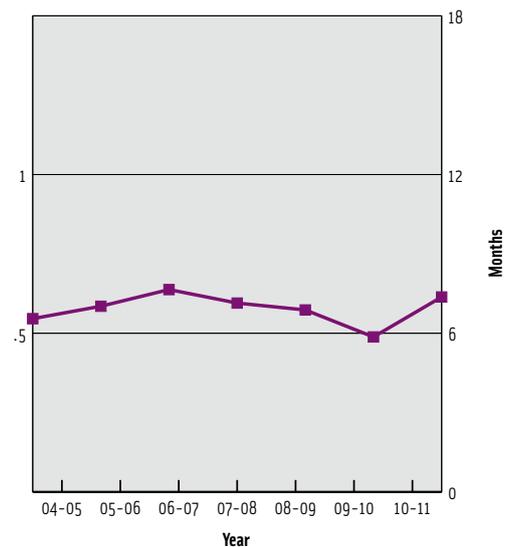
These figures include interlocutory appeals. There were 11, with nine refused leave. Two proceeded and were upheld. The leave hearing for interlocutory appeals is conducted as part of the short matters list. This procedure introduced last year has helped to move this business more quickly.

The main variation from previous years affects the Retail Leases Division, Historically it has had a very low appeal rate. It was a little higher last year. Similarly the Revenue Division had a somewhat higher rate than the historical pattern.

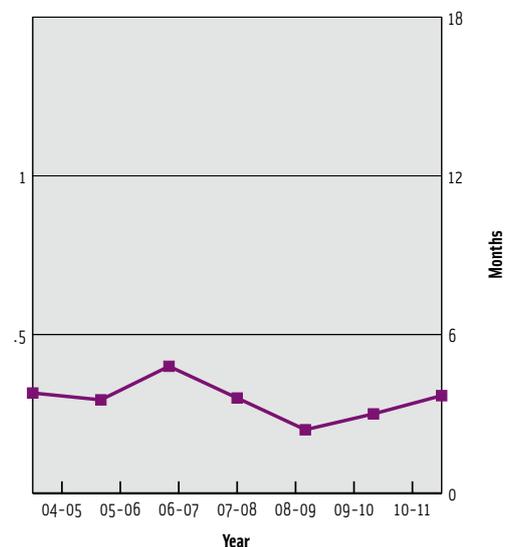
## Themes

Appendix F gives a short catchword account of nine of the Appeal Panel cases, primarily ones where the underlying decision were reversed. It will be seen that most of the successful appeals involved points of practice and procedure, such as jurisdiction, costs and time bars.

Internal Appeals- Average Disposal Time



External Appeals- Average Disposal Time



# Supreme Court Oversight

Appendix F includes a summary of relevant Court of Appeal and single judge rulings for the reporting period.

Most Divisional decisions of the Tribunal are appealable to the Appeal Panel. Appeal panel decisions are appealable to the Court of Appeal of the Supreme Court. In some instances there is no right of appeal to the Appeal Panel from a Divisional decision but there is a direct appeal allowed to the Supreme Court, often confined to a question of law. For example Legal Services Division appeals go direct to the Supreme Court. It is also possible for parties to proceed directly to the Supreme Court by way of judicial review at any point while a matter is before a Division or the Appeal Panel. The ADT Act also provides for referrals of questions of law.

The judicial review procedure has been used in a number of security industry cases in recent years to test procedural rulings of the Tribunal. A judge may decline to deal with a judicial review application on the basis that there is a better or adequate remedy provided by appeal to the Appeal Panel. That point is illustrated in one of the cases this year, *Black v Hunter New England Health Service* [2010] NSWSC 1252.

During the year there were nine Court of Appeal decisions dealing with proceedings that arose from the Tribunal. Three related to the LSD, two direct appeals and one appeal from a judicial review ruling by a single judge (*Bechara, Doherty, Fitzgibbon*), all unsuccessful. (They are covered in the LSD part of this report or the summary). Of the remaining five that flowed from the Appeal Panel, two were allowed. One dealt with a point of statutory interpretation, the other a procedural fairness issue.

We have in the past sought to report in our statistics, see Appendix E, on the number of applications filed in the Supreme Court and Court of Appeal that arise from the Tribunal. It has proved increasingly difficult to track outward Supreme Court activity affecting the Tribunal. There is no procedure of notification from the Supreme Court Registry or from the parties. We rely on informal notifications for the most part, except where the Tribunal is named as a party. We now rely entirely on a review of the published decisions of the Supreme Court and Court of Appeal to track activity there affecting the Tribunal. Accordingly the statistics no longer seek to report numbers of applications at the Supreme Court affecting the Tribunal.

# Alternative Dispute Resolution

Mediation is one form of alternative dispute resolution available to parties under the ADT Act. The other form, neutral evaluation, is not currently in use.

Mediation is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to achieve their own resolution of the dispute. A matter may only be referred to mediation if all parties consent. It is provided at no cost to the parties.

Six trained mediators comprise the list of mediators. The list is at the end of the list of members in Appendix B. Three of the six are also members of the Tribunal. The mediator/members do not sit if the matter goes to hearing.

Mediation is most widely used in the EOD. It is also used, to a lesser extent, in the CSD and the GD.

There were 83 mediations conducted this year with the following outcomes, of which 73 were resolved at mediation or after mediation, and only 10 went to hearing. The precise figures for this year are EOD: 59 mediations, with 52 settled at or following mediation; GD: 18 mediations, with 16 settled at or following mediation; CSD: six mediations, with five settled at or following mediation. The number of mediations held this year was 93% higher than last year (then 43 held, 39 successful) and 36% higher than the year before that (61 held, 45 successful). The rate of success remained similar, and is at the high end of the usual experience of courts and tribunals using annexed mediation.

The primary technique used to resolve cases prior to hearing in the Information Law stream in the General Division is the planning meeting or case conference. This process is very effective in narrowing the issues in dispute and contributes to a good pre-hearing settlement rate. Referrals for reconsideration by the agency is a technique commonly used in the Revenue Division. The statistics show that over 60% of Revenue Division filings do not proceed to hearing. This figure tends to suggest that the pre-hearing procedure is successful in obtaining agreed resolutions. In the Retail Leases Division attempts at mediation are required of the parties prior to filing. Where they file directly to seek an urgent interim order, the practice is to deal with the interim order application and then refer the dispute back to the Retail Tenancy Unit.

# Practice and Procedure

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The practice of the Tribunal is formally documented in its Act, Practice Notes and Rules. The Rules of the Tribunal are found in the *Administrative Decisions Tribunal Rules 1998*.

The experience of the Tribunal has been that it is more practical to deal with practice and procedure issues via Practice Notes or Guidelines. The Parliament has recognised the value of using Practice Notes, and given their use statutory force.

Section 91A provides:

## 91A Practice notes

(1) Subject to the rules of the Tribunal, the President may issue practice notes for the Tribunal in relation to any matter with respect to which rules may be made.

(2) A practice note must be published in the Gazette.

(3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

The Tribunal has eight operative Practice Notes and 12 operative Guidelines. The new guidelines that have issued this year are :

- Equal Opportunity Division
- External Appeals
- Reviews under the *Government Information (Public Access) Act 2009*
- Mediation
- Internal appeals to Appeal Panel.

The Tribunal has five user groups:

- Freedom of Information
- Privacy
- Guardianship and Protected Estates
- Legal Services Division
- Revenue Division.

The LSD and Revenue groups met twice during the year. There were also meetings with the Information Commissioner in connection with the changes flowing from the GIPA reforms.

## LEGISLATIVE AMENDMENTS

There was one amendment to the *Administrative Decisions Tribunal Act 1997* in the reporting period. The Courts and Crimes Legislation Further Amendment Act 2010 amended sections 55 and 71.

# Appendices

## Appendix A: Financial Information

### Administrative Decisions Tribunal & Legal Services Division Financial Information as at 30 June 2011<sup>1</sup>

	ADT			LSD <sup>2</sup>	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (including Crown Liabilities)	2,202,712	2,138,794	(63,918)	21,552	<b>2,224,264</b>
Property Items	365,487	384,670	19,183		<b>365,487</b>
Other Operating	1,160,411	1,063,796	(96,615)	114,519	<b>1,274,930</b>
Depreciation	68,965	69,724	759		<b>68,965</b>
<b>Total Expenditure</b>	<b>3,797,575</b>	<b>3,656,984</b>	<b>(140,591)</b>	<b>136,071</b>	<b>3,933,646</b>
Total Revenue[3]	<b>(1,949,994)</b>	<b>(895,383)</b>	<b>1,054,611</b>	<b>(136,071)</b>	<b>(2,086,065)</b>
<b>Net Cost Of Services</b>	<b>1,847,581</b>	<b>2,761,601</b>	<b>914,020</b>	<b>0</b>	<b>1,847,581</b>
Less Depreciation	(68,965)	(69,724)	759	0	(68,965)
Less Crown Liabilities	(314,652)	(591,975)	(277,323)	0	(314,652)
<b>Controlled Net Cost Of Services</b>	<b>1,463,964</b>	<b>2,099,902</b>	<b>1,190,584</b>	<b>0</b>	<b>1,463,964</b>

#### Notes

1. This appendix has been based on information supplied by the Department of Attorney General and Justice. The Audit Office had not completed the audit of the Department's financial statements when this information was supplied.
2. Legal Services Division  
The LSD is funded by the Public Purpose Fund. A global amount is contributed towards the operating costs of the Tribunal and is included in the "actual" and "budget" columns of the ADT. Additionally, the costs of members' fees and associated costs and transcription services provided to that Division are separately recouped. These are the amounts shown in the LSD column.
3. Revenue  
The Tribunal received \$2,086,065 in revenue. Of this, \$930,954 was by way of recoupment from the Public Purpose Fund for the cost of operating the LSD and \$1,019,080 was recouped from the Retail Leases Security Bonds Interest Account for the cost of operating the RLD. The balance was general revenue items.

## Appendix B: List of Members and Mediators

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

If a member has been assigned to more than one Division, there is a corresponding entry in each Division.

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

### PRESIDENT

Judge KEVIN PATRICK O'CONNOR, AM to 9 August 2012

### DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY to 7 March 2013  
Assigned as set out below.

### GENERAL DIVISION

#### Divisional Head

Judge KEVIN PATRICK O'CONNOR, AM President

09.08.12

#### Presidential Members assigned to Guardianship and Protected Estates list

Magistrate NANCY LOUISE HENNESSY

07.03.13

#### Deputy Presidents

PETER RAYMOND CALLAGHAN, SC

31.10.13

MICHAEL RAINSFORD CHESTERMAN

02.10.11

Magistrate NANCY LOUISE HENNESSY

07.03.13

SIGRID HIGGINS

09.05.13

Hon. Acting Judge RODNEY NEVILLE MADGWICK, QC

31.10.12

JANE ANNABEL DARLING NEEDHAM, SC

02.11.11

DAVID LOUTHEAN PATTEN

31.10.12

#### Judicial Members assigned to Guardianship and Protected Estates list

LOUISE ANN RACHEL GOODCHILD

31.10.13

PENELOPE HELEN GOODE

31.10.11

CAROLYN HUNTSMAN

31.10.11

SUZANNE MAREE LEAL

31.10.12

JULIAN JOSEPH MILLAR

31.10.12

PETER HENRY MOLONY

31.10.13

#### Judicial Members

CATHERINE LOUISE FITZGERALD

31.10.13

STEPHEN EDWARD FROST

31.10.12

GAIL BARTON FURNESS

31.10.13

YVONNE GRANT

31.10.10

ERAINÉ ELIZABETH GROTTÉ

31.10.10

CAROLYN HUNTSMAN

31.10.11

NAIDA ISENBERG

31.10.12

SUZANNE MAREE LEAL

31.10.12

PETER HENRY MOLONY

31.10.13

STEPHEN HENRY MONTGOMERY

31.10.13

ROBERT BRUCE WILSON

31.10.10

#### Non-judicial Members assigned to Guardianship and Protected Estates list

MARY ELIZABETH BOLT

31.10.13

BARBARA RUTH FIELD

31.10.12

JENNIFER GREEN

31.10.11

RALPH WILLIAM FRANCIS MERRELL

31.10.11

BRUCE GEOFFREY THOMSON

31.10.11

ANN DOMINICA WUNSCH

31.10.12

#### Non-judicial Members, Accredited Certifier

PETER GABRIEL FRIEDMANN

31.10.12

PHILIP ARTHUR HAYWARD

31.10.12

GRAHAM JOHN MALLISON

31.10.12

#### Non-judicial Members

ZITA ROSE ANTONIOS

31.10.11

CLIFFORD DOUGLAS BLAKE, AO

31.10.10

MARY ELIZABETH BOLT

31.10.13

LESHIA OLGA BUBNIUK

31.10.10

ROSS ANDREW EDWARD FITZGERALD

31.10.11

PETER CHARLES GOUDIE (from 01.02.11)

31.10.13

JANETTE BELVA McCLELLAND (from 01.02.11)

31.10.13

PHILIPPA JUDITH SMITH, AM (from 01.02.11)

31.10.13

MICHAEL VON KOLPAKOW (from 01.02.11)

31.10.13

#### Non-judicial Members, Architects

JANE MARGARET JOSE

31.10.13

PATRICK JOHN O'CARRIGAN

31.10.13

PETER ROY WATTS, AM

31.10.13

#### Non-judicial Members, Education

TERENCE RICHARD BURKE, AM

31.10.13

ALAN WILLIAM RICE, AM (from 01.02.11)

31.10.13

JOSEPH RIORDAN, AO

31.10.10

TREVOR WOOTTEN (from 01.02.11)

31.10.13

**Non-judicial Members, Public Health**

ANNEMARIE HENNESSY 31.10.13  
 RICHARD MATTHEWS, AM 31.10.13

**Non-judicial Members, Veterinary Surgeons Discipline**

MAGDOLINE AWAD 31.10.12  
 TANYA LORRAINE CARTER 31.10.12  
 FIONA JENNIFER CLARK 31.10.11  
 ANDREW JONATHAN DART 31.10.12  
 PETER KENNETH KNIGHT 31.10.12  
 ROSALIE JANE MAYO-RAMSAJ 31.10.11

**EQUAL OPPORTUNITY DIVISION****Divisional Head**

Magistrate NANCY LOUISE HENNESSY, Deputy President 07.03.13

**Deputy Presidents**

MICHAEL RAINSFORD CHESTERMAN 02.10.11  
 SIGRID HIGGINS 09.05.13  
 Hon. Acting Judge RODNEY NEVILLE MADGWICK, QC 31.10.12  
 JANE ANNABEL DARLING NEEDHAM, SC 02.11.11  
 DAVID LOUTHEAN PATTEN 31.10.12

**Judicial Members**

JENNIFER LOUISE CONLEY 31.10.13  
 GAIL BARTON FURNESS 31.10.13  
 PENELOPE HELEN GOODE 31.10.11  
 ERAINE ELIZABETH GROTHE 31.10.10  
 CAROLYN HUNTSMAN 31.10.11  
 NAIDA ISENBERG 31.10.12  
 RICHARD JOHN PERRIGNON 31.10.13  
 SIMON JAMES RICE, OAM 31.10.11  
 ANNE SCAHILL 31.10.13  
 MARGARET MARY SMYTH 31.10.10  
 STEPHANIE VASS 31.10.10  
 JOHN ALEXANDER STEVENS WAKEFIELD 31.10.12  
 ROBERTSON JAMES WRIGHT, SC 31.10.12

**Non-judicial Members**

ZITA ROSE ANTONIOS 31.10.11  
 MARY ELIZABETH BOLT 31.10.13  
 BARBARA RUTH FIELD 31.10.12  
 MAREE JANE GILL 30.10.11  
 DENNY GROTH 31.10.13  
 ELAYNE HAYES 31.10.13  
 ELSIE MARY HEISS (from 01.02.11) 31.10.13  
 NOEL ARTHUR HIFFERNAN 31.10.11  
 DINOO KELLEGHAN 31.10.13  
 ANTHEA ELISABETH LOWE 31.10.11  
 JANETTE BELVA McCLELLAND (from 01.02.11) 31.10.13  
 LINDA MARILYN MONAGHAN-NAGLE 31.10.10  
 MIKE MUNIR NASIR (from 01.02.11) 31.10.13  
 MAURICE MICHAEL O'SULLIVAN 31.10.11  
 JOACHIM SCHNEEWEISS, AM 31.10.13  
 JANE LOUISE SCHWAGER, AO (from 01.02.11) 31.10.13  
 PHILIPPA JUDITH SMITH, AM (from 01.02.11) 31.10.13  
 BETTY LORRAINE WEULE 30.04.11  
 TREVOR WOOTTEN (from 01.02.11) 31.10.13

**COMMUNITY SERVICES DIVISION****Divisional Head**

SIGRID HIGGINS 09.05.13

**Deputy President**

Magistrate NANCY LOUISE HENNESSY 07.03.13

**Judicial Members**

LOUISE ANN RACHEL GOODCHILD 31.10.12  
 SUZANNE MAREE LEAL 31.10.12  
 MARGARET MARY SMYTH 31.10.10

**Non-judicial Members**

MARY ELIZABETH BOLT 31.10.13  
 PHILIP FOREMAN 31.10.13  
 JANE GOODMAN-DELAHUNTY 31.10.13  
 JENNIFER GREEN 31.10.11  
 DENNY GROTH 31.10.13  
 JOHN VINCENT LE BRETON 31.10.12  
 JAN MASON 31.10.13  
 JEANETTE McDONALD MOSS, AM \*13.04.11  
 LINDA MARILYN MONAGHAN-NAGLE 31.10.10

**LEGAL SERVICES DIVISION****Divisional Head**

Hon. Justice WAYNE ROGER HAYLEN, Deputy President 15.06.14

**Deputy Presidents**

MICHAEL RAINSFORD CHESTERMAN 02.10.11  
 Hon. Acting Judge RODNEY NEVILLE MADGWICK, QC 31.10.12  
 DAVID LOUTHEAN PATTEN 31.10.12

**Barrister Members**

PAUL EDWIN BLACKET, SC 31.10.12  
 SHARRON NORTON, SC 31.10.11  
 LIONEL PHILIP ROBBERDS, QC 31.10.11  
 WENDY LOUISE ROBINSON, QC 31.10.11  
 ROBERTSON JAMES WRIGHT, SC 31.10.12

**Solicitor Members**

MICHAEL JAMES BARNES 31.10.13  
 JOHN SYDNEY CURRIE 31.10.12  
 DAVID GRAHAM FAIRLIE 31.10.12  
 SANDRA NERYL HALE 31.10.12  
 NAIDA ISENBERG 31.10.12  
 GRAHAM BRIAN MOLLOY \*28.02.11  
 Hon GRAHAM ROBERT MULLANE 31.10.12  
 JOHANNA PHEILS 31.10.13  
 MICHELLE ANNE RIORDAN 31.10.13  
 JOHN ALEXANDER WAKEFIELD 31.10.12

**Licensee Member**

JANICE LOUISE HEDISON 31.10.10

**Non-judicial Members**

CARL DONALD BENNETT 31.10.13  
 LESHIA OLGA BUBNIUK 31.10.10  
 JUDITH FRANCES BUTLIN (from 18.02.11) 31.10.13  
 ROSS ANDREW EDWARD FITZGERALD 31.10.11  
 ELAYNE HAYES 31.10.13  
 SIMON ROBERT HAYES (from 18.02.11) 31.01.13  
 Hon. JOHN TINGLE 31.10.13

**RETAIL LEASES DIVISION****Divisional Head**

MICHAEL RAINSFORD CHESTERMAN, Deputy President 02.10.11

#### Deputy Presidents

PETER RAYMOND CALLAGHAN, SC	31.10.13
Magistrate NANCY LOUISE HENNESSY	07.03.13
SIGRID HIGGINS	09.05.13
Hon. Acting Judge RODNEY NEVILLE MADGWICK, QC	31.10.12
ELIZABETH MARGARET OLSSON, SC	*18.02.11
DAVID LOUTHEAN PATTEN	31.10.12

#### Judicial Members

DENNIS BLUTH	31.10.11
ROBERT JOHN FOX	31.10.11
MARGARET COLLEEN HOLE, AM	31.10.13
GRAHAM BRIAN MOLLOY	*28.02.11
PETER HENRY MOLONY	31.10.13
STEPHEN HENRY MONTGOMERY	31.10.13
KIM BERESFORD RICKARDS	31.10.12

#### Non Judicial Members

JUDITH FRANCES BUTLIN (from 18.02.11)	31.10.13
NEIL FAGG	30.04.11
GARTH WARREN GRIFFITHS	30.04.11
BRIAN TERRY HARRISON	31.10.12
ERIC MICHAEL JAMES LONIE (from 01.02.11)	31.10.13
GARY JOHN PINTER (from 01.02.11)	31.10.13
JANE LOUISE SCHWAGER, AO (from 01.02.11)	31.10.13
TERENCE JAMES TYLER	31.10.12
ROBERT VAUGHAN WARD	31.10.10
BETTY LORRAINE WEULE	30.04.11

#### REVENUE DIVISION

##### Divisional Head

JANE ANNABEL DARLING NEEDHAM, SC	02.11.11
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##### Judicial Members

JULIAN BLOCK	31.10.13
STEPHEN EDWARD FROST	31.10.12
MICHELLE JOSEPHINE HIRSCHHORN	31.10.10
MARGARET COLLEEN HOLE, AM	31.10.13
RICHARD JOHN PERRIGNON	31.10.13
AMARJIT SINGH VERICK	31.10.13

##### Non Judicial Members

CARL DONALD BENNETT	31.10.13
CLIFFORD DOUGLAS BLAKE, AO	31.10.10
JUDITH FRANCES BUTLIN (from 18.02.11)	31.10.13
DANNY KOUTOULAS	31.10.13
JANE LOUISE SCHWAGER, AO (from 01.02.11)	31.10.13

#### MEDIATORS

List of Mediators under s 106 of the ADT Act  
Appointments have been limited to serving members of the Tribunal.

#### COMMUNITY SERVICES DIVISION

PENELOPE HELEN GOODE
DENNY GROTH
SIGRID HIGGINS
ASHLEY LIMBURY
LEIGH BAKER

#### EQUAL OPPORTUNITY DIVISION

ZITA ROSE ANTONIOS
LEIGH BAKER
PENELOPE HELEN GOODE
DENNY GROTH
SIGRID HIGGINS
ASHLEY LIMBURY
JILLIAN MOIR

#### GENERAL DIVISION – GUARDIANSHIP AND PROTECTED ESTATES MATTERS

ZITA ROSE ANTONIOS
LEIGH BAKER
PENELOPE HELEN GOODE
DENNY GROTH
ASHLEY LIMBURY

#### GENERAL DIVISION – FREEDOM OF INFORMATION AND PRIVACY MATTERS

ZITA ROSE ANTONIOS
PENELOPE HELEN GOODE
SIGRID HIGGINS
ASHLEY LIMBURY
JILLIAN MOIR

#### Legend

\* Date of resignation

## Appendix C: Legislation

### Principal Legislation

Administrative Decisions Tribunal Act 1997  
Administrative Decisions Tribunal (General)  
Regulation 2009  
Administrative Decisions Tribunal Rules 1998

### Primary Legislation

Aboriginal Lands Rights Act 1983  
Adoption Act 2000  
Agricultural Livestock (Disease Control Funding) Act 1998  
Agricultural Tenancies Act 1990  
Air Transport Act 1964  
Animal Research Act 1985  
Anti-Discrimination Act 1977  
Apiaries Act 1985  
Architects Act 2003  
Associations Incorporation Act 2009  
Banks and Bank Holidays Act 1912  
Births Deaths and Marriages Registration Act 1995  
Building and Construction Industry Security of Payment Act 1999  
Building Professionals Act 2005  
Business Names Act 2002  
Charitable Fundraising Act 1991  
Child Protection (International Measures) Act 2006  
Child Protection (Offenders Registration) Act 2000  
Children (Care and Protection) Act 1987  
Children (Education and Care Services National Law Application) Act 2010  
Children and Young Persons (Care and Protection) Act 1998  
Children and Young Persons (Care and Protection) Regulation 2000  
Children's Services Regulation 2004  
Coal Industry Act 2001  
Coal Mine Health and Safety Act 2002  
Coal Mine Health and Safety Regulation 2006  
Combat Sports Act 2008  
Commercial Agents and Private Inquiry Agents Act 2004  
Commission for Children and Young People Act 1998  
Community Justices Centres Act 1983  
Community Services (Complaints, Reviews and Monitoring) Act 1993  
Community Services (Complaints, Reviews and Monitoring) Regulation 2004  
Conveyancers Licensing Act 2003  
Co-operative Housing and Starr-Bowkett Societies Act 1998  
Deer Act 2006  
Disability Services Act 1993  
Drug and Alcohol Treatment Act 2007  
Education Act 1990  
Electricity Supply Act 1995  
Electricity (Consumer Safety) Act 2004  
Entertainment Industry Act 1989

Exhibited Animals Protection Act 1986  
Explosives Act 2003  
Fair Trading Act 1987  
Firearms Act 1996  
Firearms Regulation 2006  
First Home Owner Grant Act 2000  
Fisheries Management Act 1994  
Food Act 2003  
Food Regulation 2010  
Forestry Act 1916  
Freedom of Information Regulation 2005  
Game and Feral Animal Control Act 2002  
Gaming Machines Act 2001  
Gas Supply Act 1996  
Government Information (Public Access) Act 2009  
Guardianship Act 1987  
Guardianship Regulation 2005  
Health Care Complaints Act 1993  
Health Practitioner Regulation National Law Regulation  
Health Records and Information Privacy Act 2002  
Hemp Industry Act 2008  
Higher Education Act 2001  
Home Building Act 1989  
Home Building Regulation 2004  
Housing Act 2001  
Hunter Water Act 1991  
Impounding Act 1993  
Institute of Teachers Act 2004  
Legal Profession Act 2004  
Licensing and Registration (Uniform Procedures) Act 2002  
Liquor Act 2007  
Local Government Act 1993  
Lotteries and Art Unions Act 1901  
Marine Safety Act 1998  
Mental Health Regulation 2007  
Mine Health and Safety Act 2004  
Mine Health and Safety Regulation 2007  
Motor Accidents Compensation Act 1999  
Motor Dealers Act 1974  
Motor Vehicle Repairs Act 1980  
Motor Vehicle Sports (Public Safety) Act 1985  
Native Title (New South Wales) Act 1994  
Non-Indigenous Animals Act 1987  
NSW Trustee and Guardian Act 2009  
Occupational Health and Safety Act 2000  
Occupational Health and Safety Regulation 2001  
Occupational Licensing (Adoption of National Law) Act 2010  
Ombudsman Act 1974  
Passenger Transport Act 1990  
Pawnbrokers and Second-hand Dealers Act 1996  
Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011  
Pesticides Act 1999  
Photo Card Act 2005

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Plant Diseases Act 1924  
Police Act 1990  
Powers of Attorney Act 2003  
Privacy and Personal Information Protection Act 1998  
Private Health Facilities Act 2007  
Property, Stock and Business Agents Act 2002  
Public Health Act 2010  
Public Lotteries Act 1996  
Racing Administration Act 1998  
Rail Safety Act 2008  
Regional Relocation (Home Buyers Grant) Act 2011  
Registered Clubs Act 1976  
Registration of Interests in Goods Act 1986  
Relationships Register Act 2010  
Residential Tenancies Act 2010  
Retail Leases Act 1994  
Retail Trading Act 2008  
Rice Marketing Act 1983  
Road Transport (General) Act 2005  
Road Transport (Safety and Traffic Management) Act 1999  
Security Industry Act 1997  
State Water Corporation Act 2004  
Surveying and Spatial Information Act 2002  
Sydney Water Act 1994  
Sydney Water Catchment Management Act 1998  
Taxation Administration Act 1996 ie  
    Betting Tax Act 2001  
    Duties Act 1997  
    Gaming Machine Tax Act 2001  
    Health Insurance Levies Act 1982  
    Insurance Protection Tax Act 2001  
    Land Tax Act 1956  
    Land Tax Management Act 1956  
    Parking Space Levy Act 1992  
    Payroll Tax Act 2007  
Thoroughbred Racing Act 1996  
Timber Marketing Act 1977  
Tow Truck Industry Act 1998  
Travel Agents Act 1986  
Travel Agents Regulation 2006  
Valuers Act 2003  
Veterinary Practice Act 2003  
Weapons Prohibition Act 1998  
Wine Grapes Marketing Board (Reconstitution) Act 2003  
Wool Hide and Skin Dealers Act 2004  
Workers Compensation Regulation 2003  
Workplace Injury Management and Workers Compensation Act 1998  
Youth and Community Services Act 1973

## Appendix D: Case Load and Time Standards

### Case Load

	All Divisions			Appeal Panel - Internal		
	Applications Lodged	Applications Completed	Applications Pending#	Appeals Lodged	Appeals Completed	Appeals Pending(a)
1998-1999	625 (b)	234	391(c)	8	2	6
1999-2000	568	619	340*	44	20	30
2000-2001	666	629	377	53	45	38
2001-2002	695	642	430	61	59	40
2002-2003	766	817	379	73	67	46
2003-2004	908	791	496	65	89	21
2004-2005	919	910	505	77	59	39
2005-2006	969	913	561	82	74	47
2006-2007	1009	954	616	80	76	51
2007-2008	989	955	650	83	84	50
2008-2009	990	952	672	75	82	42
2009-2010	871	988	537	85	84	41
2010-2011	864	933	466	57	62	35
<b>Total</b>	<b>10839</b>	<b>10337</b>		<b>843</b>	<b>803</b>	

#### NOTES TO TABLE

(a) The figures recorded in the columns "Applications pending" and "Appeals lodged" have not been retrospectively audited or reconciled with either previous or succeeding periods.

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

(c) Date of commencement: 6 October 1998

### Appeal - External

	Appeals Lodged	Appeals Completed	Appeals Pending#
2002-2003*	1	0	0
2003-2004	28	21	8
2004-2005	19	21	6
2005-2006	17	18	5
2006-2007	15	14	6
2007-2008	21	19	8
2008-2009	20	22	4
2009-2010	20	19	5
2010-2011	13	14	4
<b>Total</b>	<b>153</b>	<b>148</b>	<b>4</b>

\*External appeals jurisdiction commenced - 28 February 2003

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## Time Standards

As at 30 June 2011 the Tribunal's performance against its time standards was:  
(target appears in brackets)

### **General Division**

65% of matters disposed of in less than 6 months (85%)  
96% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –103%

---

### **Community Services Division**

65% of matters disposed of in less than 6 months (85%)  
94% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –71%

---

### **Equal Opportunity Division**

76% of matters disposed of in less than 1 year (80%)  
90% of matters disposed of in less than 2 years (100%)

Clearance ratio\* –130%

---

### **Retail Leases Division**

69% of matters disposed of in less than 6 months (85%)  
81% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –121%

---

### **Revenue Division**

47% of matters disposed of in less than 6 months (85%)  
78% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –94%

---

### **Legal Services Division**

62% of matters disposed of in less than 9 months (90%)  
68% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –86%

---

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

59% of matters disposed of in less than 6 months (80%)  
96% of matters disposed of in less than 1 year (100%)

Clearance ratio\* –108%

---

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

# Appendix E: Statistics

## General Division 1/7/2010 - 30/6/2011

### 1. Case flow 2010-2011

Matters pending at 30 June 2010	New applications filed	Disposals	Pending as at 30 June 2011
182	344	357	169

### 2. Applications by type 2010-2011

Applications for Original Decision	Applications for review	Professional Discipline
0	344	2

### 3. Applications by Act 2010-2011

Architects Act 2003	
Births Deaths and Marriages Registration Act 1995	6
Building Professionals Act 2005	2
Business Names Act 2002	1
Charitable Fundraising Act 1991	1
Commercial and Private Inquiry Agents Act 2004	1
Conveyancers Licensing Act 2003	1
Firearms Act 1996	29
Food Act 2003	2
Freedom of Information Act 1989	19
Government Information (Public Access) Act 2009	38
Guardianship Act 1987	8
Health Records and Information Privacy Act 2002	1
Higher Education Act 2001	1
Home Building Act 1989	23
Motor Dealers Act 1974	2
Motor Vehicle Repairs Act 1980	3
Motor Vehicle Sport (Public Safety) Act 1985	1
NSW Trustee and Guardian Act 2009	11
Privacy and Personal Information Protection Act 1998	43
Passenger Transport Act 1990	68
Property, Stock and Business Agents Act 2002	23
Protected Estates Act 1983	1
Security Industry Act 1997	33
Shop Trading Act 2008	3
Transport Administration Act 1988	1
Tow Truck Industry Act 1998	8
Vocational Education and Training Accreditation Act 2005	4
Vocational Education and Training Act 2005	10

### 4. Outcomes in review matters 2010-2011

Dismissed because application withdrawn/no appearance/agreement reached	Decision under review affirmed	Decision under review set aside/varied/recommended made	Mixed result - Partly Affirmed/Partly set aside varied or remitted	Privacy - contravention - no action	Privacy - contravention order made	Privacy - application dismissed	No Jurisdiction
202	61	62	4	9	2	2	10

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**5. Outcomes in Original matters 2010-2011**

Dismissed because application withdrawn/no appearance/ agreement reached	Application granted	Application refused	No Jurisdiction
0	0	0	0

**6. Outcomes in Professional Discipline 2010-2011**

Dismissed	Orders made	Application withdrawn dismissed	No jurisdiction
1	4	0	0

**7. Timeliness - time from date of application to date of disposal 2010-2011**

No. disposed of in under 6 months	233
No. disposed of in under 12 months	72
No. disposed of in over 12 months	39
No. disposed of in over 2 years	13
	357

**8. Mediation 2010-2011**

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
	11	5	2

## Guardianship and Protected Estates List 1/7/2010 - 30/6/2011

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

**1. Case Flow-Guardianship and Protected Estates Review Matters 2010-2011**

Pending as at 30 June 2010	New Applications Filed	Disposals	Pending as at 30 June 2011
3	20	14	9

\* 2 adjustment after audit

**2. Applications for Review by Act 2010-2011**

Subject by Act	Number
NSW Trustee and Guardian Act 2009	20

**3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2010-2011**

Dismissed because application withdrawn/ no appearance/ agreement reached	Decision under review affirmed	Decision under review set aside/varied/ remitted/ recommendation made	Mixed result - Partly Affirmed/ Partly set aside varied or remitted	No Jurisdiction	Total
8	1	2	2	1	14

**4. Timeliness-time from date of application to date of disposal 2010-2011**

No. disposed of in under 6 months	10
No. disposed of in under 12 months	2
No. disposed of in over 12 months	1
No. disposed of in over 2 years	0

## Community Services Division 1/7/2010 - 30/6/2011

### 1. Case flow 2010-2011

Matter pending as at 30 June 2010	New Applications filed	Disposals	Pending as at 30 June 11
14	49	35	28

### 2. Applications by type 2010-2011

Applications for original decision	Applications for review
12	37

### 3. Applications by Act 2010-2011

Subject Act	Number
Children and Young Persons (Care and Protection) Act 1988	11
Commission for Children and Young People Act 1998	11
Disability Services Act 1993	2
Community Services (Complaints Reviews and Monitoring) Act 1993	25

### 4. Outcomes - Reviewable Decisions 2010-2011

Dismissed because application withdrawn/no appearance/agreement reached	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
23	0	0	0	3

### 5. Outcomes- Original Decisions 2010-2011

Dismissed because application withdrawn/no appearance/agreement reached	Declaration Made	Declaration Refused	No Jurisdiction
3	5	0	1

### 6. Mediation 2010-2011

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
6	3	2	1

### 7. Timeliness - time from date of application to date of disposal 2010-2011

No. disposed of in under 6 months	23
No. disposed of in under 12 months	10
No. disposed of in over 12 months	2
No. disposed of in over 2 years	0

## Equal Opportunity Division 1/7/2010 - 30/6/2011

### 1. Case flow 2010-2011

Matters pending at 30 June 2010	New Applications filed	Disposals	Pending as at 30 June 2011
112	128	167	73

### 2. Applications by type 2010-2011

Referrals of complaints by President of Anti-Discrimination Board	Application for registration of conciliation agreement	Applications for leave to proceed	Applications for interim orders	Application for Exemption
102	1	24	1	0

### 3. Referrals of Complaints by President of Anti-Discrimination Board by Ground 2010-2011

Head of discrimination**	Number
Race	30
Disability discrimination	27
Sexual harassment	8
Sex discrimination	9
Victimisation	2
Carers responsibilities	3
Age discrimination	8
Homosexual vilification	4
Homosexual discrimination	2
Racial vilification	3
Pregnancy discrimination	1
Transgender vilification	1
Marital Status discrimination	4

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

### 4A. Outcomes of referrals 2010-2011

Dismissed because application withdrawn/no appearance/agreement reached	Summary dismissal under section 111,s 102	Dismissed after hearing	Orders made
108	4	18	12

### 4B. Mediation 2010-2011

No. of disposals where mediation was conducted	Settled at or after Mediation	Proceeded to Hearing	Percentage of finalised matters resolved at mediation
59	52	7	36%

### 4C. Timeliness - time from date of application to date of disposal 2010 - 2011

for referrals	
No. disposed of in under 6 months	88
No. disposed of in under 12 months	37
No. disposed of in over 12 months	23
No. disposed of in over 2 years	19

### 5A. Application for registration of conciliation agreement 2010 - 2011

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

Matters pending at 30 June 2010	New Applications filed	Disposals	Pending as at 30 June 2011
0	1	1	0

**5B. Outcome of application for registration of agreement 2010-2011**

Agreement registered	Agreement not registered	Dismissed because application withdrawn / no appearance/ agreement reached
0	0	1

**5C. Timeliness - time from date of application to date of disposal 2010-2011**

for registration of agreement

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

**6A. Applications for leave to proceed 2010-2011**

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

Matters pending at 30 June 2010	New applications filed	Disposals	Pending at 30 June 2011
1*	24	21	6

\*2 pending adjusted from audit

**6B. Outcome of applications for leave 2010-2011**

Leave granted	Leave not granted	Dismissed because application withdrawn / no appearance/ agreement reached
5	9	7

**6C. Timeliness - time from date of application to date of disposal 2010-2011**

for leave applications

No. disposed of in under 6 months	20
No. disposed of in under 12 months	1
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

**7A. Applications for interim orders 2010-2011**

New Applications Filed	Disposals
1	2

**7B. Outcome of applications for interim orders 2010-2011**

Order granted	Order not granted	Consent orders	Application withdrawn dismissed
1	1	0	1

**7C. Timeliness - time from date of application to date of disposal 2010-2011**

for interim orders

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

**8. Review of exemption decision s126 2010-2011**

Matters pending at 30 June 2010	New applications filed	Disposals	Pending as at 30 June 2011
1	0	1	0

## Retail Leases Division 1/7/2010 - 30/6/2011

### 1. Case flow 2010-2011

Matters pending at 30 June 2010 *112	Applications filed 198	Disposed 242	Pending as at 30 June 2011 67
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\*Database audit corrected to 111

### 2. Applications by type 2010 - 2011

Retail tenancy claim	99	127	40
Unconscionable conduct claim	6	6	2
Combined retail tenancy & unconscionable conduct claim	45	57	18
Specialist Retail Valuer	48	50	9

### 3. Outcomes 2010 - 2011

Dismissed because application withdrawn / no appearance / agreement reached	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
63	18	72	85	3	1

### 4. Timeliness - time from date of application to date of disposal 2010-2011

No. disposed of in under 6 months	165
No. disposed of in under 12 months	31
No. disposed of in over 12 months	23
No. disposed of in over 2 years	23

## Revenue Division 1/7/2010- 30/6/2011

### 1. Case flow 2010-2011

Matters pending at 30 June 2010 68	Applications filed 108	Disposals 102	Matters pending as at 30 June 2011 74
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### 2. Applications by type 2010 - 2011\*

Subject Act	
Duties Act 1997	19
First Home Owners Grant Act	15
Land Tax Act	2
Land Tax Management Act 1956	51
Payroll Tax Act 1971	1
Payroll Tax Act 2007	16
Taxation Administration Act 1996	4

### 3. Outcomes 2010 - 2011

Dismissed because application withdrawn / no appearance / agreement reached	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
65	28	6	3	0

### 4. Timeliness - time from date of application to date of disposal 2010-2011

No. disposed of in under 6 months	48
No. disposed of in under 12 months	32
No. disposed of in over 12 months	18
No. disposed of in over 2 years	4

## Legal Services Division 1/7/2010- 30/6/2011

### 1. Case flow 2010-2011

Matters pending at 30 June 2010	Applications filed	Disposed	Pending as at 30 June 2011
48	37	33	52

### 2. Applications by type 2010-2011

Applications for original decision	2
Applications for review	1
Application for professional discipline	34

### 3. Applications by subject 2010-2011

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	4
Solicitor	Disciplinary action	27
Solicitor	Reprimand/Compensation Order s.540	1
Lay associate	Approval of lay associate s. 17(3)	2
Lay associate	Prohibition on employment s.18	1
Solicitor	Application under s 70(3)	2

### 4. Outcomes in Original matters 2010-2011\*

#### *Disciplinary - Penalty imposed by type*

Dismissed after hearing	3
Fined	10
Reprimanded	20
Removed from Roll	7
Conditions imposed on practising certificate	1
Undertake and complete course of further legal education	4
Approval of lay associate	
Application granted	1
Withdrawn	1

\*NB: a number of matters have more than one outcome

### 5. Outcomes in review matters 2010 - 2011

Application withdrawn/ dismissed	0
Decision under review affirmed 2	
Decision under review set aside/ varied/ remitted/ recommendation made	1

### 6. Timeliness - time from date of application to date of disposal 2010-2011

No. disposed of in under 6 months	13
No. disposed of in under 12 months	9
No. disposed of in over 12 months	8
No. disposed of in over 2 years	3

## Appeals 1/7/2010 - 30/6/2011

### Internal Appeals to Appeal Panel

#### 1. Case Flow 2010-2011

	Appeals Pending as 30 June 2010	New Appeals filed	Disposals	Pending as at 30 June 2011
General Division	23	30	36	17
Community Services Division**	2	1	0	1
Equal Opportunity Division	7	7	9	5
Retail Leases Division	3	11	8	6
Revenue Division	7	8	9	6
Total	42	57	62	35

#### 1a Interlocutory appeals 2010-2011

(this figure forms part of the Internal appeal case flow statistics above)	Interlocutory appeal filed	Disposals	Pending as at 30 June 2011
	6	11	4

#### 2. Outcome of Internal Appeals 2010-2011

	Upheld	Dismissed	No jurisdiction	Consent Orders	Withdrawn/Discontinued	Total
General Division	3	27	1	0	5	36
Community Services Division	0	0	0	0	0	0
Equal Opportunity Division	2	7	0	0	0	9
Retail Leases Division	2	5	0	0	1	8
Revenue Division	0	8	0	0	1	9
Total	7	47	1	0	7	62

#### 2a Interlocutory appeals 2010-2011

(this figure forms part of the Internal appeal case flow statistics above)	Leave to proceed refused and dismissed	Leave granted but dismissed	Leave granted & appeal upheld
	9	0	2

#### 3. Timeliness - time from date of appeal to date of determination 2010-2011

No. disposed of in under 6 months	45
No. disposed of in under 12 months	28
No. disposed of in over 12 months	1
No. disposed of in over 2 years	2

### External Appeals to the Appeal Panel

#### 1. Case Flow 2010-2011

	Appeals Pending as 30 June 2010	New Appeals filed	Disposals	Pending as at 30 June 2011
Guardianship Tribunal	5	13	14	4
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	0	0	0
Total	5	13	14	4

#### 2. Outcome of External Appeals 2010-2011

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	No Jurisdiction
5	8	1	0

### 3. Timeliness -time from date of application to date of disposal 2010-2011

No. disposed of in under 6 months	11
No. disposed of in under 12 months	3
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

### Published Appeal Decisions- Presiding Member 2010-2011

Member	Internal Appeals	External Appeals	Total
O'Connor, P	23	1	24
Hennessy, DP	14	8	22
Chesterman, DP	8	0	8
Needham, DP	5	0	5
Higgins, DP	0	1	1
Callaghan, DP	6	0	6
Madgwick, DP	1	0	1
Patten, DP	3	0	3

## Applications to the Supreme Court or Court of Appeal

### 1. Case flow 2010-2011

	New appeals filed	Disposals
General Division	1	0
Community Services Division	1	2
Equal Opportunity Division	0	0
Retail Leases Division	0	0
Revenue Divison	0	0
Legal Services Division	1	2
Appeal Panel	11	8
Appeal External	0	0
Total	14	12

Note : this data is based on information provided by parties and may not be complete.

### 2. Outcome of Supreme Court matters 2010-2011

	Upheld (in full or part)	Dismissed discontinued	Withdrawn/	Orders made following s 118 referral
General Division	0	0	0	0
Community Services Division	1	1	0	0
Equal Opportunity Division	0	0	0	0
Retail Leases Division	0	0	0	0
Revenue Divison	0	0	0	0
Legal Services Division	0	2	0	0
Appeal Panel	0	7	1	0
Appeal External	0	0	0	0
Total	1	10	1	0

## Appendix F: Significant Appeal Cases

This Summary covers the reporting year period, 1 July 2010 to 30 June 2011.

### Appeals to Court of Appeal

#### (A) From Appeal Panel

*Avilion Group Pty Ltd v Commissioner of Police* [2010] NSWCA 275

EVIDENCE – evidence of events at earlier hearing

Earlier proceedings in the same matter had been held to be void because the coram of the Tribunal was invalid. On the rehearing of the matter the Tribunal admitted evidence of events at the earlier hearing. Held: the evidence of events at the earlier hearing was admissible. So long as the Tribunal at the second hearing gave a fair hearing on its intention to admit the evidence of events at the first hearing there was no other reason why that material could not be admitted.

*Preston v Commissioner for Fair Trading* [2011] NSWCA 40

JURISDICTION – original jurisdiction – *Home Building Act 1989* ("HB Act") Held: a decision made by the Director-General under section 62 HB Act to reprimand the holder of an authority who has engaged in improper conduct is a decision to "impose a penalty" within section 83B(3)(a) and thus the Administrative Decisions Tribunal has jurisdiction to review the decision.

*Potier v Director-General, Department of Justice & Attorney General* [2011] NSWCA 105 (Handley AJA)

JURISDICTION – appellate jurisdiction – appellant appealed from a decision of the Appeal Panel dismissing an appeal from three decisions in the review jurisdiction (General Division).

(1) Refusal of leave to appeal from a costs decision

*Held:* the factor taken into account in refusing leave that the amount of costs was small was a permissible consideration.

(2) Refusal to refer conduct of an agency to the Attorney-General under *Freedom of Information Act 1989* (repealed) s58, refusal to refer conduct of an agency to the Supreme Court as contempt under ADT Act s 131

*Held:* neither of these decisions are appealable decisions within the meaning of ADT Act s112: they are ministerial decisions not judicial decisions.

*Chand v RailCorp (No 2)* [2011] NSWCA 80

COSTS – appellate jurisdiction – proceedings in the Equal Opportunity Division involved a protracted procedural history prior to hearing at first instance and on appeal. Some costs orders were made following the hearing at first instance and others were refused. – *held:* An Appeal Panel can make an award of costs in connection with the proceedings at first instance.

*Northern NSW Football Ltd v Chief Commissioner of State Revenue* [2011] NSWCA 51

*Payroll Tax Act 2007* s 48 – the appellant, a not for profit organisation established for the promotion of soccer, claimed exemption from payroll tax under *Payroll Tax Act 2007* s 48 as an organisation having a "charitable or benevolent purpose" – Appeal Panel rejects its claim. On appeal *held*, dismissing the appeal: The promotion of a healthy sport, such as soccer, although beneficial to the participants and the public is not a

charitable purpose: and the promotion of a sport was not a benevolent purpose.

### **(B) From Legal Services Division**

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*Bechara v Legal Services Commissioner* [2010] NSWCA 369

PROFESSIONAL MISCONDUCT – costs – legal practitioner acted for three clients whose proceedings were heard together with evidence in one being evidence in the other – practitioner’s failure to apportion hearing costs constituted professional misconduct – *held*: where a solicitor acts for multiple clients whose proceedings are heard together with evidence in one being evidence in the other, and the clients are charged on a time-costed basis, there must be an apportionment of time spent on matters common to two or more of the proceedings – one unit of time cannot be charged more than once.

*Fitzgibbon v Council of New South Wales Bar Association* [2011] NSWCA 165

APPEAL – plaintiff commenced common law judicial review proceedings as of right seeking to quash an interlocutory decision of the Legal Services Division – under LPA s 729A a party can appeal by leave from interlocutory decisions of the Legal Services Division – *held*: proceedings dismissed – it is an abuse of process in the Supreme Court for a person with appeal rights under LPA s 729A to instead take judicial review proceedings.

### **(C) From Community Services Division**

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*Commissioner for Children and Young People v FZ* [2011] NSWCA 111

ORIGINAL JURISDICTION – evidence – procedural fairness – admission and reliance on hearsay evidence – *Commission for Children and Young People Act 1998*

Proceedings in ADT seeking exemption from “prohibited person” order relied on a statement from the victim of applicant’s actions. The victim, the maker of the statement, was never called or made available for cross-examination yet weight was placed by Tribunal on the hearsay evidence. The issue on appeal was whether the use made of the hearsay evidence was contrary to ADT Act s 73(2) as a breach of the rules of natural justice? members of the Court all agreed there had been a breach of the rules of procedural fairness, but for differing reasons.

### (4) From Single Judge Judicial Review rulings relating to the Tribunal

*Commissioner of Police v Sleiman* [2011] NSWCA 21

PRACTICE AND PROCEDURE – This case concerned the procedure to be adopted by the Tribunal in relation to reliance by the Commissioner of Police on confidential criminal information in making a revocation of licence decision. The Tribunal had declined to allow the licensee to be represented by a special advocate who could have access to the material in closed session, and question it. On judicial review, the single judge of the Supreme Court allowed that procedure. The Commissioner appealed. The Court upheld the appeal, but said that it was permissible for the Tribunal to appoint a counsel assisting the Tribunal who could have access to the material in closed session and question it.

The Tribunal has since adopted the counsel assisting procedure in these proceedings.

## Supreme Court - First Instance

There were no single judge rulings of significance affecting the ADT during the reporting period. There was an important practice ruling going to filings in the Supreme Court which seek to bypass the Appeal Panel.

*Black v Hunter New England Health Service* [2010] NSWSC 1252 (RA Hulme J)

APPEAL – proceedings in Supreme Court without prior decision of Appeal Panel

The applicant commenced proceedings in the Supreme Court seeking orders to set aside a decision of the Tribunal at first instance. They had not first sought to appeal to the Appeal Panel. *Held*: the statutory rights of appeal to the Supreme Court in the ADT Act cannot be used without first appealing to the Appeal Panel. The Court will not normally make orders in its common law judicial review jurisdiction where the applicant has not used their statutory right of appeal to the Appeal Panel under the ADT Act.

## Appeals to Appeal Panel

### (A) From General Division

*Department of Education and Training v VK* [2010] NSWADTAP 52

PRIVACY – Jurisdiction – whether the Department was bound by the *Privacy and Personal Information Protection Act 1998* – High school students used school computers to access derogatory statements about applicant, a teacher, that appeared on publicly available websites – they stored copies of the data in the computers – alleged that school delayed in blocking access – Whether

Department can be said to ‘hold’ or ‘control’ that data and have breached the security safeguards principle.

*Held*: the mere provision by agency of computer access facilities to a resident population such as students in a school setting does not of itself make the agency a holder or controller of downloaded data and responsible for its management – therefore the circumstances did not fall under the Act.

*Department of Education and Training v EM* [2011] NSWADTAP 4

(1) PRIVACY – Jurisdiction – Application for Review of Conduct – whether the applicant was time barred from bringing the applicant – Depended on when he “first became aware” of the conduct put in issue – PPIPA, s 53(3)(d); HRIPA.

*Held*: the phrase “first became aware of” refers to actual or subjective knowledge of the applicant, not constructive or objective knowledge.

(2) EVIDENCE – the only evidence considered by the Tribunal as to the state of awareness was that of the applicant’s agent, his mother – whether the applicant’s own state of awareness should have been considered.

*Held*: In the circumstances of the case, the applicant’s own evidence should have been considered – applicant should have been called, or the failure of the agent to call the applicant should have been considered in making an assessment of the agent’s credit.

## **(B) From Equal Opportunity Division**

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*Rae v Commissioner of Police, New South Wales Police Force* [2011] NSWADTAP 30

COSTS - appeal by applicant against costs order made against him following application by respondent agency and after he had withdrawn the case - Tribunal had regard to the unsatisfactory way he conducted his case over several years, and made an exceptional costs order against the applicant that covered much of the period the case was before the Tribunal - the applicant appealed against the costs order -

*Held:* appeal allowed in part. Tribunal disregarded an agency pre-trial offer made close to the date of trial under which it would waive all costs in exchange for withdrawal of the complaint prior to trial - the closing date for the offer was the Friday before the Wednesday trial date - withdrawal made on the Monday morning before the Wednesday - Litigant in person - Appeal Panel ruled lateness of the withdrawal did not deprive the offeror of the substantial benefit that would flow from withdrawal - closure and the avoidance of the costs of trial. These remained a relevant consideration. Appeal extended to merits - order varied to confine costs payable by the offer - costs order varied by limiting costs to the period between the deadline for the offer and the date of actual withdrawal.

*Commissioner of Police, NSW Police Force v Butcher* [2011] NSWADTAP 9

EVIDENCE - a complaint lodged on 23 November 2007 was dealt with by the President of the Anti-discrimination Board on the basis that the start of the complaint period was 30 May 2006 - Tribunal took into account evidence of events and circumstances prior to that time.

*Held:* error of law - failure to correctly apply *Wollongong City Council v Bonella* [2002] NSWADTAP 26 as to when evidence of a continuing discrimination commencing prior to period of complaint can be properly taken into account.

## **(C) From Retail Leases Division**

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*Goldberg Enterprises Pty Ltd v Online IT Services Pty Ltd* [2011] NSWADTAP 21

DAMAGES - adequacy of evidence of damages following tenant's vacation of premises.

*Wallis Lake Fisherman's Co-operative Ltd v ACN 079 830 595 Pty Ltd t/as Jolly Joe's Fish 'n' Chips (No 2)* [2011] NSWADTAP 29

COSTS - retail lease - admissibility of offer of compromise made during mediation - *Held:* evidence from this source is inadmissible due to RLA s 69.

*Troubridge v Morris* [2010] NSWADTAP 70

COSTS - small error in calculation of amount of final order set off against assessment of costs - fixed amount costs orders - orders varied - otherwise, appeal dismissed.

## **(D) From Guardianship Tribunal**

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*VM v NSW Trustee and Guardian* [2011] NSWADTAP 13

MATERIALITY - Guardianship Tribunal - appointment of financial manager - adequacy of statement of reasons - application before the Guardianship Tribunal involved questions of fact sensitive to the personal relationships between the parties. Guardianship Tribunal makes no express findings about them, but instead expressed the view that it had "concerns" about evidence bearing on those questions.

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*Held:* These questions of fact were material questions of fact so the failure to make findings, but instead to note "concerns", meant the reasons were an inadequate set of reasons contrary to *Guardianship Act 1987* s 68(1B).

*UB v NSW Trustee and Guardian* [2010] NSWADTAP 71

PROCEDURAL FAIRNESS – Guardianship Tribunal – application to appoint financial manager – procedural fairness – medical reports relevant to the issues considered by the Guardianship Tribunal but not disclosed to one of the parties – held: breach of fair hearing rule.

## Appendix G: Decisions Organised into Division and Internal and External Appeal Panel, from 1 January 2011

### INTERNAL APPEALS 1 JANUARY 2011 TO 15 AUGUST 2011 (1)

Haddad v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 35
NSW Vocational Education and Training Accreditation Board v Focal Holdings Pty Ltd (No 2) (GD)	[2011] NSWADTAP 34
Rae v Commissioner of Police, New South Wales Police Force (GD)	[2011] NSWADTAP 30
Wallis Lake Fisherman's Co-operative Ltd v ACN 079 830 595 Pty Ltd t/as Jolly Joe's Fish 'n' Chips (No 2) (RLD)	[2011] NSWADTAP 29
Potier v Department of Corrective Services (GD)	[2011] NSWADTAP 28
Campbell v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 27
Z v Department of Education and Training (GD)	[2011] NSWADTAP 26
Burns v Nine Network Australia Pty Ltd (GD)	[2011] NSWADTAP 25
WK v NSW Trustee and Guardian (GD)	[2011] NSWADTAP 24
ACE v Director General, Department of Education and Training (EOD)	[2011] NSWADTAP 23
Goldberg Enterprises Pty Ltd v Online IT Services Pty Ltd (RLD)	[2011] NSWADTAP 21
Jones And Harbour Radio Pty Limited v Trad (EOD)	[2011] NSWADTAP 19
Hayward v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 17
Department of Transport and Infrastructure v Murray (GD)	[2011] NSWADTAP 16
KP v Narrandera Shire Council (GD)	[2011] NSWADTAP 15
KP v Narrandera Shire Council (GD)	[2011] NSWADTAP 14
Chief Commissioner of State Revenue v Kelly (No.3) (RD)	[2011] NSWADTAP 12
NSW Vocational Education and Training Accreditation Board v Focal Holdings Pty Ltd (GD)	[2011] NSWADTAP 11
KT v Sydney Local Health Network (formerly Sydney South West Area Health Service) (GD)	[2011] NSWADTAP 10
Commissioner of Police, NSW Police Force v Butcher (EOD)	[2011] NSWADTAP 9
KT v Sydney Local Health Network (formerly Sydney South West Area Health Service) (No. 2) (GD)	[2011] NSWADTAP 8
Media Research Group Pty Ltd v Department of Premier and Cabinet (GD)	[2011] NSWADTAP 7
A & J Verdi Pty Ltd v Uckan (No 2) (RLD)	[2011] NSWADTAP 6
Department of Education and Training v EM (GD)	[2011] NSWADTAP 4
LN v Sydney South West Area Health Service (GD)	[2011] NSWADTAP 3
The Investment 1 Pty Ltd v Subway Realty Pty Ltd (RLD)	[2011] NSWADTAP 2
Perry Properties Pty Ltd v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 1

Note 1: The two or three letter code in brackets next to the name of the case refers to the source division of the appeal

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#### EXTERNAL APPEALS DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
FX v NSW Trustee and Guardian	[2011] NSWADTAP 31
WL v NSW Trustee and Guardian	[2011] NSWADTAP 22
XA v NSW Trustee and Guardian	[2011] NSWADTAP 20
AAD v NSW Trustee and Guardian, AAE, AAF, AAG	[2011] NSWADTAP 18
VM v NSW Trustee and Guardian	[2011] NSWADTAP 13
FX v NSW Trustee and Guardian	[2011] NSWADTAP 5

#### GENERAL DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
Assi v Department of Transport and Infrastructure	[2011] NSWADT 192
Hawkins v Commissioner of Police, NSW Police Force	[2011] NSWADT 190
Ware v Director General, Transport NSW	[2011] NSWADT 189
McGuirk v University of New South Wales	[2011] NSWADT 182
Boutros v Director - General Department of Finance and Services, New South Wales Fair Trading	[2011] NSWADT 181
ABJ v Public Guardian	[2011] NSWADT 172
KT v Sydney Local Health Network	[2011] NSWADT 171
AEF v Northern Sydney Local Health District	[2011] NSWADT 170
McGuirk v University of New South Wales	[2011] NSWADT 169
VK v Department of Education and Training (No. 3)	[2011] NSWADT 168
ACV v Public Guardian and ACX	[2011] NSWADT 167
TB v South Eastern Sydney Illawarra Area Health Service	[2011] NSWADT 165
Ornelas v Director-General, Department of Services, Technology & Training	[2011] NSWADT 163
QB v Greater Southern Area Health Service (No. 2)	[2011] NSWADT 162
Carr v Director-General, Department of Finance and Services	[2011] NSWADT 157
McGuirk v NSW Police Force	[2011] NSWADT 155
Psychopoulos v Northern Sydney Central Coast Area Health Service	[2011] NSWADT 151
UE & UD v NSW Trustee and Guardian & Guardian	[2011] NSWADT 150
TQM Design and Construct Pty Ltd v Department of Services, Technology & Administration	[2011] NSWADT 144
Rima v Commissioner of Police, NSW Police Force	[2011] NSWADT 141
WS v NSW Trustee and Guardian	[2011] NSWADT 138
Ezekeil v Registrar of Births, Deaths and Marriages	[2011] NSWADT 137
Alam v Ministry of Transport	[2011] NSWADT 136
Kocoski v Department of Services, Technology and Administration	[2011] NSWADT 135
Building Professionals Board v Cohen	[2011] NSWADT 134
Legian Shore Pty Ltd v Office of Fair Trading, Department of Commerce	[2011] NSWADT 132
Elfalak v Commissioner of Police, NSW Police Force	[2011] NSWADT 131
Ebadi v Transport NSW	[2011] NSWADT 126
QN & ors v Commissioner of Fire Brigades	[2011] NSWADT 125

Tannous v Commissioner of Police	[2011] NSWADT 116
Doyle v NSW Maritime	[2011] NSWADT 113
Bennett v Building Professionals Board	[2011] NSWADT 111
Norrie v Registry of Births Deaths and Marriages	[2011] NSWADT 102
AF v Healthquest & Another	[2011] NSWADT 99
Richards v Commissioner, Department of Corrective Services	[2011] NSWADT 98
Eloss v Commissioner of Police, New South Wales Police Force	[2011] NSWADT 97
Soliman v Director General, Transport NSW	[2011] NSWADT 94
Mouwad v Commissioner of Police, NSW Police Force	[2011] NSWADT 93
Nasour v Director-General, Transport NSW	[2011] NSWADT 91
QB v Greater Southern Area Health Service	[2011] NSWADT 90
PV v NSW Trustee and Guardian	[2011] NSWADT 89
Flood v Commissioner of Police, NSW Police Force	[2011] NSWADT 88
NK v Northern Sydney Central Coast Area Health Service (No.2)	[2011] NSWADT 81
QQ v Commissioner of Police, NSW Police Force (No.2)	[2011] NSWADT 79
AF v Roads and Traffic Authority	[2011] NSWADT 69
SL v University of Sydney	[2011] NSWADT 65
JT v Technical and Further Education Commission	[2011] NSWADT 63
Menon v Director General, Transport NSW	[2011] NSWADT 62
VE v Department of Human Services, Community Services	[2011] NSWADT 60
Keene and Director-General, Department of Justice and Attorney-General (Commissioner, Corrective Services, NSW)	[2011] NSWADT 59
Brandusoiu v Commissioner of Police, NSW Police Force	[2011] NSWADT 57
QQ v Commissioner of Police, NSW Police Force	[2011] NSWADT 54
Potier v Department of Corrective Services	[2011] NSWADT 53
UH v Department of Justice & Attorney General	[2011] NSWADT 49
PZ v NSW Trustee and Guardian	[2011] NSWADT 48
Assadourian v Roads and Traffic Authority	[2011] NSWADT 46
Ambrosio v Ambulance Service of NSW	[2011] NSWADT 45
LN v Sydney South West Area Health Service	[2011] NSWADT 44
Altaranesi v Sydney South West Area Health Service	[2011] NSWADT 43
AI-Najjar v Director General Transport NSW	[2011] NSWADT 38
OS v Mudgee Shire Council (No. 2)	[2011] NSWADT 34
Altaranesi v NSW Self Insurance Corporation (No. 2)	[2011] NSWADT 28
Lambell v Department of Justice and Attorney General	[2011] NSWADT 23
Confos v Department of Transport and Infrastructure	[2011] NSWADT 22
Kamis v Director-General, Department of Transport and Infrastructure	[2011] NSWADT 21
SW v Northern Sydney Central Coast Area Health Service	[2011] NSWADT 19
Challita v NSW Department of Education and Training	[2011] NSWADT 16
Zaineddine v Department of Services Technology & Administration	[2011] NSWADT 14
NY v Lake Macquarie City Council	[2011] NSWADT 13
Ganley v Northern Sydney Central Coast Area Health Service	[2011] NSWADT 7
SF v Shoalhaven City Council	[2011] NSWADT 6
Szann v Commissioner of Police, NSW Police Force	[2011] NSWADT 5
Profilio v Coogee Bay Village Pty Ltd (No. 3)	[2011] NSWADT 4

Zidar v NSW Department of Education & Training	[2011] NSWADT 3
WK v NSW Trustee and Guardian	[2011] NSWADT 2
Fisher v Department of Transport and Infrastructure	[2011] NSWADT 1

#### COMMUNITY SERVICES DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
WN v Commission for Children and Young People	[2011] NSWADT 179
WM v Barnardos Australia	[2011] NSWADT 164
VT v Commission for Children and Young People	[2011] NSWADT 142
RD v Commissioner NSW Commission for Children and Young People	[2011] NSWADT 140
People With Disability Australia Incorporated v The Minister for Disability Services	[2011] NSWADT 100
UT v Commission for Children and Young People	[2011] NSWADT 71

#### EQUAL OPPORTUNITY DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
Giovanetti v State of New South Wales (Department of TAFE)	[2011] NSWADT 195
AEQ v Department of Education and Communities	[2011] NSWADT 194
Miljus v Guests Cakes & Pies Pty Ltd	[2011] NSWADT 193
Linnell v Seachem Australia Pty Ltd (No. 2)	[2011] NSWADT 178
Duncan v Kembla Watertech Pty Ltd	[2011] NSWADT 176
Fletcher v TNT Australia Pty Ltd	[2011] NSWADT 175
Lam v Parsons Brinckerhoff Australia Pty Ltd	[2011] NSWADT 174
Xian v RailCorp	[2011] NSWADT 173
Elliott v State of NSW (Housing NSW)	[2011] NSWADT 160
Elliott v State of NSW (NSW Police Force)	[2011] NSWADT 159
Richard v Director General, Department of Justice and the Attorney General (Corrective Services NSW)	[2011] NSWADT 158
ACE v State of NSW (TAFE Commission and DET) (No. 3)	[2011] NSWADT 154
Johnson v Free Spirit Management Pty Ltd (No. 3)	[2011] NSWADT 147
Slottje v City of Lithgow Council	[2011] NSWADT 146
Murray v Commissioner of Corrective Services, New South Wales Department of Corrective Services	[2011] NSWADT 128
Mojaeva v Mission Australia	[2011] NSWADT 103
Edmundson v Endeavour Foundation	[2011] NSWADT 96
O'Sullivan v Health Care Complaints Commission and anor (No. 2)	[2011] NSWADT 82
ACE v State of NSW (TAFE Commission and DET) (No. 2)	[2011] NSWADT 77
Chacon v Rondo Building Services Pty Ltd	[2011] NSWADT 72
Faulkner v ACE Insurance Limited (No. 2)	[2011] NSWADT 70
Talbot v Sperling Tourism & Investments Pty Ltd (formerly Mount 'N' Beach Safaris Pty Ltd) ABN 72 602 188 201	[2011] NSWADT 67
Linnell v Seachem Australia Pty Ltd	[2011] NSWADT 61

Kuruppa v Director General, Department of Justice and Attorney General	[2011] NSWADT 51
Ibrahim v Sydney Local Health Network	[2011] NSWADT 50
Soliman v State of NSW (NSW Police Force)	[2011] NSWADT 42
Hendrickson v Yarra Bay 16 ft Skiff Sailing Club Ltd	[2011] NSWADT 37
Faulkner v ACE Insurance Limited	[2011] NSWADT 36
Gould v The Director-General, New South Wales, On Behalf of Ambulance Service, New South Wales	[2011] NSWADT 35
Craig-Bennet v Greater Western Area Health Service	[2011] NSWADT 30
Johnson v Free Spirit Management Pty Ltd (No. 2)	[2011] NSWADT 29
Docherty v The Smith Family	[2011] NSWADT 26
Bacirongo v ACL Pty Ltd	[2011] NSWADT 12
Dezfouli v Corrective Services	[2011] NSWADT 11

#### RETAIL LEASES DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
Trowbridge v Morris	[2011] NSWADT 207
Spuds Surf Chatswood Pty Ltd v P T Ltd (No.3)PT Ltd v Spuds Surf Chatswood Pty Ltd (No.2)	[2011] NSWADT 186
Torchia v Swanton (No. 2)	[2011] NSWADT 185
Brookfield Multiplex WS Retail Landowner (ACN 109 033 794) and AWPf Management No 2 Pty Ltd (ACN 135 365 365) v Valentino Franchise Pty Ltd (ACN 114 469 662)	[2011] NSWADT 184
Mutlu v Cetinkaya	[2011] NSWADT 180
P Vlahakis Pty Ltd v Bevillesta Pty Ltd	[2011] NSWADT 166
Duncan v Aljayar Pty Ltd	[2011] NSWADT 156
Kokkinidis v Zaharopoulos	[2011] NSWADT 153
Spuds Surf Chatswood Pty Ltd v PT Ltd (No 2) PT Ltd v Spuds Surf Chatswood Pty Ltd	[2011] NSWADT 152
Zenya Group Pty Limited v Leilei	[2011] NSWADT 149
Valentino Franchise Pty Ltd (ACN 114 469 662) v Brookfield Multiplex WS Retail Landowner (ACN 109 033 794) and AWPf Management Pty Ltd (ACN 114 689 146)	[2011] NSWADT 143
Rahman v Oprescu	[2011] NSWADT 124
Benyameen v Wetherill Park Market Town Pty Ltd (No. 2)	[2011] NSWADT 120
O'Brien v Rushworth	[2011] NSWADT 115
Clausen Property Pty Limited atf Clausen Property Hybrid Trust v RVM Pty Limited	[2011] NSWADT 112
Brittain & ors v Tylo Vision Pty Ltd & De Souza	[2011] NSWADT 110
Kriletich v Dee Why Projects Pty Limited	[2011] NSWADT 109
Cai & ors v Sydney Markets Ltd	[2011] NSWADT 107
Rovere Holdings Pty Limited v O'Shea and Wilson	[2011] NSWADT 106
Duncan v Director General, Department of Environment, Climate Change and Water	[2011] NSWADT 105
Vuong v Ladikos	[2011] NSWADT 104
Garces v TMG Argyle Pty Ltd and another	[2011] NSWADT 101

Shree Sai Charan Pty Ltd v North Indian Flavour (Broadway) Pty Ltd and Bobby Singh	[2011] NSWADT 95
Kim v Kim	[2011] NSWADT 92
Sean Lytton v North Bondi RSL Club Limited	[2011] NSWADT 86
Benyameen v Wetherill Park Market Town Pty Ltd	[2011] NSWADT 85
Eather v Nguyen	[2011] NSWADT 80
Eastpoint Shopping Village Pty Ltd v Grayson Pty Ltd	[2011] NSWADT 68
Profilio v Coogee Bay Village Pty Ltd (No. 4)	[2011] NSWADT 64
Starwick Pty Ltd v Harrison	[2011] NSWADT 58
Fagerlund v PPS Nominees Pty Ltd (No. 2)	[2011] NSWADT 52
De Costi Seafoods (Franchises) Pty Ltd v Broadway Shopping Centre Sydney Pty Ltd	[2011] NSWADT 40
Braun v Roach	[2011] NSWADT 31
Snowpave Pty Ltd v Gibo Pty Ltd and Edite Pty Ltd (No. 2)	[2011] NSWADT 25
Fagerlund and Atkinson v PPS Nominees Pty Ltd	[2011] NSWADT 24
Lovecek v JV Idola Pty Ltd and ors	[2011] NSWADT 18
McGlenn v Sassine (No.3)	[2011] NSWADT 15
Saboune v Chief Commissioner of State Revenue	[2011] NSWADT 8

#### REVENUE DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

NAME	MEDIUM NEUTRAL CITATION
Caruana v Chief Commissioner of State Revenue	[2011] NSWADT 183
Perry Properties Pty Ltd v Chief Commissioner of State Revenue	[2011] NSWADT 145
Kolln v Chief Commissioner of State Revenue	[2011] NSWADT 127
Tsovolos & anor v Chief Commissioner of State Revenue	[2011] NSWADT 123
Craythorn v Chief Commissioner of State Revenue	[2011] NSWADT 122
Wilkinson v Chief Commissioner of State Revenue	[2011] NSWADT 121
Molyneux and Vermeesch v Chief Commissioner of State Revenue	[2011] NSWADT 117
J.A.M. Investments Australia Pty Ltd as Trustee of the Geokjian Trust v Chief Commissioner of State Revenue	[2011] NSWADT 76
Fitzpatrick v Chief Commissioner of State Revenue	[2011] NSWADT 75
Murray v Chief Commissioner of State Revenue	[2011] NSWADT 74
Romano v Chief Commissioner of State Revenue	[2011] NSWADT 73
Black v Chief Commissioner of State Revenue	[2011] NSWADT 66
Prasad v Chief Commissioner of State Revenue (No 2)	[2011] NSWADT 55
Nairn v Chief Commissioner of State Revenue	[2011] NSWADT 41
Amir v Chief Commissioner of State Revenue (No 2)	[2011] NSWADT 27
Haddad v Chief Commissioner of State Revenue	[2011] NSWADT 17

## LEGAL SERVICES DIVISION DECISIONS 1 JANUARY 2011 TO 15 AUGUST 2011

<b>NAME</b>	<b>MEDIUM NEUTRAL CITATION</b>
Council of the Law Society of NSW v Ly	[2011] NSWADT 210
Council of the Law Society of New South Wales v Rook	[2011] NSWADT 191
Perla v The Legal Services Commissioner	[2011] NSWADT 188
Legal Services Commissioner v Scroope	[2011] NSWADT 187
Council of the Law Society of NSW v Adams	[2011] NSWADT 177
Bar Association of NSW v Miller (No. 2)	[2011] NSWADT 148
Council of the Law Society of New South Wales v Gray	[2011] NSWADT 139
Council of the Law Society of New South Wales v McGuire	[2011] NSWADT 133
Council of the Law Society of New South Wales v Dalla	[2011] NSWADT 130
Council of the Law Society of New South Wales v Franks	[2011] NSWADT 119
Council of the Law Society of New South Wales v Vaughan	[2011] NSWADT 118
Legal Services Commissioner v Keddie & ors	[2011] NSWADT 114
Council of the New South Wales Bar Association v Asuzu	[2011] NSWADT 108
Hutchinson v Legal Services Commissioner	[2011] NSWADT 87
The Council of the Law Society of New South Wales v Nicopoulos	[2011] NSWADT 84
Council of the Law Society of New South Wales v Clapin	[2011] NSWADT 83
Council of the New South Wales Bar Association v Ghabrial (No. 2)	[2011] NSWADT 56
Law Society of New South Wales v Singh	[2011] NSWADT 47
Law Society of NSW v English	[2011] NSWADT 39
Bar Association of NSW v Ward	[2011] NSWADT 33
Law Society of New South Wales v Carbone	[2011] NSWADT 32
Council of the Law Society of New South Wales v Hinde	[2011] NSWADT 20
The Council of the Law Society of New South Wales v White	[2011] NSWADT 10
Law Society of New South Wales v Stormer (No. 2)	[2011] NSWADT 9

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