



Administrative Decisions Tribunal

New South Wales

Annual Report
2011-2012

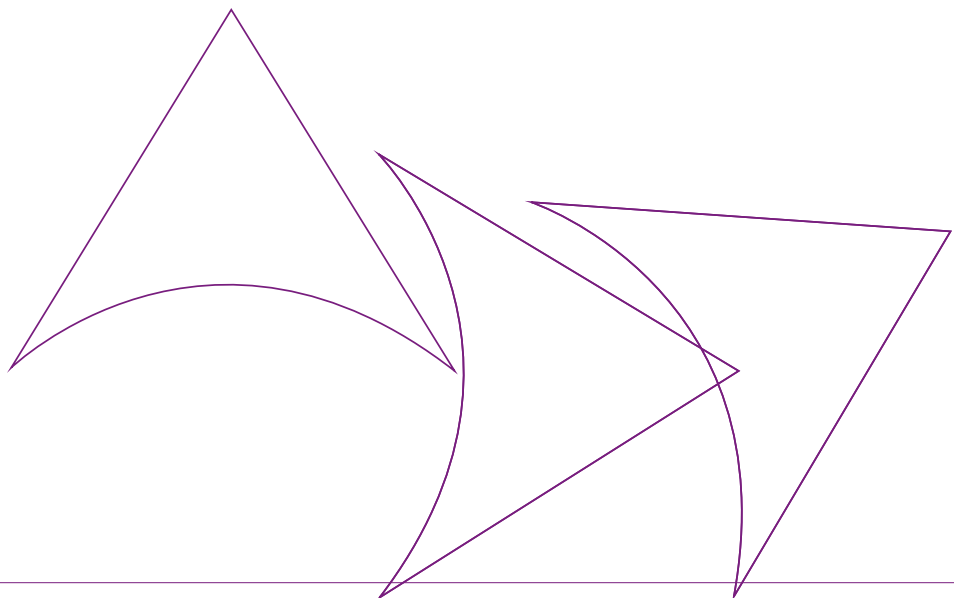


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Administrative Decisions Tribunal
New South Wales

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 14th annual report of the Tribunal, covering the period 1 July 2011 to 30 June 2012.

Yours sincerely,

Judge KEVIN O'CONNOR AM
President

26 October 2012

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Table of Abbreviations

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
DAGJ	Department of Attorney General and Justice
EOD	Equal Opportunity Division
FHOG Act	<i>First Home Owners Grant Act 2000</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
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
RD	Revenue Division
RLA	Retail Leases Act 1994
RLD	Retail Leases Division
SCA	<i>Supreme Court Act 1970</i>



The Year in Review

In November 2011 the Attorney General and the Minister for Finance referred the issue of consolidation of State tribunals to a Parliamentary Committee for inquiry and report. This is an issue that I have canvassed on several occasions in this annual overview.

I have supported the desirability of New South Wales consolidating State tribunals along the lines seen in Victoria (1998), Western Australia (2004), the United Kingdom (2006), the Australian Capital Territory (2008), and Queensland (2009).

The Parliamentary Committee issued its report in March 2012, generally commending the desirability of broad consolidation, but suggesting that the detail be developed by an expert committee. The broadest option canvassed in the report proposed the absorption of the ADT into a 'New South Wales Civil and Administrative Tribunal' (NCAT) along with the major civil tribunal in the State, the Consumer, Trader and Tenancy Tribunal, together with the Guardianship Tribunal and the various health professional disciplinary tribunals.

The Parliamentary Committee rejected criticisms that a broad consolidation was inappropriate, referring positively to the interstate developments and the experience of the tribunals in NSW that already had a variety of jurisdictions, such as the ADT and the CTTT. The Government announced its response to the report on 26 October 2012. The Government has endorsed the broad NCAT options, with a start date of 1 January 2014.

In the period covered by this annual report, 1 July 2011 to 30 June 2012, the Tribunal's level of activity and spread of filings remained similar to recent years. There were two areas where filings increased significantly - applications for review of agency decisions made under the *Government Information (Public Access) Act 2009*, and applications for review of State revenue decisions relating to land tax assessments. The level of activity in other jurisdictions of the

Tribunal varied up or down within a small margin.

Disposal rates were a little slower than last year, but remain satisfactory in most of the Tribunal's jurisdictions.

The main exception is the Legal Services Division, where disposal rates is slow. A new practice guideline will be published later in 2012 to assist in speeding up the pre-hearing stages of the Division's cases. There has also been a slowing in the Community Services Division which is seen as transitory.

At the operational level, the Tribunal relocated from its former premises at 15th floor, 111 Elizabeth Street, Sydney to its new premises at 10th floor, 86 Goulburn Street, Sydney (the District Court building). The new premises provide greater security for members and staff, improved work spaces for the key part-time members, and better break-out meeting areas for hearing panels. There are improved acoustics in the hearing rooms. However, the fit-out proved unsatisfactory in numerous respects, leading to several months of disruptions at the new premises while rectification works took place.

The Tribunal has updated its public website, as part of a Department of Attorney General and Justice project. The public website includes much more detailed information than in the past, and includes general guides as to how cases in the different areas of the Tribunal are conducted. We welcome feedback.

The Tribunal has followed, since its inception, the practice of publishing on the Caselaw website all reserved decisions of the Tribunal and selected *ex tempore* decisions. The Caselaw site as it operated until the end of 2010 contained features of benefit to the Tribunal and our user population that have been lost in the transition to a new Caselaw site. These problems



Judge Kevin O'Connor AM
President

are outlined more fully elsewhere in this report. I am hopeful that we will see the lost features restored by the end of 2012.

One of our part-time Divisional Heads stepped down after many years of service, Jane Needham SC. May I thank her for her great contribution to the Tribunal, for the leadership she brought to the State revenue jurisdiction and for her wider involvement in the work of the Tribunal, especially in the equal opportunity area. Soon after the reporting year ended, her replacement was appointed - Rashelle Seiden, a barrister with a specialist practice in tax. We welcome Ms Seiden to the Tribunal. Other changes in membership are noted in the membership section of this report.

Finally, may I thank the members generally and the Registry staff for their work in maintaining high professional standards, and fostering an

environment which is seen to support the key values of accessibility, respect, fairness and clarity.



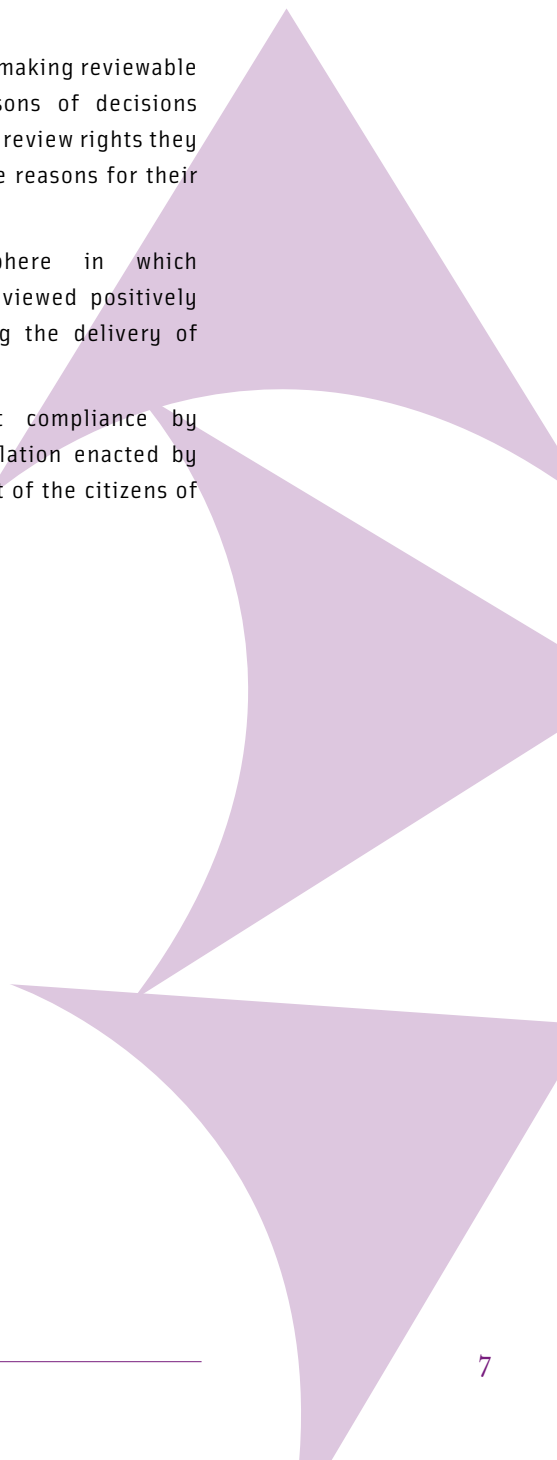
Judge Kevin O'Connor, AM
President
October 2012

Our Objectives

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

3. Objects of Act

The objects of this Act are as follows:

- (a) to establish an independent Administrative Decisions Tribunal:
 - (i) to make decisions at first instance in relation to matters over which it is given jurisdiction by an enactment, and
 - (ii) to review decisions made by administrators where it is given jurisdiction by an enactment to do so, and
 - (iii) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or law,
 - (b) 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

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

On 24 October 2011 the Tribunal relocated to the 10th floor of the John Maddison Tower, 86 Goulburn Street, Sydney. As noted in the President's overview of the year, the floor had a new fit-out but there were some major issues which had to be rectified with further work. Three of the four hearing rooms needed substantial alteration, as did the main two members' rooms. The hearing rooms do not include the oval table shaped style seen in two of the rooms at the former premises. The Tribunal remains in need of more space, at least one more hearing room as well as proper mediation rooms, and greater Registry work and storage space.

Remote users and regional access

The Tribunal seeks to be accessible to remote users and those users who cannot attend the Tribunal for other reasons.

The Tribunal routinely sits outside Sydney when one or more parties live in a regional area. Panels of the Tribunal sat outside Sydney 48 times in the last year. The usual venue for regional sittings is at the local courthouse.

During the year, the Tribunal sat at Armidale, Ballina, Bourke, Coffs Harbour, Dubbo, East Maitland, Forster, Lismore, Newcastle, Nowra, Orange, Queanbeyan, Tamworth and Taree. The Legal Services Division of the Tribunal sat at the Industrial Relations Commission premises in Sydney eight times, usually for legal professional discipline hearings. (The Divisional Head is a judge of the Industrial Relations Court.)

Where appropriate the Tribunal also allows parties to appear by phone or video link, rather than in person.

At the directions and interlocutory stages, at least one party uses a telephone link in about

a third of cases. Often both parties use a telephone link. Suburban and country residents and legal practitioners welcome this facility.

The new premises have a hearing room with video link facilities. While these facilities are not used often, if the need arises they are available.

Access by persons with disabilities

The new Goulburn Street premises contain the following improvement as compared to the Elizabeth Street premises: wheelchair accessible public toilet. There is no similar provision in the members' and staff area.

As previously, the premises have: infra-red listening system (Hearing Loop) and a telephone typewriter (TTY). On the other hand, in contrast to the Elizabeth Street premises, the lifts do not include Braille signage and voice announcements.

A review has been undertaken of the adequacy of the disability access arrangements at the new premises, and further upgrades are being undertaken. They include the need to upgrade the entrance areas to the building and information signs and the like to modern disability access standards.

New Website

The Tribunal's new website (www.lawlink.nsw.gov.au/adt) went live on 18 May 2012. The new site has more information and an improved format. The site has links to ADT legislation and rules, daily law lists and published decisions. It also provides information about each Division including Guidelines, Practice Notes and standard forms. An electronic version of all Annual Reports can be accessed online.





Openness

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 as to publication of names or other information. Where appropriate, the Tribunal may decide to suppress the names of parties or witnesses and/or the content of evidence.

Publication of Decisions

The Tribunal's policy is to publish on the internet all reserved decisions and selected oral decisions. Wide dissemination of decisions promotes understanding of the Tribunal's role and reasoning, and contributes to a consistent, predictable approach to the making of decisions.

Comprehensive publication of the Tribunal's decisions is undertaken by the Department of Attorney General and Justice (DAGJ) on its CaseLaw NSW website at www.caselaw.nsw.gov.au/admin/index.html.

Comprehensive publication also occurs on the AUSTLII (Australasian Legal Information Institute) website at www.austlii.edu.au.

A number of specialist reporting services cover relevant decisions of the Tribunal.

During the reporting period, the Tribunal published in this way 309 decisions made up of:

- 58 Appeal Panel decisions (of which 8 related to external appeals)
- 251 Divisional decisions.

The Divisional decisions were spread as follows: General Division - 92; Equal Opportunity Division - 51; Retail Leases Division - 33; Legal Services Division - 36; Revenue Division - 26; and Community Services Division - 13.

New CaseLaw system

The new CaseLaw website commenced on 1 January 2011. Until the end of 2010 not only were Tribunal decisions presented in a collective format (alphabetical and by case number), they were also presented under Division headings and Appeal Panel headings. The latter feature has been lost.

The result is a less searchable system than the past, and greater difficulty for area specialists in following the work of a particular division of the Tribunal. For example, in the case of legal profession discipline, the old Blue Book that appeared quarterly as a supplement to the Law Society Journal until 1998 was discontinued on the basis that a consolidated single site presentation of those decisions would appear on the public website of the ADT. It is expected that the divisional presentation will be restored by the end of 2012, and cover all decisions since 1 January 2011. As an interim measure, in last year's annual report and in this year's report there is a table dividing the decisions into the relevant streams (See Appendix G for the present reporting period).

Registry Report

The Registry has nine 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.

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 Tribunal's website; and
- preparation and uploading of written decisions.

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.

Staff development

Staff receive training through the DAGJ's Learning and Development Section and through attendance at conferences and seminars. Staff also 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 DAGJ. The Tribunal has three sources of funds:

- Government Revenue,
- Public Purpose Fund and
- Retail Lease Bond Interest Account.

The DAGJ provides the government funding.

The Trustees of the Public Purpose Fund provide funds to meet the cost of operating the Legal Services Division of the Tribunal. The Public Purpose Fund is derived from interest earned on solicitors' clients' funds held in compulsory trust account deposits under the *Legal Profession Act 2004*.

The third source of funds is the interest from bonds held by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services on behalf of tenants under the *Retail Leases Act 1994*. The money received from the Interest Account is used to meet the cost of operating the Retail Leases Division of the Tribunal.

Appendix A is a summary financial statement for the reporting year. The DAGJ's annual report will also include a budget report.

Membership

The membership has three categories:

- presidential judicial members, i.e. the President and the Deputy Presidents, usually described by the latter titles;
- non-presidential judicial members, usually described by the title 'judicial member'; and
- non-judicial members, known by that description.

As at 30 June 2012, there were:

- 8 presidential members;
- 30 judicial members; and
- 50 non-judicial members.

In addition there were two non-judicial members whose renewals were still being processed.

The gender division overall is 52 male/38 female (23-15 at presidential and non-presidential judicial member level; and 29-23 at non-judicial member level), counting for this purpose the two renewals pending at 30 June 2012. The gender disparity has only developed in the last three years, and hopefully is a short term one.

All members except for the President and one of the Deputy Presidents serve on a sessional basis. We have standing arrangements with two of the judicial members to serve for a fixed number of days each week. Most of the presiding and decision-writing work is done by a small group of members, namely the two full-time members - the President and Deputy President Hennessy, and the following part-time members - Deputy Presidents Higgins and Chesterman, and Judicial Members Montgomery and Molony.

The Appeal Panel and some Divisions (notably, the Legal Services Division, the Equal Opportunity Division and the Community Services Division) normally hear cases in the form of multi-member panels. On the other hand, the General Division and the Revenue Division normally have a single member hear the matter.

Retirements from the Tribunal

Members to retire during the reporting period were:

- Deputy President Jane Needham SC;
- Judicial Members: Robbert Fox, Penelope Goode, Simon Rice, Wendy Robinson SC; and
- Non-Judicial Members: Maree Gill, Maurice O'Sullivan.

Many of these members were very active contributors to the work of the jurisdictions in which they sat, and several had served for many years extending back to the Tribunals that were merged into the ADT.

Notable in that regard is Penny Goode. Her service as a hearing member in the equal opportunity jurisdiction commenced in 1991. She will remain active in the Tribunal as a mediator, the role in which she has specialised with great distinction now for a number of years. Similarly Simon Rice (equal opportunity) and Robbert Fox (legal profession discipline) served with distinction on the predecessor tribunals before they were absorbed into the ADT.

New Appointments

There were no new appointments during the reporting year.

Following an expressions of interest process, in July 2012 the following members were appointed: Rashelle Seiden, part-time Deputy President and Divisional Head, Revenue Division; Geoffrey de Q. Walker and Norman Isenberg, part-time judicial members, Revenue Division; Peta Drake and Matt Foldi, part-time non-judicial (advisory) members, Retail Leases Division.

Annual Conference

The Tribunal held its annual members' conference on 16 September 2011 at the Australian Museum. This is the Tribunal's major collegiate event, and most of the Tribunal's members attended.

The conference was opened by the new Attorney General, the Hon. Greg Smith SC MP. Justice Alan Robertson of the Federal Court gave the keynote address. Justice Robertson was, for many years prior to his appointment, a leader of the administrative law bar in Australia, and had appeared at the ADT.

Other presentations included: 'Neurobiology and Decision Making' by Dr Hayley Bennett, barrister and formerly a clinical neuropsychologist; 'Making Human Rights work: theory and practice - the David Jones' case, the Patricks' case' by Rachel Francois, barrister; 'The Modern Contract' by Judge Peter Johnstone of the District Court; 'The Maverick Litigant' by Dr Simon Smith of Monash University, Victoria; 'Suppression Orders: Some Observations' by Michael Sexton, SC, NSW Solicitor General.

Council of Australasian Tribunals

Tribunal service in Australia is carried on by a wide array of full-time and part-time members, with a diversity of skills and backgrounds. COAT is the umbrella professional organisation for tribunal members in Australia and New Zealand.

The ADT's President, Judge O'Connor, was the Convenor of the NSW Chapter of COAT from 2007 to 2011; has served on the NSW Chapter committee since its foundation in 2002; and has also served on the National Executive.

NSW COAT conducts two major collegiate events each year - a Conference and the Whitmore Lecture. Due to a change in the scheduling of these events there were two Whitmore Lectures in the period of this annual report and no Conference, with the conference moved in future to September. The presenter of the 2011 Whitmore Lecture (given in September 2011) was the Hon Ronald Sackville QC AO, a former Federal Court judge, academic and head of various law reform bodies and public inquiries. His topic was 'The Constitutionalisation of State Administrative Law'.

The presenter of the 2012 Whitmore Lecture (given in May 2012) was the Hon. Michael Kirby AC CMG, retired High Court judge and also a former law reform head. His topic was 'The Duty to Give Reasons Revisited'.

Submissions to the Parliamentary Inquiry on Consolidation of Tribunals

This was a major activity during the last year. The Committee's proceedings and report, the Tribunal's submissions and the oral evidence given by the President and Deputy President Hennessy can be found by following the links on the Parliament of NSW website to Legislative Council Law and Justice Committee then to Opportunities to Consolidate Tribunals in NSW (Inquiry). As noted in the overview, the Government has decided to establish a Civil and Administrative Tribunal ('NCAT'), with a view to it commencing operations on 1 January 2014.

2011 ADT Member's Conference

Speakers included



Dr Jane Goodman-Delahunty



Greg Smith SC MP Attorney General



Justice Alan Robertson



Rachel Francois



Michael Sexton SC Solicitor General



Dr Hayley Bennett

The Divisions and the Appeal Panel



From left: Deputy Presidents Nancy Hennessy, Michael Chesterman, President Kevin O'Connor, Deputy President Sigrid Higgins. (Deputy President Wayne Haylen was unavailable.)
- as at 30 June 2012 -

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

- the 'review of reviewable decisions'; and
- the making of 'original decisions'.

A 'reviewable' decision refers to an administrative decision made by a public body such as a

government agency or a Minister in relation to a matter of controversy between a citizen and the State that is in turn declared to be reviewable by the Tribunal.

The term 'original decision' refers to any matter where the Tribunal is specified as the maker of the first legally binding decision on the matter of controversy.

An 'original' decision is any application to the Tribunal where the Tribunal makes the first binding decision. Applications heard in the EOD and the RLD fall into this category. They are analogous to civil suits.

When disciplining lawyers, veterinarians, architects and accredited certifiers, more serious matters are usually dealt with by an application from the relevant occupational disciplinary body. In some less serious cases, an applicant can apply to the Tribunal for a review of a decision made by the occupational disciplinary body.

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'. Those divisions are the GD, the RD and the CSD.

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

- GD: operative 6 October 1998. This Division hears most applications by citizens for the review of administrative decisions or administrative conduct. Disciplinary matters, whether original applications or review applications, but not involving lawyers, are heard in this Division;
- CSD: operative 1 January 1999. This Division hears applications for review of various administrative decisions made in the Family and Community Services portfolio and for exemption from a statutory prohibition on being engaged in child-related employment;
- RD: operative 1 July 2001. This Division hears applications for review of various State taxation decisions; and
- LSD: operative 6 October 1998. This Division hears complaints against legal practitioners.

The Civil or 'private law' divisions

- EOD: operative 6 October 1998. This Division hears complaints of unlawful discrimination, harassment, victimisation and vilification; and
- RLD: operative 1 March 1999. This Division hears claims by parties to retail shop leases.

Appeal Panel

The Tribunal's upper tier, the Appeal Panel, hears 'internal' appeals against decisions by the Divisions of the Tribunal and 'external' appeals against certain decisions by the Guardianship Tribunal ('GT') and the Mental Health Review Tribunal.

The General Division



Judge Kevin O'Connor AM
President

- President of the ADT since 1998
- Judge, District Court of NSW since 1998
- Deputy Chair, Interpol Data Protection Committee, Lyon 2005-11
- Law Reform Commissioner, NSW (part-time), 2007-2010
- Chairperson - Fair Trading Tribunal 1999-2001; Commercial Tribunal 1997-98
- Inaugural Federal Privacy Commissioner and Commissioner, Australian Human Rights Commission 1988-1996

The President is, in addition, the Divisional Head of the General Division.

Case Load

The General Division is the main merits review division of the Tribunal. There were 371 new applications filed this year an increase of 27 on last year. They comprised 39% of the Tribunal's first instance filings.

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 176 filings in the occupational and related licensing stream, a decrease of 24 on last year.

In the 'information law' stream there were 150 filings, 49 more than last year, with 102 in the 'freedom of information' GIPA Act category (45 up). There were 48 on the privacy side, 4 more, with 39 under PPIPA and 9 under HRIPA.

The remaining 45 filings were across a scatter of Acts, the main group being reviews of decisions of the office of NSW Trustee and Guardian affecting the affairs of protected persons. This category of business is dealt with further in the section of the annual report dealing with the Guardianship and Protected Estates List.

We noted last year that in the period 2007-2011 we had seen a significant drop in FOI/GIPA filings from 117 in 07-08 to 57 in 10-11.

It can be seen that filing activity has now returned to the higher level. GIPA resulted from a review of the FOI Act, and is more generous in its approach to the grant of access to information. It also allows for review of aspects of the agency response to requests which were not reviewable under the previous Act (for example, sufficiency of search).

While the primary filings level has returned to a high level, in contrast to the Tribunal's earlier experience, more matters are settling without going to full hearing, and there are significantly fewer appeals to the Appeal Panel.

As in previous years, the dominant occupational licensing category involved public highway driver authorities, 72 public passenger authority cases (mainly taxi drivers) and 10 tow truck authority cases. There were 53 Commissioner of Police licensing cases (mainly security and firearms); and 41 Fair Trading licence cases (mainly building trades and real estate agents).

In recent years the Division has dealt with many disputes over withdrawals of the accreditation of privately operated vocational education colleges whose main student body has been overseas students. This jurisdiction has now shifted to the Commonwealth.

Case Management

The case management practices in the Division have remained the same as reported in the last two years' annual reports.

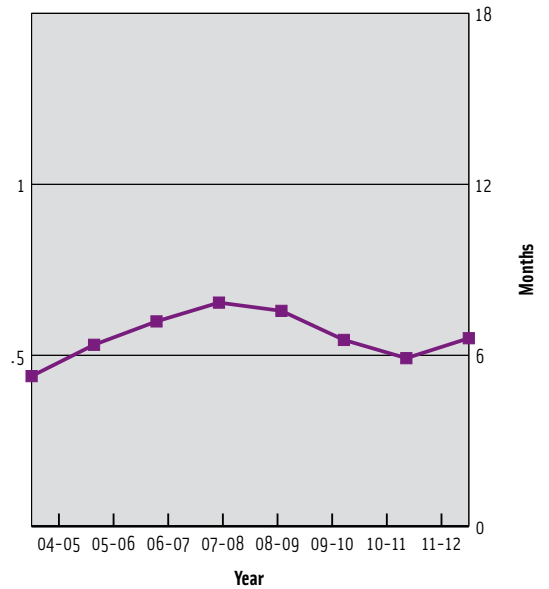
Timeliness

We noted in the 2009-10 annual report a marked improvement in the General Division disposal rate, from 33 weeks down to 26 weeks, and last year a further small decrease to 24.5 weeks. The disposal rate has slipped back to 28.5 weeks this year, but remains reasonable. As I did last year, may I 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.

General Division - Average Disposal Time



Guardianship and Protected Estates List

Deputy President Hennessy manages the Guardianship and Protected Estates List.

The Tribunal hears 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 hears 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.

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

Case load

External appeals

There were four external appeals pending at the beginning of the reporting year. During the year 10 new appeals were lodged, all from decisions of the GT. Ten appeals were finalised, leaving four appeals pending at the end of the year. In three cases the appeal was upheld either in part or in full. Seven appeals were dismissed.

The time standards for appeals is 80% to be finalised in six months and 100% in 12 months. These standards were not quite met this year with six (60%) disposed of in under six months and a further three (30%) finalised in less than 12 months. One appeal took more than 12 months to finalise. The average disposal time for all matters is less than six months.

Review decisions

There were nine review applications pending at the beginning of the reporting year. During the year 26 new applications were lodged and 30 were finalized, leaving five review applications pending at the end of the year.

Of the 30 applications that were finalised, the administrator's decision was set aside or varied in two cases and affirmed in 14 cases. In the remaining 14 cases, the matter was dismissed for various reasons either with or without a hearing.

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. Twenty-four of the thirty (72%) took less than six months to complete; a further four (84%) took less than 12 months and two took over 12 months.

Significant cases

AFM v NSW Trustee and Guardian [2012] NSWADTAP 17 (29 May 2012)

The GT has power to make a financial management order in relation to a person's finances. It has a separate power to appoint a financial manager for the financial management order. Either the NSW Trustee or a private person can be the financial manager. In this case the GT made a financial management order in relation to a young woman with a disability and appointed her father as the financial manager. The GT ordered the financial management order be reviewed in two years. When reviewing the order, the GT revoked the appointment of the father as financial manager and instead appointed the NSW Trustee.

The Appeal Panel decided that the GT had no power to revoke the appointment of the father because the review power it relied on only related to the making of the financial management order, not to the appointment of the manager. The GT could have reviewed the appointment on its own motion but because it did not do so, the new appointment decision was set aside and the matter remitted to the GT.

Revenue Division

Divisional Head

Ms Jane Needham SC completed a distinguished period of service with the Tribunal on 2 November 2011. She had served as a part-time Deputy President and Divisional Head, Revenue Division for six years. Prior to that she had served for three years as a part-time Judicial Member assigned initially to the Equal Opportunity Division. Soon after the end of the reporting



Deputy President
Rashelle Seiden

year, in July 2012, a new Divisional Head was appointed, Rashelle Seiden, an experienced barrister who specialises in taxation.

We welcome Rashelle to the Tribunal, and thank Jane for her contribution to the work of the Tribunal

in many of its jurisdictions, not only the Revenue Division.

The President managed the Division in the period between Ms Needham's departure and the appointment of Ms Seiden.

Case Load

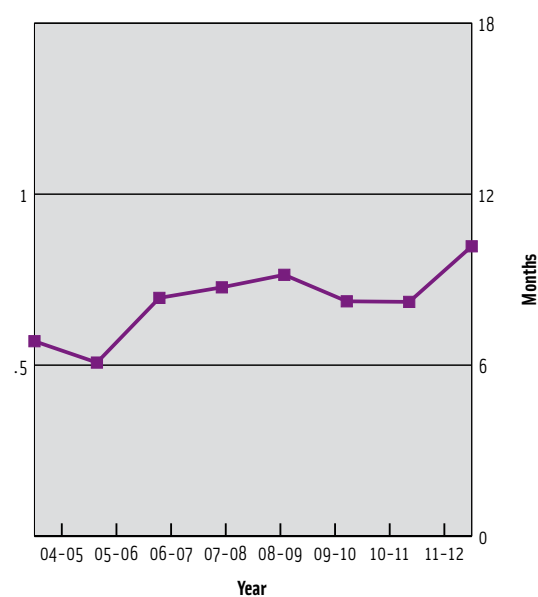
The case load of the Revenue Division increased from 108 filings last year to 138 filings this year, the main area of increase involving disputes in relation to land tax assessments. The disposal rate continued to be slower than the rate in the other merits review divisions of the Tribunal. The average disposal time is 8.2 months, and has sat at that level now for some years.

The delay appears mainly to be a function of the preliminary conference system used in the Division. At the first directions hearing a view is sought from the parties as to whether a matter should be referred for preliminary conference, and that course is adopted in most cases. Often the preliminary conference process leads to referral back of issues to the

Office of State Revenue. If that process does not resolve the dispute the matter is relisted and further directions made. During the year, greater emphasis was given to the desirability of fixing a final hearing date at the first directions hearing, even if the matter was referred out to a preliminary conference. It is hoped that a system of this kind will reduce the number of relistings and bring matters on for hearing more quickly, where they are not resolved by the preliminary conference process.

The main category of business continues to be land tax disputes, comprising exactly 50% of primary filings in the last year. The main areas of dispute concern the interpretation and application of the primary place of residence exemption and the primary production exemption. First home owner grant filings declined markedly, reflecting the phasing out of that legislation. The recent State budget introduced a new first home owner grant scheme.

Revenue Division - Average Disposal Time



Community Services Division



Deputy President
Sigrid Higgins

- Part-time Judicial Member of the ADT since 2001, Deputy President since 2010
- Barrister since 1999
- Part-time Member Defence Honours and Awards Appeals Tribunal since 2008
- Patent and Trade Marks Attorneys Disciplinary Tribunal 2005 –2012
- Executive Secretary, International Commission of Jurists, Geneva, 1995-1997
- Manager, Fair Trading Division, New Zealand Commerce Commission, 1991-1994

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

Structure and functions

The Division has both an original jurisdiction and a review jurisdiction.

The Division's review jurisdiction covers a wide range of administrative decisions of a community welfare kind, especially child welfare. For example the Tribunal can hear review applications in relation to various decisions affecting the licensing and grant of care authorities to foster carers, out-of-home carers, and the operators of child care centres, family day care centres and home based child care; the accreditation of adoption service providers. It can also hear applications for review of grants of financial assistance for disability services; and the licensing of residential centres for handicapped persons. During the last year the review jurisdiction has comprised about 80% of the filings in the Division, and the cases have mainly related

to the removal of children from an authorised carer, and the (often subsequent) decision to remove the carer's general authorization.

The Division's original jurisdiction concerns persons with a sex offence history who wish to work in child-related employment (see *Commission for Children and Young People Act 1998*). They must obtain a formal exemption from the prohibition that ordinarily applies to them. The Commission for Children and Young People, the Industrial Relations Commission or the Tribunal may grant an exemption. The applicant must prove that he or she does not pose a risk to the safety of children.

Case load

Forty-two new applications were filed in the Division during the year, 34 'review' and 8 'original'. In each category the filings were a little lower than the previous year.

Forty-two applications were disposed of during the year (34 review applications and 8 original decision applications). Of these 59% were disposed of within six months of the application having been made. A further 21.4% were disposed of within 12 months of the application having been made.

Four applications (5.4%), all 'original' applications for a child-related employment exemption, were disposed of in more than 12 months but less than two years. The remaining application was dealt with in more than two years; delayed, with the consent of the parties, due to an intervening coronial inquiry.

Mediation continues to be used to resolve disputes involving decisions about authorised carers and the children in their care. Twelve applications (an increase of 50% from the previous year) were referred to mediation and of these, three applications settled at mediation and eight settled after mediation.

Appeals

Child-related employment exemption decisions can only be appealed to the Supreme Court, whereas review decisions can be appealed to

the Appeal Panel. There was one appeal to the Supreme Court and two to the Appeal Panel (two of which are pending).

In the decided appeal, the Appeal Panel held that the Division did not have jurisdiction to make orders for ongoing contact between an authorised carer and a removed child.

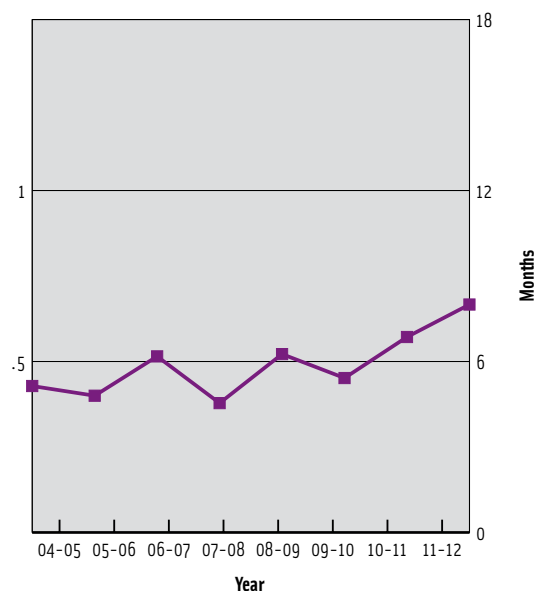
Significant cases

In most cases the decision of the administrator is affirmed, and similarly sex offender applications to allow them to engage in child-related employment are not granted. The following are two illustrations of different outcomes:

- A local council removed the review applicant's name from its register of family day carers, thus preventing her from operating that kind of business. The reason given was conduct said to have been engaged in by the applicant's son towards children in her care. The Tribunal did not consider that the Council had acted on any credible evidence. Because of the absence of evidence, it held that it was not able to make a positive finding as to whether or not a risk of harm existed at [88]. Nor could it, in the circumstances, find that there was an unacceptable risk of harm. The decision is the subject of a pending appeal before the Appeal Panel. *WI v Fairfield City Council* [2011] NSWADT 279.
- A nurse applied for an exemption to permit him to engage in child-related employment, though he had a conviction for aggravated indecent assault imposed in June 2008. After reviewing the circumstances and his subsequent history, the Tribunal granted the exemption subject to two conditions: one, that he not practice clinical nursing involving children under the age of 18

years; and two, the applicant was to provide a copy of the Tribunal's order to the hospital or medical practice in which he worked. This decision is being appealed to the Supreme Court. *ADV v Commission for Children and Young People* [2012] NSWADT 8.

Community Services Division - Average Disposal Time



Legal Services Division



Deputy President, the Honourable Justice Wayne Haylen

- Judge of the Industrial Court since 2001
- Barrister 1976-2001; QC, 1991
- Part-time Deputy President of ADT since 2008
- Previously, Chair, Racing Appeals Tribunal; Chair, Australian Consumers Association; Member, NSW Privacy Committee

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

Structure and functions

The primary function of the Division is:

- To hear applications for disciplinary orders to be made against legal practitioners for alleged professional misconduct or unsatisfactory misconduct.

Applications can be initiated by the Council of the Law Society (in relation to solicitors), the Bar Council (in relation to barristers) or the Legal Services Commissioner.

The Division also deals with:

- Client claims for compensation arising from misconduct;
- Practitioner applications to allow employment in their practice of persons with convictions for serious offences; and
- Practitioner applications for review of minor disciplinary orders made by the disciplinary committees of the Law Society or the Bar Association.

Hearings in the Division are conducted by a panel of three members comprising two judicial

members (being a judge, a retired judge, barristers or solicitors) and a non-judicial member from the general community. A senior judicial member presides and the hearings are normally conducted in public. The ability to bring disciplinary matters concerning legal practitioners before the Division does not affect the inherent jurisdiction of the Supreme Court to control and discipline local lawyers. The Division, like the Supreme Court, has available to it a wide range of sanctions for misconduct.

Case load

Detailed statistics are found in Appendix D.

During the reporting year there were 34 applications filed and 34 matters were finalised. There were 50 matters pending at the conclusion of the reporting year.

Disciplinary outcomes

The 34 applications divided into 31 original applications and three review applications. All 31 original applications related to the conduct of solicitors. There were no applications affecting barristers in the reporting period. Other statistics are given in Appendix E.

In relation to outcomes, there were 15 fines, 14 reprimands, seven removals from the Roll and 13 other orders (seven placing conditions on the practising certificate, six requiring a course of further education). The total number of orders is greater than the number of practitioners the subject of discipline as a case may result in multiple orders. Compensation was granted in one case. Three matters were dismissed following a hearing.

Case management

The disposal rate in the Division (the time from original filing to final determination) has sat between 12 and 18 months for some time.

All disciplinary applications are preceded by an investigation and decision-to-refer by the initiating body. Consequently the originating application to the Tribunal will be relatively particularised, and the practitioner should be able to furnish a considered and responsive

Reply. Yet it is common for a matter to appear many times in the monthly Directions List without any Reply. It is often the case that there are good reasons for this delay. However, in cases with no satisfactory explanation the Tribunal will consider simply setting the matter down for hearing without further adjournments. A new case management guideline is expected to take effect by the end of 2012.

Two illustrations of numerous party-related delays in bringing the matter on for final hearing are the cases of *Legal Services Commissioner v Keddie* [2012] NSWADT 106, commenced 2009; and *Council of the Law Society of New South Wales v Sheehan* [2012] NSWADT 100, commenced 2010. In the latter case the practitioner did not co-operate at any point with the proceedings, leading the Tribunal to make adverse findings as to a range of matters based entirely on the applicant's material and on inferences drawn from lack of co-operation.

Over-charging has been a central issue in some key cases in the Division in the last year, for example, the *Keddie's case* already mentioned, and the related case *Legal Services Commissioner v Scroope* [2012] NSWADT 107. While these cases had a protracted history, at the beginning of a two-week hearing the parties were able to tender an Agreed Statement of Facts that admitted to gross overcharging. On the evidence submitted there was no allegation by the Legal Services Commissioner that the overcharging was dishonest.

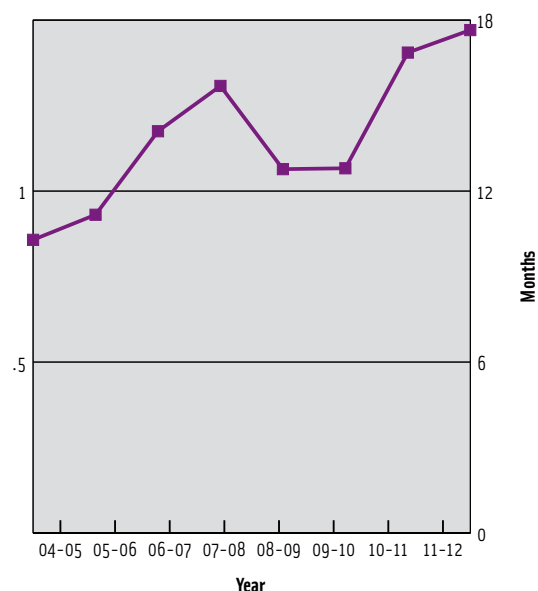
However, the evidence did demonstrate office practices that were inadequately supervised:

- Numerous entries were made on the bill without clearly indicating the level of charge-out; and
- There was virtually no checking of whether work was indeed performed or appropriately performed.

There were other practices that led to gross overcharging.

The cases are significant for two reasons. Firstly, in confirming that dishonesty or criminal intent is not a requirement in establishing professional misconduct for gross overcharging. Secondly, for the fact that the Tribunal specifically left open the question of whether an employed solicitor could be guilty of professional misconduct for overcharging where a senior partner was otherwise responsible for the conduct of the matter.

Legal Services Division - Average Disposal Time



Equal Opportunity Division



Deputy President,
Magistrate Nancy Hennessy

- Full-time Deputy President of the ADT since 2001; previously part-time Deputy President 1999-2001;
- Appointed Magistrate, 2002
- President, Community Services Appeals Tribunal 1997-1999
- Senior Legal Officer, Anti-Discrimination Board of NSW 1990-1997

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

Structure and function

The Division exercises jurisdiction conferred by the *Anti-Discrimination Act 1977* (ADA). Its main business is:

- To resolve complaints referred by the President of the Anti-Discrimination Board (ADB) relating to alleged discrimination, harassment, vilification and victimisation.

The Division also deals with:

- Applications for leave to have heard complaints declined by the ADB President;
- Applications for the registration of conciliation agreements made at the ADB;
- Applications for interim orders; and
- Reviews of ADB decisions relating to applications for exemption from discrimination laws.

Panel

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.

Outcomes and disposal rates

There were 73 matters pending at the beginning of the year. One hundred and seventy-five new applications were received. Of those, 141 were referred complaints and 23 were applications for permission to proceed. There were four applications for the registration of a conciliation agreement and seven applications for an interim order. No application for a review of an exemption decision was received.

The Division finalised 144 matters, 31 fewer than it received. At the close of the reporting period there were 104 applications pending.

This year 94 (86%) referrals were finalised within 12 months and 11 (10%) within two years. The remaining five (5%) matters were more than two years old when they were finalised. The average disposal times for all matters has been steadily decreasing since 2008 from a high of 48 weeks to a low this year of about 30 weeks.

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

Referred complaints/Mediation

Of the 110 referred matters, 28 went to hearing, with orders being made in the applicant's favour in 10 cases, the application being dismissed after hearing in 15 cases and three applications being summarily dismissed. Eighty-two cases (75%) were dismissed for reasons including that they had been settled or withdrawn, many at mediation. Of the 110 matters mentioned, after consultation with the parties, 48 went to mediation, with 42 settling at or after mediation, and the balance proceeding to hearing.

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

Grounds of complaint

A complaint can allege more than one ground of discrimination. The most frequently cited grounds of discrimination were disability (43), race (30), sex discrimination (14), sexual harassment (18) and carer's responsibilities (11). This distribution is broadly consistent with the pattern over the last ten years, with disability being the dominant category.

Other categories of business

The statistics are given in Appendix E. The balance of the new filings (65) had as its main component 23 leave applications. Most leave applications are unsuccessful, the Tribunal agreeing with the ADB President that the matter lacks substance. In the last year, only two of the 24 leave applications were successful.

Significant cases

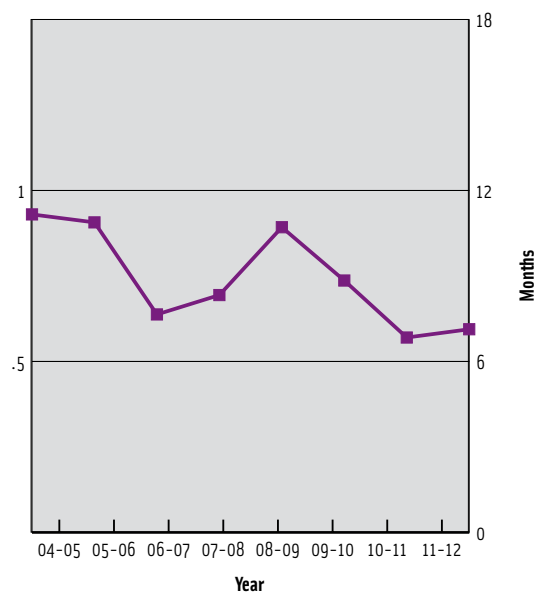
QZ v Sydney South West Area Health Service and QY [2012] HCATrans 164.

The High Court refused leave for QZ to appeal against a decision of the Court of Appeal: *Sydney Local Health Network v QY and QZ* [2011] NSWCA 412 (20 December 2011). The Court of Appeal decided that discrimination against a person on the grounds of the disability of an associate of that person, who was dead at the time the discrimination is said to have occurred, does not breach the ADA.

Sunol v Collier (No 2) [2012] NSWCA 44

The Court of Appeal found that the homosexual vilification provisions in the ADA were not unconstitutional. While those provisions do affect freedom of political speech, preventing homosexual vilification is a legitimate goal of government. The provisions are a proportionate way to attain that goal.

Equal Opportunity Division - Average Disposal Time



Retail Leases Division



Deputy President
Michael Chesterman

- Part-time Deputy President of ADT since 2002
- Acting Judge, District Court of NSW 1998-2008
- Emeritus Professor, University of New South Wales since 2001
- Professor of Law, UNSW 1979-2001; Dean of Law 1990-95
- Law Reform Commissioner, Commonwealth 1983-86 (full-time), 1987-92 (part-time)
- Law Reform Commissioner, NSW 1993-96, 1999-2006 (part-time)

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

Structure and functions

The Retail Leases Division exercises jurisdiction conferred by the Retail Leases Act 1994 on the Tribunal to determine applications relating to 'retail shop leases' as defined in this Act. The Supreme Court, the District Court and the Local Court 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'.

On 11 August 2011, the Tribunal published a new Guideline for the Division. It replaces a Practice Note that came into operation in November 2001. Using simple terminology so far as is feasible, it describes the kinds of application that may be filed in the Division, the types of legal remedy that may be granted and the steps to be taken by parties in commencing proceedings and preparing for a hearing. It also contains an outline of the requirement in section 68 of the RLA that, subject to limited exceptions, parties must attempt to settle their dispute by mediation before any application is filed in the Tribunal.

A separate Practice Note (No 20), published in July 2006, deals with applications for the appointment by the Tribunal of a specialist retail valuer.

The decision of the Appeal Panel in *Torchia v Swanton* [2012] NSWADTAP 5, delivered in February 2012, made reference to another Guideline of the Tribunal: the *Guideline on Costs* (Practice Note No. 22, published in October 2009). Clause 9 of the Guideline 'encourages' parties to advise the Tribunal at the end of the hearing of their case if they wish to apply for costs and states that in such event they should file and serve a statement showing the amount of costs that they are claiming. The Appeal Panel in *Torchia v Swanton* held, however, that a failure to take these steps in proceedings in the RLD does not necessarily preclude a later application for costs. It pointed out that, particularly in cases of significant length or complexity, it will often not be feasible for the Tribunal to hear the evidence and argument relating to costs during the substantive hearing of the matter. In substantive decisions given by the Division, directions for any question of costs to be determined on the basis of written submissions filed later are given frequently, though not in every instance.

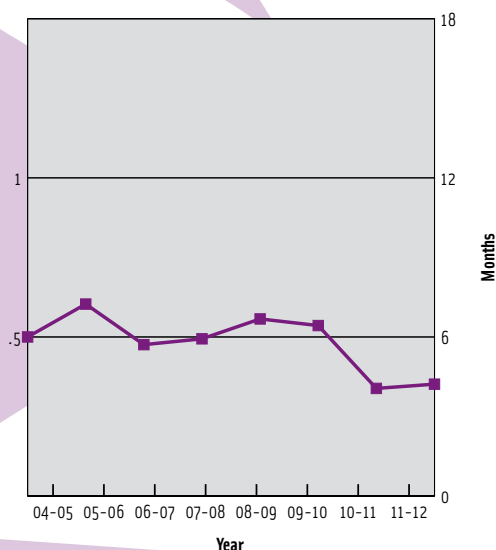
Case load

In last year's Annual Report, it was noted that for the second year running the number of new applications filed in the Division had declined significantly. This marked trend downwards did not continue in the reporting period. The number of new applications was just one less than in the preceding year.

At the beginning of the reporting period, 67 applications under the Retail Leases Act were pending. During the reporting period, the number of new applications filed was 197. The number of applications disposed of was 194, leaving 69 pending applications at the end of the reporting period. The Division fell only just short of keeping up with the inflow of applications.

Among the 197 new applications, 45 (23%) 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; 110 (56%) were retail tenancy claims in other categories; one (0.5%) was an unconscionable conduct claim; and 40 (20.4%) were 'combined'

Retail Leases Division - Average Disposal Time



claims, involving both retail tenancy claims and unconscionable conduct claims.

Of the 194 applications that were disposed of, the outcomes were as follows: 65 (33.5%) were withdrawn/dismissed on the ground of no appearance, or settled without orders being made; 30 (15.5%) were settled with consent orders being made; nine (4.6%) were dismissed after a hearing; one (0.5%) was dismissed on the

ground of lack of jurisdiction; and in 89 (45.9%), orders (non-consensual) were made.

The rate of disposal of claims (49%) without a determination by the Tribunal (other than a consent order) was lower than last year's rate of 56.2%.

During the reporting period, Appeal Panels delivered nine decisions (the same number as last year) relating to appeals from first instance decisions within the Division. Only one appeal raising a substantive question of law on retail tenancies was allowed in full. In consequence, the costs order made at first instance was set aside in a second decision, and another costs order was substituted. In two other cases, the Panel allowed the appeal to the extent of reducing the amount of damages awarded at first instance. In another appeal, dealing only with costs, the Appeal Panel reached the same decision as the Tribunal at first instance, but by a distinctly different route. In one case, the Appeal Panel delivered a decision extending the appeal to the merits and permitting further evidence to be adduced, but has yet to decide the final outcome of the appeal. In two Appeal Panel decisions, the appeal was dismissed outright and in one of these cases, the Panel gave a subsequent decision containing a costs order against the unsuccessful appellants.

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. Out of the 194 applications disposed of in the reporting period, 151 (77.8%) were disposed of within six months and 183 (94.3%) within 12 months. This does however represent a faster disposal rate than was achieved in the preceding reporting period, when only 81% of the disposals occurred within 12 months of the application being filed.

Significant themes

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

- What must be proved to obtain damages under section 10 of the RLA (pre-lease misrepresentations) or section 62D (misleading or deceptive conduct) on the ground of a misrepresentation as to a future event;
- The effect of a clause in a retail shop lease purporting to prevent a lessee's claim for damages under section 34 (disruption of trading) or for abatement of rent under section 36 (damage to premises) being set off against the lessor's claim for arrears of rent;
- Assessment of damages for a lessor's breach of a contractual promise to 'discuss in good faith and fair consideration' a request by the lessee for a new lease;
- Whether a provision for rent relief in a lease was replicated in a new lease arising on the exercise by the lessee of an option to renew;
- The Common Law and statutory requirements for the creation of a retail shop lease;
 - The necessary features of a valid notice under section 29 of the *Conveyancing Act 1919* requiring a lessee to remedy a breach of a lease;
 - The necessary features of a relocation notice under section 34A of the RLA and of a demolition notice under section 35; and
 - The definition of 'key money' under section 14 of the RLA.

Appeal Panel

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

Structure and functions

Normally, 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 panel comprises 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 presiding member in internal appeals is, ordinarily, either the President or the relevant Divisional Head. 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 57 appeals filed (47 internal, 10 external), a significant decrease on last year (57; 13 total 70). During the year 66 appeals were finalised. The pending business as at 30 June 2012 was 24 (internal), four (external), total 28.

The Appeal Panel published 58 decisions: 50 (internal) and eight (external).

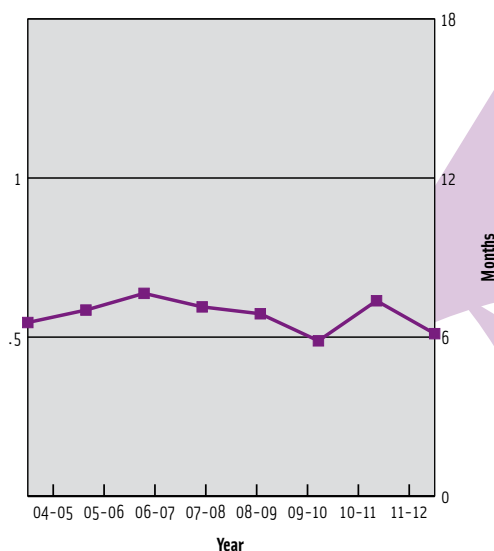
The new filings were distributed as follows - General Division (19), CSD (three), the RLD (11), the EOD (seven), the RD (seven); GT (10). The Internal Appeals distribution, broadly speaking, is similar to the ratio of underlying business in the various Divisions (the LSD is not appealable to the Appeal Panel).

These figures include interlocutory appeals. There were eight new applications. 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.

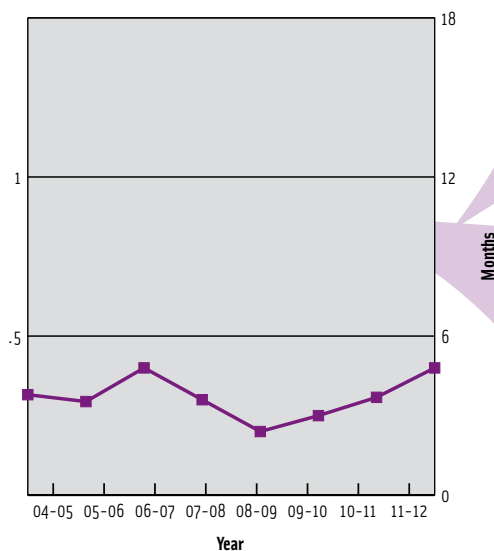
Themes

Appendix F gives a short catchword account of nine of the Appeal Panel cases.

Internal Appeals- Average Disposal Time



External Appeals- Average Disposal Time



Supreme Court Oversight

Most Divisional decisions of the Tribunal are appealable to the Appeal Panel. Appeal Panel decisions are appealable to the Court of Appeal.

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, LSD 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 an Appeal Panel.

During the reporting period there were two proceedings determined on originating summonses in the Common Law Division of the Supreme Court. One originated in the GD and the other in the EOD. Both were unsuccessful.

During the reporting period there were nine Court of Appeal decisions dealing with seven separate proceedings that arose from the Tribunal. One each related to the CSD and RLD, two related to the EOD and three related to the GD. The appellants were successful in two of the decisions and unsuccessful in the remainder.

In addition to providing for rights of appeal to the Supreme Court, the ADT Act also provides for referrals of questions of law to the Court. In *Assadourian v Roads and Traffic Authority of New South Wales (Northern Region)* [2011] NSWSC 1052 the Court commented on the proper procedure for referral of a question of law from the Tribunal to the Court. In that case the referral-proceeding was first heard by a Registrar of the Court of Appeal. By consent the proceedings were then referred to a judge of the Common Law Division. However when the proceeding came on for hearing the presiding judge queried the correctness of the referral-by-consent. In the reasons for its decision the Court confirmed its opposition to the procedure used. Any referral from the Court of Appeal to a trial division of the Court must be made by a judge of the Court of Appeal.

We continue to be unable to report 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.

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

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.

Seven trained mediators comprise the list of mediators. The list is at the end of the list of members in Appendix B. Two of the seven are also members of the Tribunal. Those members do not sit if the matter goes on to a 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 67 mediations conducted this year with the following outcomes: 56 were resolved at or after mediation, and only 11 went to hearing. The precise figures for this year are EOD: 48 mediations, with 42 settled at or following mediation; GD: seven mediations, with five settled at or following mediation; CSD: 12 mediations, with 11 settled at or following mediation.

The primary technique used to resolve cases prior to hearing in the Information Law stream in the GD 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 RD. The statistics show that over 60% of RD filings do not proceed to hearing. This figure tends to suggest that the pre-hearing procedure is successful in achieving agreed resolutions.

In the RLD, 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

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 of the ADT Act 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 five operative Practice Notes and 13 operative Guidelines. The new guidelines that have issued this year are :

- Appointing a Guardian Ad Litem: Guideline
- Publication, Anonymisation and Suppression: Guideline
- RLD: Guideline
- VETAB Reviews: Guideline

The Tribunal has five user groups:

- Freedom of Information
- Privacy
- Guardianship and Protected Estates
- LSD
- RD

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 were no amendments to the ADT Act in the reporting period.

Appendices

Appendix A: Financial Information

Administrative Decisions Tribunal & Legal Services Division Financial Information as at 30 June 2012¹

	ADT			LSD ²	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (including Crown Liabilities)	3,581,334	3,258,199	(323,135)	208,977	3,790,311
Other Operating Expenses	591,744	580,698	(11,046)	15,664	607,408
Depreciation	59,427	69,724	10,297	59,427	
Ex Gratia Payments	509	0	(509)	509	
Maintenance	762	4,171	3,409	762	
Total Expenditure	4,233,776	3,912,792	(320,984)	224,641	4,458,417
Total Revenue ³	(629,294)	(958,516)	(329,222)	(224,641)	(853,935)
Net Cost Of Services	3,604,482	2,954,276	(650,206)	0	3,604,482

Notes

1 This appendix is based on information supplied by the DAGJ. The Audit Office had not completed the audit of the Department's financial statements when this information was supplied.

Correction

In the 2010-11 Annual Report it was reported that the Tribunal received \$2,086,065 in revenue including an amount of \$1,019,080 recouped from the Retail Leases Security Bonds Interest Account. Whilst this amount agreed the amount actually paid in June 2012 was \$759,425.70 including GST. This was a partial contribution for the costs of operating the RLD for 2010-11.

LSD

2 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.

Revenue

3 The Tribunal received \$853,935 in revenue. Of this, \$815,948 was recouped from the Public Purpose Fund for the cost of operating the LSD. 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 ADT Act.

PRESIDENT

Judge KEVIN PATRICK O'CONNOR, AM to 9 February 2013

DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY to 7 March 2013

Assigned as set out below.

GENERAL DIVISION

Current Expiry date

Divisional Head

Judge KEVIN PATRICK O'CONNOR, AM President

09.02.13

Deputy Presidents

PETER RAYMOND CALLAGHAN, SC

31.10.13

MICHAEL RAINSFORD CHESTERMAN

19.10.14

Magistrate NANCY LOUISE HENNESSY

07.03.13

SIGRID HIGGINS

09.05.13

Hon. Acting Judge RODNEY NEVILLE MADGWICK, QC

31.10.12

DAVID LOUTHEAN PATTEN

31.10.12

JANE ANNABEL DARLING NEEDHAM, SC

02.11.11

Judicial Members

CATHERINE LOUISE FITZGERALD

31.10.13

STEPHEN EDWARD FROST

31.10.12

GAIL BARTON FURNESS, SC

31.10.13

CAROLYN HUNTSMAN

31.10.14

NAIDA ISENBERG

31.10.12

SUZANNE MAREE LEAL

31.10.12

PETER HENRY MOLONY

31.10.13

STEPHEN HENRY MONTGOMERY

31.10.13

Non-judicial Members

ZITA ROSE ANTONIOS

31.10.14

MARY ELIZABETH BOLT

31.10.13

ROSS ANDREW EDWARD FITZGERALD

18.12.12

PETER CHARLES GOUDIE

31.10.13

JANETTE BELVA McCLELLAND

31.10.13

JANE LOUISE SCHWAGER, AO

31.10.13

PHILIPPA JUDITH SMITH, AM

31.10.13

MICHAEL VON KOLPAKOW

31.10.13

Presidential Members assigned to Guardianship and Protected Estates list

Magistrate NANCY LOUISE HENNESSY

07.03.13

Judicial Members assigned to Guardianship and Protected Estates list

LOUISE ANN RACHEL GOODCHILD

31.10.12

PENELOPE HELEN GOODE

31.10.11

CAROLYN HUNTSMAN

31.10.14

SUZANNE MAREE LEAL

31.10.12

JULIAN JOSEPH MILLAR

31.10.12

PETER HENRY MOLONY

31.10.13

Non-judicial Members assigned to Guardianship and Protected Estates list

MARY ELIZABETH BOLT

31.10.13

BARBARA RUTH FIELD

31.10.12

JENNIFER GREEN

31.10.12

RALPH WILLIAM FRANCIS MERRELL

31.10.14

BRUCE GEOFFREY THOMSON

31.10.14

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, 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

31.10.13

TREVOR WOOTTEN

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-RAMSAY 31.10.11

EQUAL OPPORTUNITY DIVISION**Divisional Head**

Magistrate NANCY LOUISE HENNESSY, Deputy President 07.03.13

Deputy Presidents

MICHAEL RAINSFORD CHESTERMAN 19.10.14
 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, SC 31.10.13
 PENELOPE HELEN GOODE 31.10.11
 CAROLYN HUNTSMAN 31.10.14
 NAIDA ISENBERG 31.10.12
 RICHARD JOHN PERRIGNON 31.10.13
 SIMON JAMES RICE, OAM 31.10.11
 ANNE SCAHILL 31.10.13
 JOHN ALEXANDER STEVENS WAKEFIELD 31.10.12
 ROBERTSON JAMES WRIGHT, SC 31.10.12

Non-judicial Members

ZITA ROSE ANTONIOS 31.10.14
 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 31.10.13
 NOEL ARTHUR HIFFERNAN 31.10.14
 DINOO KELLEGHAN 31.10.13
 ANTHEA ELISABETH LOWE 31.10.14
 JANETTE BELVA McCLELLAND 31.10.13
 MIKE MUNIR NASIR 31.10.13
 JENNIFER LESS NEWMAN 31.10.13
 MAURICE MICHAEL O'SULLIVAN 31.10.11
 JOACHIM SCHNEEWEISS, AM 31.10.13
 JANE LOUISE SCHWAGER, AO 31.10.13
 PHILIPPA JUDITH SMITH, AM 31.10.13
 TREVOR WOOTTEN 31.10.13

COMMUNITY SERVICES DIVISION**Divisional Head**

SIGRID HIGGINS 09.05.13

Judicial Members

LOUISE ANN RACHEL GOODCHILD 31.10.12
 SUZANNE MAREE LEAL 31.10.12
 PETER HENRY MOLONY (from 25.11.11) 31.10.13

Non-judicial Members

MARY ELIZABETH BOLT 31.10.13
 PHILIP FOREMAN 31.10.13
 JANE GOODMAN-DELAHUNTY 31.10.13
 JENNIFER GREEN 31.10.12
 DENNY GROTH 31.10.13
 JOHN VINCENT LE BRETON 31.10.12
 JAN MASON 31.10.13

LEGAL SERVICES DIVISION**Divisional Head**

Hon. Justice WAYNE ROGER HAYLEN, Deputy President 15.06.14

Deputy Presidents

MICHAEL RAINSFORD CHESTERMAN 19.10.14
 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 31.10.14
 LIONEL PHILIP ROBBERDS, QC 31.10.14
 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
 Hon. GRAHAM ROBERT MULLANE 31.10.12
 JOHANNA PHEILS 31.10.13
 MICHELLE ANNE RIORDAN 31.10.13
 JOHN ALEXANDER STEVENS WAKEFIELD 31.10.12

Non-judicial Members

CARL DONALD BENNETT 31.10.13
 JUDITH FRANCES BUTLIN 31.10.13
 ROSS ANDREW EDWARD FITZGERALD 18.12.12
 ELAYNE HAYES 31.10.13
 SIMON ROBERT HAYES 31.10.13
 Hon. JOHN TINGLE 31.10.13

RETAIL LEASES DIVISION**Divisional Head**

MICHAEL RAINSFORD CHESTERMAN, Deputy President 19.10.14

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
 DAVID LOUTHEAN PATTEN 31.10.12

Judicial Members

DENNIS BLUTH 31.10.14
 ROBERT JOHN FOX 31.10.11
 MARGARET COLLEEN HOLE, AM 31.10.13
 PETER HENRY MOLONY 31.10.13
 STEPHEN HENRY MONTGOMERY 31.10.13
 Hon. GRAHAM ROBERT MULLANE (from 03.08.11) 31.10.12
 KIM BERESFORD RICKARDS 31.10.12

Non-judicial Members

JUDITH FRANCES BUTLIN	31.10.13
BRIAN TERRY HARRISON	31.10.12
ERIC MICHAEL JAMES LONIE	31.10.13
GARY JOHN PINTER	31.10.13
JANE LOUISE SCHWAGER, AO	31.10.13
TERENCE JAMES TYLER	31.10.12

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
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
JUDITH FRANCES BUTLIN	31.10.13
DANNY KOUTOULAS	31.10.13
JANE LOUISE SCHWAGER, AO	31.10.13

MEDIATORS

List of Mediators under s 106 of the ADT Act

COMMUNITY SERVICES DIVISION

LEIGH BAKER
PENELOPE HELEN GOODE
DENNY GROTH
SIGRID HIGGINS
ASHLEY LIMBURY

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 – ACCESS TO INFORMATION AND PRIVACY MATTERS

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

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
Air Transport Act 1964
Animal Research Act 1985
Anti-Discrimination Act 1977
Apiaries Act 1985
Architects Act 2003
Associations Incorporation Act 2009
Births, Deaths and Marriages Registration Act 1995
Building and Construction Industry Security of Payment Act 1999
Building Professionals Act 2005
Charitable Fundraising Act 1991
Child Protection (International Measures) Act 2006
Child Protection (Offenders Registration) Act 2000
Children (Education and Care Services National Law Application) Act 2010
Children (Education and Care Services) Supplementary Provisions Regulation 2004
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 Justice Centres Act 1983
Community Services (Complaints, Reviews and Monitoring) Act 1993
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
Education and Care Services National Regulations
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
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
Mount Panorama Motor Racing Act 1989
Native Title (New South Wales) Act 1994
Non-Indigenous Animals Act 1987
NSW Trustee and Guardian Act 2009
Occupational Licensing (Adoption of National Law) Act 2010
Ombudsman Act 1974
Passenger Transport Act 1990
Pawnbrokers and Second-hand Dealers Act 1996
Pesticides Act 1999
Photo Card Act 2005
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
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
Tattoo Parlours Act 2012
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
 Payroll Tax Rebate Scheme (Disability Employment) Act 2011
 Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011
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
Wool Hide and Skin Dealers Act 2004
Work Health and Safety Regulation 2011
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 (a)	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
2011-2012	956	845	571	47	56	24
Total	11795	11182	571	890	859	24

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(a)	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
2011-2012	10	10	4
Total	164	158	4

NOTES TO TABLE

(a) External appeals jurisdiction commenced - 28 February 2003

Time Standards

As at 1 July 2012 the Tribunal's performance against its time standards was:
(target appears in brackets)

GD

- 63% of matters disposed of in less than 6 months (85%)
- 84% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -90%

CSD

- 69% of matters disposed of in less than 6 months (85%)
- 90% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -1%

EOD

- 68% of matters disposed of in less than 1 year (80%)
- 88% of matters disposed of in less than 2 years (100%)
- Clearance ratio* -82%

RLD

- 77% of matters disposed of in less than 6 months (85%)
- 94% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -98%

RD

- 48% of matters disposed of in less than 6 months (85%)
- 81% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -68%

LSD

- 26% of matters disposed of in less than 9 months (90%)
- 52% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -1%

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

- 50% of matters disposed of in less than 6 months (80%)
- 95% of matters disposed of in less than 1 year (100%)
- Clearance ratio* -115%

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

Appendix E: Statistics

General Division 1/7/2011 - 30/6/2012

1. Case flow 2011-2012

Matters pending at 1 July 2011	New Applications filed	Disposals	Pending at 30 June 2012
169	371	336	204

2. Applications by type 2011-2012

Applications for Original Decision	Applications for review	Professional Discipline
0	370	1

3. Applications by Act 2011-2012

<i>Births, Deaths and Marriages Registration Act 1995</i>	5
<i>Building Professionals Act 2005</i>	2
<i>Business Names Act 2002</i>	2
<i>Education Act 1990</i>	1
<i>Explosives Act 2003</i>	3
<i>Exhibited Animals Protection Act 1986</i>	1
<i>Firearms Act 1996</i>	34
<i>Fisheries Management Act 1994</i>	1
<i>GIPA</i>	102
<i>Guardianship Act 1987</i>	4
<i>Home Building Act 1989</i>	24
<i>HRIPA</i>	9
<i>Hemp Industry Act</i>	1
<i>Impounding Act 1993</i>	2
<i>Motor Dealers Act 1974</i>	1
<i>Motor Vehicle Repairs Act 1980</i>	4
<i>Non Indigenous Animals Act 1987</i>	1
<i>NSW Trustee and Guardian Act 2009</i>	22
<i>PPIPA</i>	39
<i>Property, Stock and Business Agents Act 2002</i>	9
<i>Pawnbrokers and Second-hand Dealers Act 1996</i>	1
<i>Passenger Transport Act 1990</i>	72
<i>Security Industry Act 1997</i>	19
<i>Surveying and Spatial Information Act 2002</i>	1
<i>Tow Truck Industry Act 1998</i>	10

4. Outcomes in Review matters 2011-2012

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	Privacy - contravention - no action	Privacy - contravention order made	Privacy - application dismissed	No Jurisdiction
185	91	45	2	3	4	5	1

5. Outcomes in Original matters 2011-2012

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

6. Outcomes in Professional Discipline 2011-2012

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

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

Disposed of in under 6 months	212
Disposed of in under 12 months	71
Disposed of in over 12 months	40
Disposed of in over 2 years	13

8. Mediation

No. of disposals where mediation was conducted	Settled at or after Mediation	Proceeded to Hearing
7	5	4

Guardianship and Protected Estates List 1/7/2011-30/6/2012

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

1. Case Flow-Guardianship and Protected Estates Review Matters 2011-2012

Pending at 1 July 2011	New Applications Filed	Disposals	Pending at 30 June 2012
9	26	30	5

2. Applications for Review 2011-2012

<i>NSW Trustee and Guardian Act 2009</i>	26
--	----

3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2011-2012

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
14	14	2	0	0	30

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

Disposed of in under 6 months	24
Disposed of in under 12 months	4
Disposed of in over 12 months	2
Disposed of in over 2 years	0

Community Services Division 1/7/2011 - 30/6/2012

1. Case flow 2011-2012

Matters pending at 1 July 2011	New Applications filed	Disposals	Pending at 30 June 2012
28	42	42	28

2. Applications by type 2011-2012

Applications for original decision	Applications for review
8	34

3. Applications by Act 2011-2012

Children and Young Persons (Care and Protection) Act 1988	34
CCYP Act	7
Disability Services Act 1993	1

4. Outcomes - Reviewable Decisions 2011-2012

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
26	2	2	0	1

5. Outcomes- Original Decisions 2011-2012

Dismissed because application withdrawn/no appearance/agreement reached	Declaration Made	Declaration Refused	No Jurisdiction
6	3	1	1

6. Mediation 2011-2012

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
12	3	8	1

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

Disposed of in under 6 months	28
Disposed of in under 12 months	9
Disposed of in over 12 months	4
Disposed of in over 2 years	1

Equal Opportunity Division 1/7/2011- 30/6/2012

1. Case flow 2011- 2012

Matters pending at 1 July 2011	New Applications filed	Disposals	Pending at 30 June 2012
73	175	144	104

2. Applications by type 2011-2012

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
141	4	23	7	0

3. Referral applications filed in 2011 – 2012 by Ground

Head of discrimination	Number
Race	30
Disability discrimination	43
Sexual harassment	18
Sex discrimination	14
Victimisation	5
Carers responsibilities	11
Age discrimination	6
Homosexual vilification	7
Homosexual discrimination	4
Pregnancy discrimination	1
Transgender vilification	1
HIV/AIDS vilification	1

4A. Outcomes of Referrals 2011-2012

Dismissed because application withdrawn/no appearance/agreement reached	Summary dismissal under sections 102, 111	Dismissed after hearing	Orders made after hearing
82	3	15	10

4B. Mediation

No. of disposals where mediation was conducted	Settled at or after Mediation	Proceeded to Hearing	Percentage of finalised matters resolved at mediation
48	42	6	88%

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

for referrals	Number
Disposed of in under 6 months	64
Disposed of in under 12 months	30
Disposed of in over 12 months	11
Disposed of in over 2 years	5

5A. Application for registration of conciliation agreement 2011 - 2012

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

Matters pending at 1 July 2011	New applications filed	Disposals	Pending at 30 June 2012
0	4	4	0

5B. Outcome of application for registration of agreement 2011-2012

Agreement registered	Agreement not registered	Dismissed because application withdrawn / no appearance / agreement reached
0	2	2

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

for registration of agreement

Disposed of in under 6 months	4
Disposed of in under 12 months	0
Disposed of in over 12 months	0
Disposed of in over 2 years	0

6A. Applications for leave to proceed 2011-2012

(this information also forms part of the EOD case flow statistics above)

Matters pending at 1 July 2011	New applications filed	Disposals	Pending at 30 June 2012
6	23	24	5

6B. Outcome of applications for leave 2011-2012

Leave granted	Leave not granted	Dismissed because application withdrawn / no appearance / agreement reached
2	20	2

6C. Timeliness - time from date of application to date of leave decision

for leave applications

Disposed of in under 6 months	24
Disposed of in under 12 months	0
Disposed of in over 12 months	0
Disposed of in over 2 years	0

7A. Applications for interim orders

New applications Filed	Disposals	Pending at 30 June 2012
7	6	1

7B. Outcome of applications for interim orders

Order granted	Order not granted	Consent orders	Application withdrawn dismissed
2	1	1	2

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

for interim orders

Disposed of in under 6 months	6
Disposed of in under 12 months	0
Disposed of in over 12 months	0
Disposed of in over 2 years	0

8. Review of exemption decisions s 126

Matters pending at 1 July 2011	New applications filed	Disposals	Pending at 30 June 2012
0	0	0	0

Retail Leases Division 1/7/2011 - 30/6/2012

1. Case flow 2011-2012

Matters pending at 1 July 2011	Applications filed	Disposed	Pending at 30 June 2012
67	197	194	69

2. Applications filed in 2011-2012 by type

Retail tenancy claim	110
Unconscionable conduct claim	1
Combined retail tenancy and unconscionable conduct claim	40
Specialist Retail Valuer	45

3. Outcomes 2011- 2012

Dismissed because application withdrawn / no appearance/ agreement reached	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
65	9	30	89	1	0

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

Disposed of in under 6 months	151
Disposed of in under 12 months	32
Disposed of in over 12 months	10
Disposed of in over 2 years	1

Revenue Division 1/7/2011- 30/6/2012

1. Case flow 2011-2012

Matters pending at 1 July 2011	Applications filed	Disposals	Matters pending at 30 June 2012
74	138	95	117

2. Applications by Type 2011-2012

Duties Act 1997	19
FHOG Act	19
Land Tax Act	2
Land Tax Management Act 1956	69
Payroll Tax Act 1971	1
Payroll Tax Act 2007	16
Taxation Administration Act 1996	12

3. Outcomes 2011- 2012

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
71	19	5	0	0

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

Disposed of in under 6 months	46
Disposed of in under 12 months	31
Disposed of in over 12 months	15
Disposed of in over 2 years	3

Legal Services Division 1/7/2011- 30/6/2012

1. Case flow 2011-2012

Matters pending at 1 July 2011	Applications filed	Disposed	Pending at 30 June 2012
50*	34	34	50

* 52 prior to audit of database

2. Applications by type 2011-2012

Applications for original decision	0
Applications for review	3
Application for professional discipline	31

3. Applications by subject 2011-2012

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	0
Solicitor	Disciplinary action	18
Solicitor	Reprimand/Compensation order s 540	3
Lay associate	Approval of lay associate s 17(3)	1
Lay associate	Prohibition on employment s 18	2
Solicitor	Professional misconduct	10

4. Outcomes in Original matters 2011-2012*

<i>Disciplinary - Penalty imposed by type</i>	
Dismissed after hearing	3
Fined	15
Reprimanded	14
Removed from Roll	7
Conditions imposed on practising certificate	7
Compensation	1
Undertake and complete course of further legal education	6
Withdrawn	1
Application granted	4
Application refused	1
 <i>Approval of lay associate</i>	
Application granted	2

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

5. Outcomes in Review matters 2011-2012

Application withdrawn/ Dismissed	1
Decision under review affirmed	1

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

Disposed of in under 6 months	9
Disposed of in under 12 months	9
Disposed of in over 12 months	9
Disposed of in over 2 years	7

Appeals 1/7/2011 - 30/6/2012

Internal Appeals to Appeal Panel

1. Case Flow 2011-2012

	Appeals Pending at 1 July 2011	New Appeals filed	Disposals	Pending at 30 June 2012
GD	16	19	25	10
CSD	1	3	3	1
EOD	4	7	6	5
RLD	6	11	12	5
RD	6	7	10	3
Total	33	47	56	24

1a Interlocutory Appeals*

	Pending at 1 July 2011	Interlocutory Appeal filed	Disposals	Pending at 30 June 2012
	2	8	9	1

*(this information forms part of the Internal appeal case flow statistics above)

2. Outcome of Internal Appeals 2011 - 2012

	Upheld (in full part)	Dismissed/ No jurisdiction	Consent Orders	Withdrawn/ Discontinued	Total
GD	6	19			25
CSD	3				3
EOD	1	4		1	6
RLD	4	6	1	1	12
RD	4	6			10
Total					56

2a Interlocutory Appeals*

	Leave to proceed refused and dismissed	Leave granted but dismissed	Leave granted & appeal upheld
	2	3	5

*(this information forms part of the Internal appeal case flow statistics above)

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

Disposed of in under 6 months	27
Disposed of in under 12 months	27
Disposed of in over 12 months	1
Disposed of in over 2 years	1

External Appeals to the Appeal Panel

1. Case Flow 2011 -2012

	Appeals Pending at 1 July 2011	New Appeals filed	Disposals	Pending at 30 June 2012
GT	4	10	10	4
Mental Health Review Tribunal	0	0	0	0
Total	4	10	10	4

2. Outcome of External Appeals 2011-2012

Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	No Jurisdiction
3	7	0	0

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

Disposed of in under 6 months	6
Disposed of in under 12 months	3
Disposed of in over 12 months	1
Disposed of in over 2 years	0

4. Published Appeal Decisions- Presiding Member

Member	Internal appeals	External appeals	Total
O'Connor, P	22		22
Hennessy, DP	8	6	14
Chesterman, DP	9		9
Needham, DP	5		5
Higgins, DP	1		1
Madgwick, DP	3		3
Patten, DP	6		6

Appendix F: Significant Appeal Cases

This Summary covers the reporting period 1 July 2011 to 30 June 2012

Appeals to High Court

Tasty Chicks Pty Limited v Chief Commissioner of State Revenue (2011) 85 ALJR 1183; [2011] HCA 41

This case concerned the nature of the appellate jurisdiction of the Supreme Court under the Taxation Administration Act 1996 (NSW). This legislation also gives a concurrent right of appeal to the ADT. At [14] the Court makes a comment on the Tribunal's review jurisdiction

The comment states that the specific powers of review given by an enabling enactment do not impliedly override the general powers in the ADT Act. In the result, questions as to the extent and nature of remedial powers should first be addressed to the specific provisions in the enabling enactment, and then addressed to the general powers in the ADT Act.

Appeals to Court of Appeal

Sydney Markets Ltd v Wilson [2011] NSWCA 201

RLA – “retail shop” – “premises”

Mr Wilson licensed a space within *Paddy's Market* at Haymarket. One term of the licence allowed *Paddy's Market* to vary the trading hours when the licence holder had to attend *Paddy's Market*. *Paddy's Market* sought to increase the prescribed trading hours.

Mr Wilson started proceedings in the Tribunal to challenge the variation of trading hours. *Paddy's Market* disputed the licence was covered by the RLA because the licence was not about “premises” as that

word is used in the defined term “retail shop” in RLA s 3. The Court clarified the meaning of the term “premises” by saying it at least extended to a non-enclosed structure within a building.

People with Disability Australia Incorporated v Minister for Disability Services [2011] NSWCA 253

JURISDICTION – “decision”, “reviewable decision”

The ordinary meaning of the term “decision” is extended by the inclusive legal definition in ADT Act s 6. It extends from deliberative mental actions, conventionally called “decisions” to concrete or manifested activity, conventionally called “conduct”. In the review jurisdiction ADT Act s 8 extends the ordinary meaning of the word “decision” to the conduct of the administrator as well as the varieties listed in s 6. In addition, it is implicit that the actions denoted by the word “decision” are both events or actions commenced in the past and continuing in the present as well as events or actions commenced in the past and completed in the past.

Sydney Local Health Network v QY [2011] NSWCA 412

DISCRIMINATION ON THE GROUNDS OF DISABILITY – ADA s 49M

The appeal-respondents were friends of a deceased person. Employees of the appellant did an autopsy on the deceased. The appeal-respondents claimed to be discriminated against by the appellant in the manner in which the autopsy on their

friend was done. For the purposes of the ADA they claimed to be “associates” of the deceased. For the appeal-respondents to succeed they needed to have two legal questions answered in their favour: was the deceased an “aggrieved person” within the meaning of the ADA and, were the appeal-respondents “associates” of an aggrieved person.

The Court was divided on the answer to the first question but by majority answered the second question against the appeal-respondents. So a living person cannot be an “associate” of a person deceased at the time of the alleged discrimination – hence no discrimination against the associate can occur.

Special leave to appeal to the High Court was refused: *QZ v Sydney South West Area Health Service* [2012] HCATrans 164.

Sunol v Collier [2012] NSWCA 14

JURISDICTION - ADA s 49ZT

The ADT is not a Constitution of the Commonwealth Chapter III court and cannot be the recipient of federal jurisdiction under a Commonwealth statute: *Trust Company of Australia Ltd v Skiwing Pty Ltd* (2006) 66 NSWLR 77; [2006] NSWCA 185 followed.

If the Tribunal incorrectly decides a question of constitutional validity, the prudent procedure for the affected party is to apply for declaratory relief in the Common Law judicial review jurisdiction of the Supreme Court. *Attorney General (NSW) v Radio 2UE Sydney Pty Ltd* [2006] NSWCA 349; (2006) 226 FLR 62 disapproved.

PRIVACY

Altaranesi v Administrative Decisions Tribunal [2012] NSWCA 19 (28 February 2012)

The applicant claimed the respondent disclosed “personal information” concerning the appellant’s race and job, and the health of his wife and daughter to the appellant’s personal doctor in a manner prohibited by the HRIPA and Health Privacy Principle 11. The Court held the Tribunal was not legally erroneous in holding that the appellant consented to the disclosure (exclusion 1(a) Health Privacy Principle 11). In any event, the disclosure was for the purpose of allowing the appellant’s doctor to continue treatment and care of the appellant’s back pain. The disclosure for this purpose was within exclusion 1(b) Health Privacy Principle 11.

On the facts the consent was explicit, but in obiter the Court held that “consent” in exclusion 1(a) Health Privacy Principle 11 extends to implied consent: [61].

The applicant claimed the respondent, in answers given to an insurance investigator for the purposes of assessing a workers compensation claim, disclosed information about the appellant’s wife and daughter in a manner prohibited by the HRIPA. The Court held information disclosed to the insurance investigator was not ‘held’ by the respondent in a relevant sense because it was not recorded anywhere: it was ‘in the mind of the employee’. Since the information was not “held” then its disclosure could not involve contravention of any relevant information protection principle or health privacy principle.

Special leave to appeal was refused by the High Court: *Altaranesi v Administrative Decisions Tribunal* [2012] HCASL 126; *Altaranesi v Administrative Decisions Tribunal* [2012] HCASL 129

Chi v Technical and Further Education Commission [2012] NSWCA 131

SUPREME COURT – statutory appeal from ADT

The Court observed the term “interlocutory decision” in ADT Act s 119(1A)(a) is not identical to the term “interlocutory function” in ADT Act s 24A. This could produce the result that leave from the Supreme Court could be required in circumstances where leave was not required from the Appeal Panel – or the reverse.

Supreme Court – First Instance

Ekermaui v Administrative Decision Tribunal [2011] NSWSC 1503 (Davies J)

COSTS

The plaintiff initiated misconceived appeal proceedings from the Appeal Panel to the Common Law Division. The proceedings should have been commenced in the Court of Appeal. Prior to hearing the respondent wrote to the plaintiff explaining why the proceedings were misconceived and offered not to press costs if the plaintiff withdrew the application. The plaintiff ignored the offer and the proceedings were dismissed for reasons the same as those in the respondent’s letter. This conduct of the plaintiff was held relevant to the Court’s decision on costs.

Appeals to Appeal Panel

(A) From GD

Brandusoiu v Commissioner of Police, NSW Police Force [2011] NSWADTAP 47

EVIDENCE – prior curial proceedings

The respondent cancelled the applicant’s security industry licence on the basis of evidence from an inquiry of the Independent Commission Against Corruption. At first instance the applicant sought to make a forensic attack on that evidence, especially evidence as to the applicant’s credibility. The Tribunal refused the applicant permission to do so. Held: the applicant was denied procedural fairness.

There is no rule that an administrative disciplinary tribunal cannot ‘go behind’ evidence which forms the basis of the disciplinary proceedings, from a prior curial proceeding. The Tribunal can question the facts found, at least where there is countervailing evidence presented. It can have regard to exculpatory or extenuating material, whether presented to the external body at the time and material which has since become available. However where, as here, the applicant/appellant merely asks for the Tribunal to put a different and more favourable complexion on the body of evidence without adducing new evidence of an exculpatory nature it is difficult to see how the Tribunal could substitute another view.

AF v Minister for Health [2012] NSWADTAP 16

PRIVACY – “personal information”

A statutory exception to the definition of “personal information” is expressed thus: “...information or an opinion about an individual’s suitability for appointment or employment as a public sector official...”. In this decision the Appeal Panel held the exception extends from information concerned with a decision whether to terminate a person’s employment to information concerned with a person’s on-going fitness for employment.

Commissioner of Police, NSW Police Force v Camilleri [2012] NSWADTAP 19

ACCESS TO INFORMATION – GIPA

This is the first decision from the Appeal Panel on GIPA. In the decision at [7] and following the Appeal Panel explains the new approach to assessment of claims to access information. The Appeal Panel also comments on the future use of authorities decided under the *Freedom of Information Act 1989* (repealed).

(B) From RLD

Prosha Pty Ltd v AXL Trading Pty Ltd [2011] NSWADTAP 36

RETAIL LEASES – assessment of damages – value of trading stock

During the termination of a retail tenancy the tenant’s trading stock was moved from one shop in a shopping centre to a second shop by agents of the landlord. The tenant claimed the goods were damaged during the moving. Questions arose as to the valuation of the trading stock. On appeal held: the Tribunal had erred in its valuation of the trading stock.

(C) From RD

Chief Commissioner of State Revenue v Scarfo [2011] NSWADTAP 57

STAMP DUTY – dutiable transaction done by two – *Duties Act 1997* s 18(2)

The respondent Scarfo was the undisclosed principal in the purchase of a block of land. Their agent bought the land at auction, entering a contract for sale with the vendor in their own name. The agent later directed the vendor to make the transfer of title to Scarfo. Upon settlement, stamp duty at the *ad valorem* rate was paid on the contract for sale, but only at a nominal rate on the transfer. The appellant later levied stamp duty on the transfer at the *ad valorem* rate. Scarfo disputed the assessment on the basis the transfer fell within *Duties Act 1997* s 18(2) exemption for double duty where one transaction is done by two instruments and the transfer is “in conformity with” the contract for sale.

Held: A transfer to a third party unrelated to the purchaser on the face of the contract is a transfer to an unrelated third party and not “in conformity with” the contract for sale.

Chief Commissioner of State Revenue v Sayden Pty Ltd ATF Griffin Property Unit Trust [2012] NSWADTAP 14

LAND TAX – drafting of private instruments to comply with legislation

In this case a trust deed was no longer compliant with new legislation. To bring the document into compliance the taxpayer amended the instrument by inserting a clause copying the new legislation and prefacing the new clause with the phrase “Notwithstanding any other provision of this Deed”. However the existing clauses

inconsistent with the new clause were not amended. Held: these amendments did not make the instrument compliant with the new legislation.

(D) From Guardianship Tribunal

AGM v NSW Trustee and Guardian [2012]
NSWADTAP 18

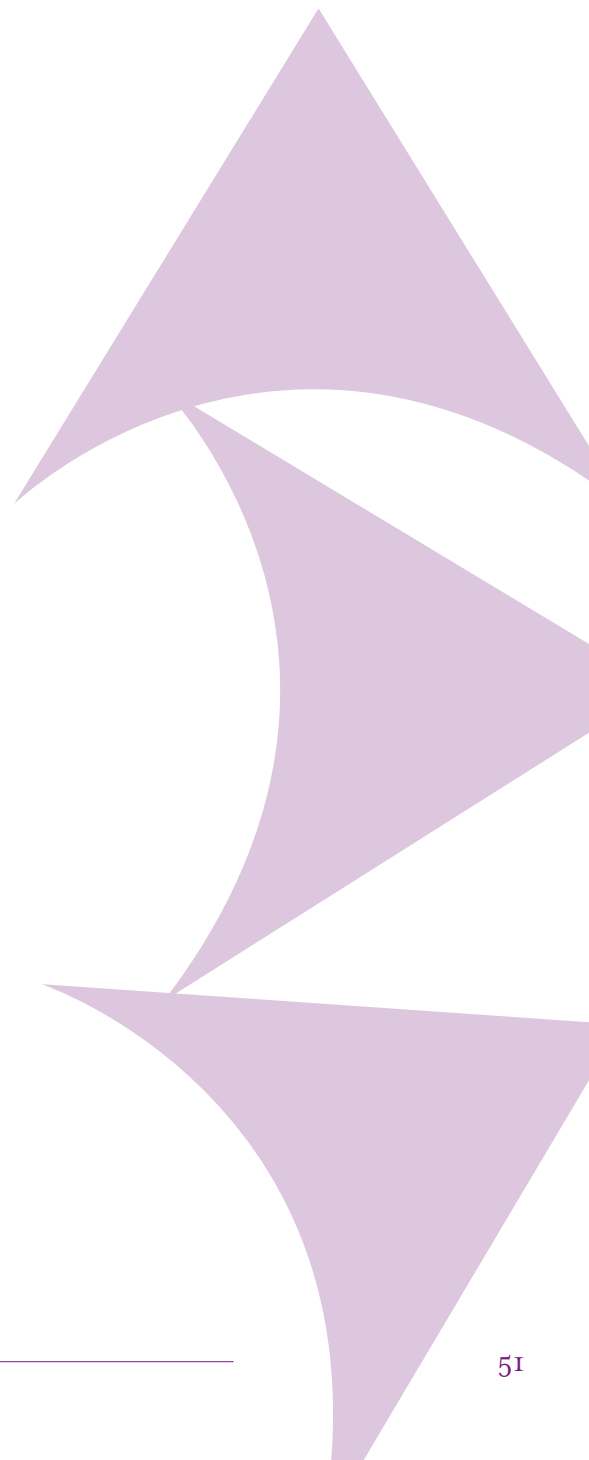
GT – jurisdiction – *Powers of Attorney Act 2003*

When the GT decides to change a person's attorney under an enduring power of attorney (*Powers of Attorney Act 2003* s 36) it has no jurisdiction to make a financial management order. However, if the GT decides not to change the attorney it has jurisdiction to make a financial management order.

AJJ v NSW Trustee and Guardian [2012]
NSWADTAP 30

APPEAL – principles in granting leave

The Tribunal when granting leave to appeal on the merits from the GT should follow the principles expressed in *K v K* [2000] NSWSC 1052 in respect of the concurrent jurisdiction of the Supreme Court.



Appendix G: Decisions Organised into Division and Internal and External Appeal Panel, from 1 July 2011 to 30 June 2012

INTERNAL APPEALS

NAME	MEDIUM NEUTRAL CITATION
Valentino Franchise Pty Ltd (ACN 114 469 662) v Brookfield Multiplex WS Retail Landowner Pty Ltd (ACN 109 033 794) (RLD)	[2012] NSWADTAP 22
Gani v Maiolo (No. 2) (RLD)	[2012] NSWADTAP 21
Chief Commissioner of State Revenue v Ghali (RD)	[2012] NSWADTAP 20
Commissioner of Police, NSW Police Force v Camilleri (GD)	[2012] NSWADTAP 19
AF v Minister for Health; Minister for Health v AF (GD)	[2012] NSWADTAP 16
Deerubbin Local Aboriginal Land Council v Hunter (EOD)	[2012] NSWADTAP 15
Chief Commissioner of State Revenue v Sayden Pty Ltd ATF Griffin Property Unit Trust (RD)	[2012] NSWADTAP 14
Perry Properties Pty Ltd v Chief Commissioner of State Revenue (RD)	[2012] NSWADTAP 13
Lo v Chief Commissioner of State Revenue (RD)	[2012] NSWADTAP 12
Soliman v Roads and Maritime Services (GD)	[2012] NSWADTAP 11
Gani v Maiolo (RLD)	[2012] NSWADTAP 10
LN v Sydney Local Health District (GD)	[2012] NSWADTAP 9
Lytton v North Bondi RSL Club (RLD)	[2012] NSWADTAP 8
Boutros v Director-General, Department of Finance and Services (No. 2) (GD)	[2012] NSWADTAP 7
Brandusoiu v Commissioner of Police, NSW Police Force (No. 2) (GD)	[2012] NSWADTAP 6
Torchia v Swanton (RLD)	[2012] NSWADTAP 5
ABJ v Public Guardian (GD)	[2012] NSWADTAP 3
Spuds Surf Chatswood Pty Ltd v PT Ltd (RLD)	[2012] NSWADTAP 2
Chief Commissioner of State Revenue v Mr Espresso Group Pty Ltd (RD)	[2012] NSWADTAP 1
Coogee Bay Village v Profilio (RLD)	[2011] NSWADTAP 67
Harms v Sydney West Area Health Service (No. 2) (EOD)	[2011] NSWADTAP 66
Director-General, Transport NSW v AIC (GD)	[2011] NSWADTAP 65
Director-General, Department of Finance and Services v Carr (GD)	[2011] NSWADTAP 64
Roads and Maritime Services v AF; AF v Roads and Maritime Services (GD)	[2011] NSWADTAP 63
Jones and Harbour Radio Pty Limited v Trad (No. 2) (EOD)	[2011] NSWADTAP 62
Department of Education and Communities v VK (GD)	[2011] NSWADTAP 61
Kolln v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 58
Chief Commissioner of State Revenue v Scarfo (RD)	[2011] NSWADTAP 57
Mytilinios v Chief Commissioner for State Revenue (RD)	[2011] NSWADTAP 56
SQ v Department of Attorney General and Justice (GD)	[2011] NSWADTAP 55

Boutros v Director-General, Department of Finance and Services (GD)	[2011] NSWADTAP 54
Norrie v Registrar of Births, Deaths and Marriages (GD)	[2011] NSWADTAP 53
1 Rocky Point Pty Ltd (No. 4) v Chief Commissioner for State Revenue (RD)	[2011] NSWADTAP 52
Mouwad v Commissioner of Police, NSW Police Force (GD)	[2011] NSWADTAP 50
KT v Sydney Local Health District (formerly Sydney Local Health Network) (No. 3) (GD)	[2011] NSWADTAP 49
Harms v Sydney West Area Health Service (EOD)	[2011] NSWADTAP 48
Brandusoiu v Commissioner of Police, NSW Police Force (GD)	[2011] NSWADTAP 47
Haddad v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 46
Ekerawi v Harbour Radio Pty Ltd (EOD)	[2011] NSWADTAP 44
Commissioner of Police, NSW Police Force v Eloss (GD)	[2011] NSWADTAP 43
KT v Sydney Local Health District (formerly Sydney Local Health Network) (No. 2) (GD)	[2011] NSWADTAP 42
Lease A Leaf Property Pty Limited v Chief Commissioner of State Revenue (RD)	[2011] NSWADTAP 41
Roach v Braun (RLD)	[2011] NSWADTAP 40
Coogee Bay Village Pty Ltd v Profilio (RLD)	[2011] NSWADTAP 39
Craig-Bennet v Great Western Area Health Service (EOD)	[2011] NSWADTAP 38
Prosha Pty Ltd v AXL Trading Pty Ltd (RLD)	[2011] NSWADTAP 36
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
TF v PZ (GD)	[2011] NSWADTAP 33
KP v Narrandera Shire Council (No. 2) (GD)	[2011] NSWADTAP 32

EXTERNAL APPEALS

AFM v NSW Trustee and Guardian	[2012] NSWADTAP 17
AGM v NSW Trustee and Guardian	[2012] NSWADTAP 18
AFX v NSW Trustee and Guardian	[2012] NSWADTAP 4
ADK v NSW Trustee and Guardian	[2011] NSWADTAP 60
AEU v NSW Trustee and Guardian	[2011] NSWADTAP 59
ADW v NSW Trustee and Guardian	[2011] NSWADTAP 51
VU v NSW Trustee and Guardian	[2011] NSWADTAP 45
PV v NSW Trustee and Guardian	[2011] NSWADTAP 37

GENERAL DIVISION DECISIONS

Luo v Roads and Maritime Services	[2012] NSWADT 140
AEB v Public Guardian	[2012] NSWADT 126
ANC High School Pty Ltd v The Board of Studies	[2012] NSWADT 125
Calabria v Department of Primary Industries	[2012] NSWADT 124
Sydney Pistol Club v Commissioner of Police, NSW Police Force	[2012] NSWADT 121
Roy v Commissioner of Police, NSW Police Force	[2012] NSWADT 120

ABA v Department of Human Services, Community Services	[2012] NSWADT 117
AHS v Roads and Maritime Services	[2012] NSWADT 116
AFV v NSW Trustee and Guardian	[2012] NSWADT 115
AJO v Director-General, Department of Transport	[2012] NSWADT 101
ACF v NSW Trustee and Guardian	[2012] NSWADT 97
Woodhouse v City of Sydney Council	[2012] NSWADT 95
ABA v Commissioner of Police, NSW Police Force	[2012] NSWADT 90
AEF v Northern Sydney Local Health District (No. 2)	[2012] NSWADT 89
McKinnon v Nepean Blue Mountains Local Health Network	[2012] NSWADT 86
Smith v Commissioner of Police, NSW Police Force	[2012] NSWADT 85
Nelson v Commissioner of Police, NSW Police Force	[2012] NSWADT 84
ACO v Department of Education and Training	[2012] NSWADT 79
Miriani v Commissioner of Police, NSW Police Force	[2012] NSWADT 78
AET v Western NSW Local Health District AET v Rural and Remote Medical Services t/as Gulgong Medical Centre	[2012] NSWADT 77
AHB v NSW Trustee and Guardian	[2012] NSWADT 76
McCabe v Workers Compensation Commission	[2012] NSWADT 74
Tziolas v NSW Department of Education and Communities	[2012] NSWADT 69
Marjoribanks v Commissioner of Police, NSW Police Force	[2012] NSWADT 67
Watson v Director-General, Department of Finance and Services	[2012] NSWADT 64
Vaporis v Commissioner of Police, NSW Police Force	[2012] NSWADT 61
Edwards v Department of Family and Community Services	[2012] NSWADT 60
Ridler-Dutton v Commissioner of Police, NSW Police	[2012] NSWADT 57
Doyle v NSW Maritime (No. 2)	[2012] NSWADT 55
Sekers v Commissioner of Police, NSW Police Force	[2012] NSWADT 54
Hamdan v Commissioner of Police, NSW Police Force	[2012] NSWADT 52
See v Transport for NSW	[2012] NSWADT 51
Hall v Department of Premier and Cabinet	[2012] NSWADT 46
McKinnon v Blacktown City Council	[2012] NSWADT 44
Mroue v Department of Transport and Infrastructure	[2012] NSWADT 43
Morgan v Commissioner of Police, NSW Police Force	[2012] NSWADT 42
Miller v Director of Public Prosecutions	[2012] NSWADT 38
AIU v Commissioner of Police, NSW Police Force	[2012] NSWADT 36
AHX v NSW Trustee and Guardian and anor	[2012] NSWADT 35
AHT v NSW Trustee and Guardian	[2012] NSWADT 34
McCabe v Workers Compensation Commission	[2012] NSWADT 30
Gurdler v Roads and Maritime Services	[2012] NSWADT 29
Gilliana v Director-General Transport NSW	[2012] NSWADT 28
Chant v Gwydir Shire Council	[2012] NSWADT 20

AIE v Commissioner of Police, NSW Police Force	[2012] NSWADT 18
Djamirze v Director-General, Department of Services Technology and Administration	[2012] NSWADT 17
AHJ v NSW Trustee and Guardian (No. 2)	[2012] NSWADT 14
All v Director-General, Transport NSW	[2012] NSWADT 10
Assi v Director-General, Transport NSW	[2012] NSWADT 7
Qutami v Commissioner of Police, NSW Police Force	[2012] NSWADT 6
Camilleri v Commissioner of Police, NSW Police Force	[2012] NSWADT 5
AEC v Commissioner of Police, NSW Police Force	[2012] NSWADT 4
AVS Group Australia Pty Limited v Commissioner of Police, NSW Police Force	[2012] NSWADT 1
AHH v NSW Registry of Births, Deaths and Marriages	[2011] NSWADT 267
Waite v Hornsby Shire Council	[2011] NSWADT 259
Turkman v Registrar, NSW Registry of Births Deaths and Marriages	[2011] NSWADT 258
Saleam v Registrar, Registry of Births, Deaths and Marriages	[2011] NSWADT 254
El-Khawli v Roads and Traffic Authority	[2011] NSWADT 253
ACP v Commissioner of Police, NSW Police Force	[2011] NSWADT 249
VZ v University of Newcastle	[2011] NSWADT 245
Moran v Shellharbour City Council	[2011] NSWADT 241
Bennett v Building Professionals Board (No. 2)	[2011] NSWADT 238
WH v Internal Audit Bureau of NSW	[2011] NSWADT 237
Campbell v Director-General, Department of Services Technology and Administration	[2011] NSWADT 236
KT v Sydney Local Health Network	[2011] NSWADT 233
Haynes v Registrar of Births, Deaths and Marriages	[2011] NSWADT 231
OS v Mid-Western Regional Council (No. 3)	[2011] NSWADT 230
Morkos v Department of Transport (formerly known as NSW Transport and Infrastructure)	[2011] NSWADT 228
Derbas v Department of Services Technology and Administration	[2011] NSWADT 227
Soliman v Director-General, Transport NSW (No. 2)	[2011] NSWADT 223
Saleam v Department of Human Services, Community Services	[2011] NSWADT 216
AT v Commissioner of Police, New South Wales Police	[2011] NSWADT 214
SY v Northern Sydney Local Health Network (formerly Northern Sydney Central Coast Area Health Service)	[2011] NSWADT 203
AFE v Registrar of Births, Deaths and Marriages	[2011] NSWADT 201
UE and UD v NSW Trustee and Guardian No. 2	[2011] NSWADT 200
Weckert v Commissioner of Police, NSW Police Force	[2011] NSWADT 197
Sharari v Director-General, Transport NSW	[2011] NSWADT 196
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 and Training	[2011] NSWADT 163
QB v Greater Southern Area Health Service No. 2	[2011] NSWADT 162
AAK v NSW TG and ABH	[2011] NSWADT 161

COMMUNITY SERVICES DIVISION DECISIONS

FZ v Commission for Children and Young People	[2012] NSWADT 93
AIO and AIP v Department of Human Services, Community Services	[2012] NSWADT 87
VR v Commission for Children and Young People	[2012] NSWADT 83
AAZ v Commission for Children and Young People	[2012] NSWADT 75
KQ v Commission for Children and Young People	[2012] NSWADT 62
People with Disability Australia Incorporated v The Minister for Disability Services	[2012] NSWADT 33
AGI v Commission for Children and Young People	[2012] NSWADT 31
LA v Commission for Children and Young People	[2012] NSWADT 13
ADV v Commission for Children and Young People	[2012] NSWADT 8
WI v Fairfield City Council	[2011] NSWADT 279
AAC v Director-General, Department of Human Services, Community Services (No. 2)	[2011] NSWADT 235
WN v Commission for Children and Young People	[2011] NSWADT 179
WM v Barnardos Australia	[2011] NSWADT 164

EQUAL OPPORTUNITY DIVISION DECISIONS

Lawson v State of New South Wales (Housing NSW)	[2012] NSWADT 127
James v Wild Food Highlands Pty Ltd	[2012] NSWADT 111
Herbert v Five Dock Dockers RSL Rugby League Football Club	[2012] NSWADT 110
QQ v NSW Ombudsman	[2012] NSWADT 109
Perera v Director-General, Department of Education and Communities (Office of Communities)	[2012] NSWADT 108
Shakespeare v Director-General, New South Wales Department of Education and Communities	[2012] NSWADT 105
Khanna v Director-General, NSW Department of Education and Communities	[2012] NSWADT 92
Osborne v Director-General Department of Premier and Cabinet	[2012] NSWADT 91
Rota v Manly 16 Foot Sailing Club and SafeCorp Security Pty Ltd	[2012] NSWADT 88
Steel v Director-General, NSW Department of Premier and Cabinet	[2012] NSWADT 82
Liria v Papuan Oil Search Ltd	[2012] NSWADT 73
Zareski v Hannanprint Pty Ltd (No. 2)	[2012] NSWADT 65

Lian v Sydney Local Health Network	[2012] NSWADT 58
Burns v Cunningham (No. 2)	[2012] NSWADT 53
Hamed v Director-General, NSW Department of Education and Training	[2012] NSWADT 50
Cooper v Western Area Local Health Network	[2012] NSWADT 39
Banjanin v Department of Education and Communities	[2012] NSWADT 37
Khader v Rail Corporation NSW	[2012] NSWADT 32
Imielska v Director-General, NSW Health	[2012] NSWADT 25
McElroy v Sutton	[2012] NSWADT 24
Leibeck v Toll Transport Pty Ltd	[2012] NSWADT 19
Stewart v Hunt	[2012] NSWADT 12
Smith v Jamsek	[2012] NSWADT 3
Parkes v The University of Newcastle	[2011] NSWADT 302
Beagan v Bi-Lo Pty Limited t/as BI-LO Killarney Vale	[2011] NSWADT 301
Skeen v Blacktown Workers Club Limited	[2011] NSWADT 298
Zareski v Hannanprint Pty Ltd	[2011] NSWADT 283
Araji v Mihailuk	[2011] NSWADT 282
Ekerawi v Jones and Harbour Radio Pty Ltd	[2011] NSWADT 280
Yu v University of Newcastle	[2011] NSWADT 277
Whitfield v State of NSW (NSW Police Force)	[2011] NSWADT 265
Magick v Orange Local Aboriginal Land Council	[2011] NSWADT 264
Nunn v Commissioner of Police, NSW Police Force	[2011] NSWADT 263
Barake v Red and White Star Cabs Co-operative Limited trading as Maitland, Beresfield and Raymond Terrace Taxi Services (No. 2)	[2011] NSWADT 262
Kaur v State Transit Authority	[2011] NSWADT 257
Burns v Cunningham	[2011] NSWADT 240
ABI v Boral Australia Gypsum Ltd t/as Boral Plasterboard	[2011] NSWADT 225
Barake v Red and White Star Cabs Co-operative Limited trading as Maitland, Beresfield and Raymond Terrace Taxi Services	[2011] NSWADT 222
Mavay v Director-General, Department of Finance and Services	[2011] NSWADT 217
Walker v Wakehurst Golf Club Ltd	[2011] NSWADT 213
Barry v Futter	[2011] NSWADT 205
Hendrickson v Yarra Bay 16 ft Skiff Sailing Club Ltd (No. 2)	[2011] NSWADT 204
Hunter v Deerubbin Local Aboriginal Land Council	[2011] NSWADT 202
Aydemir v Redegalli	[2011] NSWADT 198
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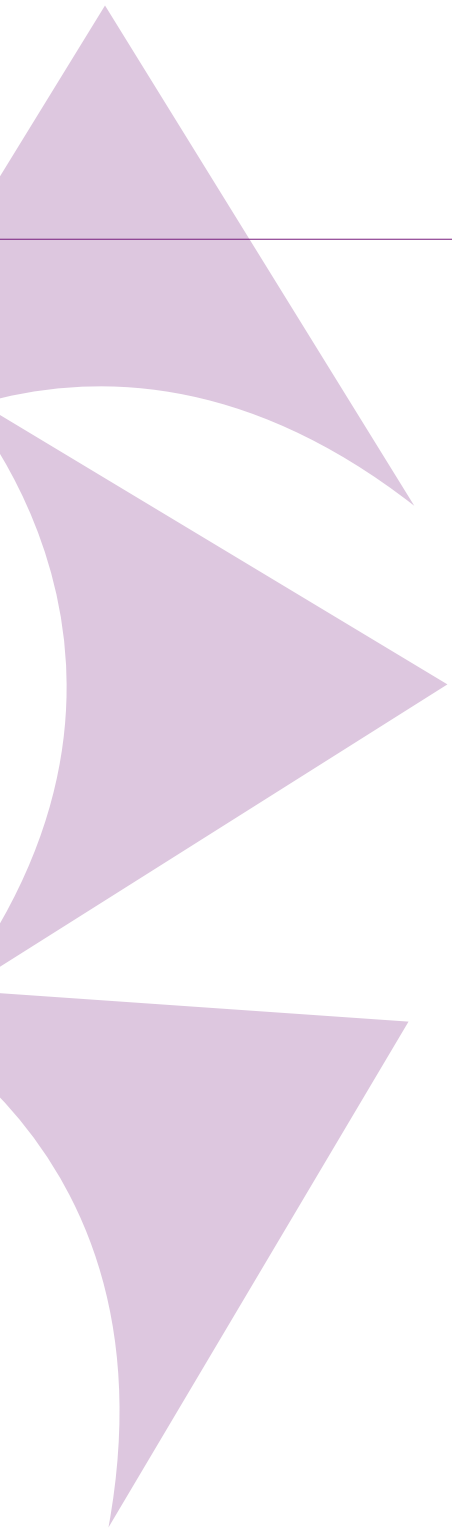
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