



# Administrative Decisions Tribunal

New South Wales



Annual Report  
2012-2013

1998 *Final* 2013

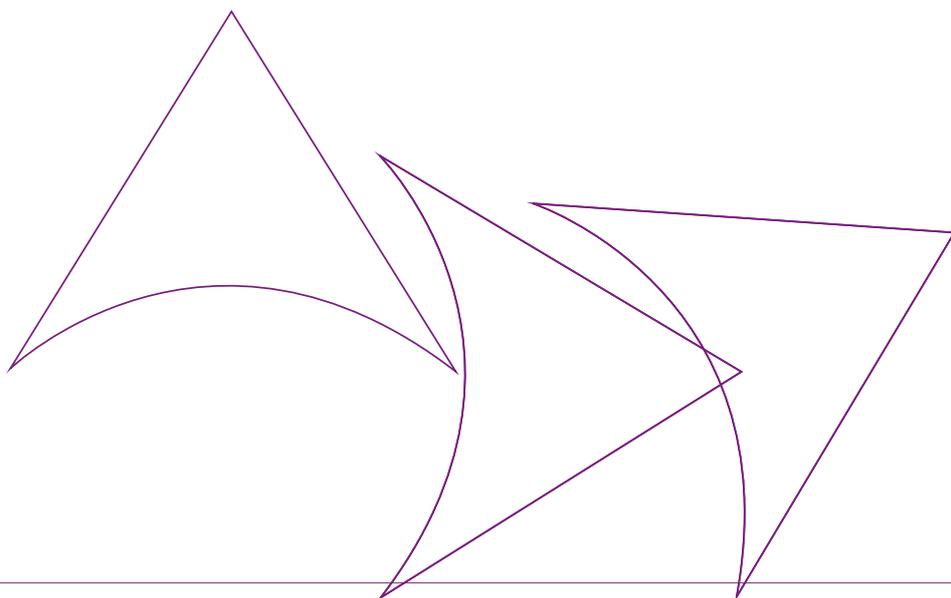


# Administrative Decisions Tribunal

New South Wales

## Annual Report

2012-2013





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 15th annual report of the Tribunal, covering the period 1 July 2012 to 30 June 2013.

Yours sincerely,

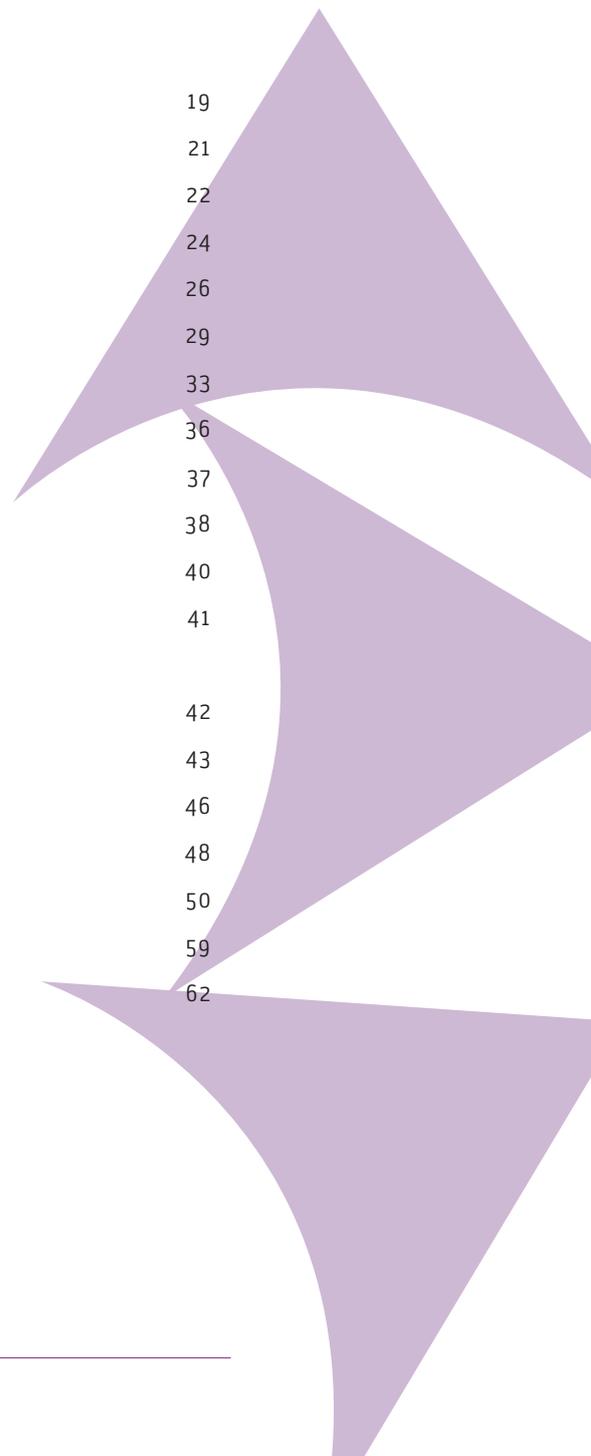
Judge KEVIN O'CONNOR AM  
President

14 October 2013

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# Table of Abbreviations

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AAT	Administrative Appeals Tribunal
ACAT	Australian Capital Territory Civil and Administrative Tribunal
ADA	<i>Anti-Discrimination Act 1977</i>
ADB	Anti-Discrimination Board
ADT	Administrative Decisions Tribunal
ADT Act	<i>Administrative Decisions Tribunal Act 1997</i>
AUSTLII	Australasian Legal Information Institute
CCYP Act	Commission for Children and Young People Act 1998
COAT	Council of Australasian Tribunals
CSD	Community Services Division
CCYP	Commission for Children and Young People
DAGJ	Department of Attorney General and Justice
EOD	Equal Opportunity Division
FHOG Act	<i>First Home Owners Grant Act 2000</i>
FOI	Freedom of Information
FTT	Fair Trading Tribunal
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
MHRT	Mental Health Review Tribunal
NCAT	New South Wales Civil and Administrative Tribunal
PPIPA	<i>Privacy and Personal Information Protection Act 1998</i>
RD	Revenue Division
RLA	Retail Leases Act 1994
RLD	Retail Leases Division
RTT	Residential Tenancies Tribunal
QCAT	Queensland Civil and Administrative Tribunal
SCA	<i>Supreme Court Act 1970</i>
VCAT	Victorian Civil and Administrative Tribunal
VCT	Victims Compensation Tribunal
VSD	Victims Support Division



# The Year(s) in Review

## THE YEAR(S) IN REVIEW

This will be the 15<sup>th</sup> and last annual report of the Administrative Decisions Tribunal. The ADT will close on 31 December 2013. Its jurisdictions will transfer to the New South Wales Civil and Administrative Tribunal (NCAT) on 1 January 2014, assuming passage in the Spring Session 2013 of the required legislation.

In the remarks that follow, I will give some personal reflections on the ADT's role and work over the last 15 years. As is customary I will also deal with the year covered by this annual report, 1 July 2012 to 30 June 2013.

### The Policy Setting of the ADT

The ADT's creation in 1998 responded to two government policies. The first embraced the need for a better system for the external merits review of adverse government administrative decisions. The second acknowledged the public access, professional and administrative goals served by having small tribunal jurisdictions brought into a larger whole.

In NSW calls for a better system for the external merits appeal of administrative decisions can be traced back to the early 1970s. Official recommendations to that effect issued in 1972 (NSW Law Reform Commission) and 1977 (Wilenski report into State government administration).

The ADT Act applied to NSW government administration well-established and successful features of the Commonwealth government's administrative law package.

The ADT Act required the NSW public service for the first time to establish a system for internal review of specified administrative decisions, and to be transparent in the giving of reasons, and for those reasons to meet statutory benchmarks. The new law required administrators that made 'reviewable decisions' to notify affected people of their external review rights. The function of external review was vested in an independent tribunal headed by a judge, the ADT. The ADT had

all the powers of the decision-maker. Its charter required it to make the 'correct and preferable' decision in relation to the matter. The General Division of the Tribunal, the Revenue Division and the Community Services Division carry out almost all of the merits review work done at the ADT.

The second policy involved a partial response to deliberations then occurring within the NSW government as to the value of reducing the number of separate tribunals and integrating them into a larger whole.

In the end only a few of NSW's many tribunals were brought together into the ADT. Among them were three important tribunals, the Legal Services Tribunal, the Equal Opportunity Tribunal and the Community Services Appeals Tribunal. Their functions were transferred to the Divisions bearing those names. A few other very small tribunals were abolished and their work absorbed into the General Division (for example, school appeals, boxing appeals). In addition a number of administrative appeals jurisdictions housed in the ordinary courts were transferred (e.g. firearms licensing appeals, passenger transport licensing appeals), and located in the General Division.

The transfer of the Retail Leases Division to the ADT from the Commercial Tribunal was a by-product of a similar amalgamation discussion that had occurred in the Fair Trading portfolio. There the Consumer Claims Tribunal and Commercial Tribunal were merged in 1999 to form the Fair Trading Tribunal (FTT). The Minister at the time the bill was being finalised (who was also the Attorney General, the late the Hon. Jeff Shaw QC) considered that the retail leases jurisdiction of the Commercial Tribunal would be better placed in the ADT rather than the FTT. The Residential Tenancies Tribunal (RTT), the largest tribunal in the State at that time,



Judge Kevin O'Connor AM  
President

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continued as a separate entity. Then in 2002 the FTT and the RTT were merged to form the Consumer Trader and Tenancy Tribunal (CTTT).

Notably, major tribunals operating in the health discipline and guardianship sectors remained unaffected by these developments, for example Guardianship Tribunal, Medical Tribunal, Nurses Tribunal, Mental Health Tribunal; as did tribunal-like decision making relating to injury compensation, i.e. Victims Services, Workers Compensation and Motor Accident Claims.

The creation of NCAT mirrors similar steps already taken in Victoria (1998), Western Australia (2004), Queensland (2008) and the Australian Capital Territory (2008), as well as Great Britain (2007). Injury compensation and mental health review are the only significant tribunal functions to remain outside the NSW integrated structure. Those areas, as it happens, do form part of some of the super tribunals already mentioned. Interestingly, the recent restructure of victims support rights in NSW will mean that one injury compensation jurisdiction (presently with the ADT) will transition to NCAT.

#### **The ADT's Contribution to Administrative Justice and Grievance Resolution in NSW**

I will not attempt any global assessment. That is for others.

But some things are clear.

As at 1998, the right to appeal against an adverse agency FOI decision had been available under NSW law for nearly ten years. FOI was a landmark reform across government in Australia, starting with the Commonwealth in 1982. The NSW appeals jurisdiction had been housed in the District Court. Yet there was no body of published court case law to guide government agencies, citizens or lawyers in relation to the interpretation of key provisions of the FOI Act; in stark contrast to the records during those years of the Commonwealth Administrative Appeals Tribunal (AAT) in relation to the Federal Act, and the Victorian AAT in relation to the Victorian Act

(commenced 1983).

The ADT has published numerous decisions relating to FOI, my estimate is at least 400. The field now has a body of learning, informed by a number of leading Court of Appeal decisions.

The various occupational licensing appeal jurisdictions had been housed in the Local Court and the District Court, with a similar absence of guiding published decisions.

The ADT's body of case law across all its areas has contributed to predictability and consistency in the interpretation of a wide range of statutes. The ADT has from the beginning been committed to the publication of its reserved decisions to the widest audience.

Like tribunals generally, the ADT has offered a level of accessibility not seen in the courts. Claims that might be non-viable financially in the Supreme Court can be brought in the ADT, with its neutral costs rule and less strictness in relation to the rules of evidence and adherence to civil procedure rules. This point is demonstrated in two of the ADT's jurisdiction that are largely or wholly concurrent with the Supreme Court, i.e. retail leases disputes and reviews of State revenue decisions. Proportionately most of the cases in each area start in the ADT.

The ADT was the first multi-jurisdictional tribunal in Australia to have an internal appeal tier. In 1998 this set it apart from the Commonwealth AAT and Victorian Civil Administrative Tribunal (VCAT). As was typical of tribunal statutes in the past, the right of appeal from the Commonwealth AAT and VCAT was on a question of law to a superior court. Appeals to the ADT Appeal Panel could be made on a question of law, and, with the leave of the Panel, the appeal could be extended to the merits. This provided a simpler, more accessible and less confined option than seen previously. The appeal could be made in a costs-neutral environment free from the procedural strictures of the courts.

The Appeal Panel has played a significant role in ensuring that the values of predictability and consistency are reflected in the work of the ADT. Members have been observant in applying leading Appeal Panel rulings, and it is usual for parties to rely on them in support of their submissions. The UK reforms include a right of internal appeal. (The eminent judge who conducted the review leading to the UK reforms, Sir Andrew Leggatt, sat in on an ADT Appeal Panel hearing during his trip to Australia to examine Australia's tribunal structures.) The right of internal appeal is a feature of both QCAT and ACAT, and was recommended for inclusion in VCAT by its President in his report on VCAT's first ten years in 2009.

I have made no detailed reference in this overview to the Equal Opportunity and Legal Services divisions. The predecessor tribunals, the Equal Opportunity Tribunal and the Legal Services Tribunal already had strong records in relation to transparency of processes and in producing scholarly and influential reasons for decisions. Both Tribunals had had leaders of standing, many of them eminent judges. Those Tribunals brought to the ADT a body of members with good experience, and with a reputation for strong standards of decision-making. This was to the benefit of the fledgling ADT, and hopefully the same kind of benefit will be delivered to NCAT by those coming into it from the ADT and the other major tribunals.

#### **The Members and Staff of the ADT**

The ADT's structure has consisted of two full-time members, with the balance all sessional; together with a registry that has had on average about ten full-time staff.

The two full-time members throughout the life of the ADT have been me, as President, and Magistrate Nancy Hennessy, as the full-time Deputy President. It became apparent at an early point that there needed more members than just we two regularly present at the plant. For example, if we were tied up in

hearings or one of us was away, how would an urgent stay matter be handled; or who could Registry go to for urgent advice or attendance to administrative requests requiring a judicial officer's attention.

I obtained commitments from key members to work at the Tribunal on a regular basis.

Those members have played a key role in fostering good standards in the ADT. I took out figures at the 10 year point of the ADT that showed that of the 4000 decisions published to that time, 2200 were the work of six people, the two full-timers and the four key part-timers.

I take this opportunity to thank publicly the part-time members to whom I am referring: Steve Montgomery, Sigrid Higgins, Michael Chesterman, Anne Britton (who left us for a full-time appointment with the Commonwealth AAT in 2009 and Peter Molony (already very active in the Tribunal, who took over Anne's place).

We have been well served by our Divisional Heads over the years: Community Services Division – Magistrate Nancy Hennessy (appointed 1999), Tom Kelly (2001), Anne Britton (2006) and Sigrid Higgins (since 2010); Equal Opportunity Division – Judge Helen Murrell (1998), Judge (now Justice) Megan Latham (1999), Magistrate Nancy Hennessy (since 2002); Retail Leases Division – Chris Rossiter (2001), Michael Chesterman (since 2003); Revenue Division – Jane Needham SC (2005), Rashelle Seiden (since 2012); Legal Services Division – Caroline Needham SC (1998), the Hon John Nader (2002), her Honour Angela Karpin (2005) and the Hon Justice Wayne Haylen (2008).

The Registry has had strong, experienced leadership throughout its history. The Registry has benefited from being able to draw into its ranks staff with wide experience in the NSW court and tribunal system. The staff are called on to deal with the diversity of the ADT's conferrals of jurisdiction (spread over more than 100 statutes), communicate that knowledge in a way

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that is understood by people aggrieved, legal practitioners and others, and do so in a way that honours the goals of access and inclusion. They have managed those responsibilities with great acumen, and on many occasions, with a level of forbearance and tolerance that would test many of us. I thank everyone who has served in the Registry, and particularly, our founding Registrar, Cathy Szczygielski, her co-Registrar at a later point, Karen Wallace, the present Registrar, Pauline Green and her deputy, Christine Skinner.

I pay special tribute to two people, Lynne Watson and Nancy Hennessy.

Lynne has been my friendly, perceptive and ever-calm Associate over the life of the ADT, continuing a connection which commenced in 1989 when she joined the staff of the Federal Privacy office.

Nancy joined the ADT in 1999 from the Community Services Appeals Tribunal where she was the part-time head. Her first appointment was as part-time Deputy President and Divisional Head of the Community Services Division. In March 2001 she became a full-time Deputy President, and in November 2002 was appointed a Magistrate, and remained with the Tribunal. She has been a key reason for any success the ADT has enjoyed.

#### **The Latest Year in Review**

The ADT received 841 new primary filings in the last year, 115 less than the previous year. The Divisional variations are as follows: General: 396 - 25 more; CSD: 34 - 8 less; RD: 91 - 47 less; EOD: 112 - 63 less; RLD: 175 - 24 less; LSD: 33 - one less. There were 66 appeals filed; 47 internal and 19 external.

The primary filings intake is the lowest in the last ten years. On the other hand, disposals were high during the last year, at 937 in the case of primary filings, and 69 in the case of appeals.

The interaction of the two factors, lower intake, high disposal rate, has led to further improvement in the ADT's turnaround times. The average disposal rate across the ADT is 29 weeks. This is a very good result, and close to the 26 weeks (6 months) mark that I see as the benchmark for a tribunal with the kind of business the ADT handles.

Four Divisions have disposal rates at or under 29 weeks (General, CSD, RLD and EOD), and two exceed it - LSD: 42 weeks; Revenue Division: 48 weeks. The Revenue Division has in fact cleared more cases than it received in the last year. The weak average is partly a function of the significant drop in filings given the formula that is used to calculate disposal time (pending business divided by registrations). If the lower filing rate continues then a significant improvement in the disposal time can be expected over the next few months.

The LSD's disposal time represents a significant improvement - the best in its history as part of the Tribunal. It reflects in part the conclusion of cases involving multiple applications affecting partners in the same firm.

#### **The Addition of the Victims Support Division**

The ADT acquired a new Division on 3 June 2013 as a result of the passage of victims support reform legislation, the Victims Support Division replacing the Victims Compensation Tribunal. A fuller account of its functions is given in the Divisional report.

Initially all business pending at the date of repeal of the old law (3 June 2013) has been transferred to the ADT for disposal. In due course the ADT will receive review applications commenced under the new law. VSD decisions are not appealable to the Appeal Panel.

The VSD's inaugural Divisional Head was Mr Brian Lulham, a retired magistrate, who sat as the VCT under the old law. Mr Lulham resigned for personal reasons on 17 September 2013. We thank Brian for his assistance to the ADT in managing the transition.



I should explain that the statistical tables in this report do not present and analyse VSD filings in the way seen for the other Divisions. There will be comprehensive statistics, I expect, in the first NCAT annual report.

### **NCAT Developments**

I will not report at length here on this subject. There is a dedicated web site managed by the NCAT project team that covers the details. NCAT will commence on 1 January 2014. The overall process is being overseen by a steering committee made up of senior officers of the key departments, serviced by a four person project team, below which lies a consultative structure that includes heads of existing tribunals and representative of some user groups.

The first NCAT Act passed in February 2013, established the governance structure of NCAT. NCAT has four Divisions. Two cover the area occupied by the Guardianship Tribunal and the Consumer, Trader and Tenancy Tribunal, and bear names reflecting that background. On the other hand, the ADT is not continued in this way. The ADT's areas are spread across three Divisions, namely the Administrative and Equal Opportunity Division (AEOD), the Occupational and Regulatory Division (ORD), and the Consumer and Commercial Division (CCD). The ADT's retail leases jurisdiction goes to the CCD, the ADT's professional discipline jurisdictions (legal profession, veterinary practitioners, architects, registered surveyors, accredited certifiers) and occupational licensing review functions go to the ORD, while the remainder of the ADT's work goes to the AEOD.

The main NCAT Act is awaited. It will cover its key operational features – practice and procedure, membership, composition of panels, variations between classes of business, rights of appeal, costs, legal representation.

NCAT will provide a clear 'fourth pillar' in the NSW courts and tribunals system – the other pillars being the Supreme Court, the District

Court and the Local Court. If the interstate precedents are any guide, it should mean that NCAT will have a clear place and voice in an integrated, collegiate justice system. As is seen in the interstate precedents, that should mean that it will be able to draw on the professional education resources and the complaint-handling expertise of the Judicial Commission. NCAT itself will furnish an environment in which better levels of professional development and work variety will be available to members, especially full-time lawyer members. NCAT will have a State-wide footprint in a way that has not been true of some, at least, of the incoming tribunals. It will, hopefully, have front of house practices that are simple for people to access and to understand. As is seen in the interstate precedents, the challenge remains to combine the community benefits of unified administrative structures with the need to handle different streams of dispute in the way best suited to the effective resolution of those disputes.



Judge Kevin O'Connor, AM  
President  
October 2013

# Our Objectives

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

### 3. Objects of Act

The objects of this Act are as follows:

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

# Services to Users

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

The Tribunal is located at the 10th floor, John Maddison Tower, 86 Goulburn Street, Sydney. The Tribunal moved to this building in October, 2011. There were numerous problems with the fit out, most now resolved. The issues noted last year remain, and hopefully will be addressed in the NCAT environment.

## 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 75 days in the last year. The usual venue for regional sittings is at the local courthouse. During the year, the Tribunal sat at Queanbeyan, Armidale, Tweed Heads, Newcastle, Dubbo, Gosford, Orange, Ballina, Port Macquarie, Lithgow, Lismore, Albury, Bathurst, Parkes, Cowra, Tamworth, Toronto, Wagga Wagga, East Maitland.

The Legal Services Division of the Tribunal also sits at the Industrial Relations Commission premises in Sydney. (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 ADT has a hearing room equipped with video link facilities.

## Access by persons with disabilities

The Tribunal's disability access features were outlined in last year's report. During the current year, signage has been installed to notify the public clearly of the presence of surveillance cameras and of hearing loop facilities.



## Website

The ADT site was updated in April, 2012. 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.

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### **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](http://www.caselaw.nsw.gov.au).

Comprehensive publication also occurs on the AUSTLII (Australasian Legal Information Institute) website at [www.austlii.edu.au](http://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 361 decisions made up of:

- 56 Appeal Panel decisions
- 305 Divisional decisions.

### **Caselaw system**

The new Caselaw website commenced on 1 January 2011. Until the end of 2010 not only were Tribunal's decisions presented in a collective format (alphabetical, and by case number), they were also presented under Division headings and Appeal Panel headings. The later feature has been lost. Last year's report noted the negative impact that this change has had on the presentation to the public of the Tribunal's output.

### **Registry Report**

The Registry has ten 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.



Pauline Green Registrar

### Staff development

Staff receive training through the DAGJ's Learning and Development Unit 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 which 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:

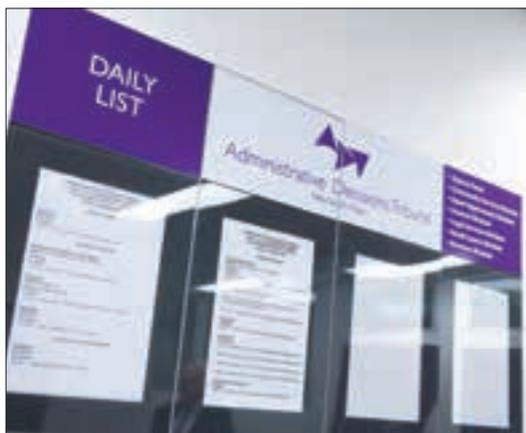
- presidential judicial members, i.e. the President and the Deputy President, usually described by the latter titles;
- non-presidential judicial members, usually described by the title 'judicial member'; and
- non-judicial members, known by that description.

As at 30 June 2013, there were:

- 9 presidential members;
- 30 judicial members;
- 54 non-judicial members.

All members except for the President and one of the Deputy President 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, full-time Deputy President Hennessy, and the following part-time members - Deputy President Higgins and Chesterman, and part-time 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, who we thank for their service, were: Deputy President, the Hon Rodney Magdwick QC; Judicial Member, Julian Millar; and Non-Judicial Member, Graham Mallison.

In addition Judicial Member Gail Furness SC, resigned in February 2013, following her appointment as counsel assisting the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse. We congratulate her on her appointment, and acknowledge the substantial contribution she made to the work of the Tribunal in its administrative review and equal opportunity jurisdictions over several years.

Soon after the end of the reporting period, Judicial Member and Mediator, Carolyn Huntsman resigned in July 2013 to take up an appointment as a judicial officer, that of Magistrate. She had been a significant contributor to the work of the Tribunal in recent years.

## New Appointments

Deputy President: Rashelle Seiden, Divisional Head, Revenue Division; Brian Lulham, Divisional Head, Victims Support Division, (commenced 3 June 2013; resigned 17 September 2013).

Judicial Members: Geoffrey de Q. Walker and Norman Isenberg, Revenue Division

Non-Judicial Members: Peta Drake and Matt Foldi, Advisory Members, Retail Leases Division; Kim Turner, Community Member, Veterinary Discipline List.

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### **Annual Conference**

The Tribunal held its annual members' conference on 16 November 2012 at Sydney Masonic Centre. This is the Tribunal's major collegiate event, and most of the Tribunal's members attended.

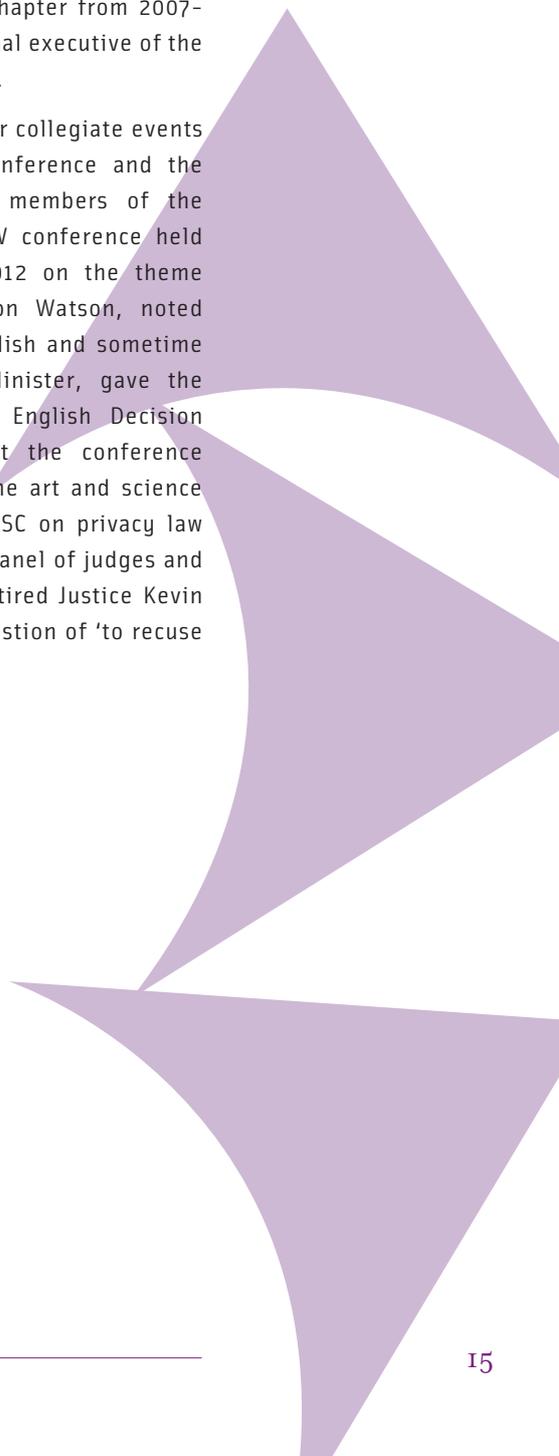
After opening remarks by the Attorney General and Minister for Justice, the Hon Greg Smith SC MP, Justice Anna Katzmann of the Federal Court delivered the keynote address on 'Confidentiality, Privacy and Open Justice'.

A sparkling array of speakers addressed the later plenary sessions: Professor Michael Legg on 'Tribunals and Social Media: Tweets, Emails, Blogs: Case Management and Evidentiary Issues'; the internationally renowned anti-gun campaigner Rebecca Peters on 'Towards a Safer Society: The Domestic and International Gun Control Debate'; and 'Tribunals and the Mass Media: Openness and Seclusion', a panel comprising Julian Disney, Chair of the Australian Press Council, Bernard Lagan, journalist, and John McAteer, Deputy NSW Privacy Commissioner.

The Divisional break-out sessions including presentations by Anina Johnson, then of the CSO, with an administrative law update, Judge Roger Dive of the Drug Court on therapeutic jurisprudence and Marcel Savary, Courts Policy Manager, DAGJ on national harmonisation of professional discipline regimes.

### **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 President, Judge Kevin O'Connor, has been a member of the committee of the State Chapter of COAT since its inception in 2002, and served as convener of the Chapter from 2007-2011. He served on the national executive of the COAT during the latter period.

COAT NSW conducts two major collegiate events each year - the annual conference and the Whitmore Lecture. Fifteen members of the ADT attended the COAT NSW conference held on Friday 14 September 2012 on the theme 'The Tribunal Skill Set'. Don Watson, noted writer on politics, plain English and sometime speechwriter to a Prime Minister, gave the keynote address on 'Plain English Decision Writing'. Other speakers at the conference included Dr Wendy Hu on the art and science of diagnosis, Kate Eastman SC on privacy law and decision-making and a panel of judges and tribunal members, led by retired Justice Kevin Lindgren on bias and the question of 'to recuse or not to recuse?'. 

# 2012 ADT Members Conference

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Rebecca Peters



Marcel Savary



Anina Johnson



Michael Legg

# The Divisions and the Appeal Panel

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From left : Deputy Presidents Brian Lulham, Sigrid Higgins, Rashelle Seiden, Michael Chesterman, President Kevin O'Connor, Deputy Presidents Wayne Haylen, Nancy Hennessy (As at 30 June 2013).

Following the addition of the Victims Support Division on 3 June 2013, the ADT has seven Divisions and an Appeal Panel.

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

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

The first category covers those administrative decisions made by a public body such as a government agency or a Minister affecting citizens in an individual way that are declared '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. Applications heard in the EOD and the RLD fall into this category. They are analogous to civil suits.

An alternative way of dividing the business of the Tribunal is into its two major streams - the 'administrative' or 'public law' functions; and the 'civil' or 'private law' functions.

Professional discipline structures typically have two tiers. The lower tier is usually empowered to make orders short of deregistration in relation to conduct that amounts to unsatisfactory professional conduct. The upper tier is given the wider power to deregister for professional

misconduct, in addition to the powers open to the lower tier. Often, but not always, upper tier proceedings must be commenced in a public tribunal. When proceedings are commenced in this way in the ADT they fall within the 'original' jurisdiction, whereas appeals ('reviews') of disciplinary decisions taken by bodies that are more internal to the profession fall within the 'review' jurisdiction.

The mixing of administrative review functions and other determinative functions in the one tribunal is possible under State law but is unconstitutional under Commonwealth law. Under Commonwealth law 'judicial functions' can only be carried out by courts, and courts can only be constituted by judges. Review of administrative decisions is regarded as 'non-judicial' and therefore can be done by non-courts, and therefore have in the hearing panel non-judge and non-lawyer members. As a result in Commonwealth tribunals these two species of activity cannot reside in the same house. An illustration of this difference is that a federal equal opportunity case can only be heard by a court, whereas the use of an mixed lawyer/non-lawyer panel in a case brought under State law as seen at the ADT is permitted.

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## **Divisions and Appeal Panel: Outline**

### *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, 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;
- LSD: operative 6 October 1998. This Division hears complaints against legal practitioners; and
- VSD: operative 3 June 2013. This Division undertakes reviews of certain injury compensation decisions made by the Commissioner of Victims Rights.

### *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 also the Divisional Head of the General Division.

## Case Load

The General Division has the largest caseload of the Tribunal's various Divisions. It mainly handles applications for review of adverse administrative decisions. There are two main streams – reviews of decisions affecting occupational and related licences (e.g. taxi drivers authorities, tow truck driver authorities, security guard licences, firearms licences, building trades licences), and reviews relating to information rights in relation to access to government documents or protection of personal information. There are some other special jurisdictions, for example applications for dismissal of elected councillors from civic office.

The General Division houses the professional discipline jurisdictions other than legal services discipline (i.e. veterinary practitioners, architects, registered surveyors, accredited

certifiers); and also deals with applications for review of decisions made by the NSW Trustee and Guardian in its capacity as appointed guardian or financial manager (there is a section dealing with each area elsewhere in this report).

In 2012-13 the Division received 396 applications (46% of the Tribunal's intake), an increase of 25 over last years. They were spread across 25 statutes. During the year there were 387 disposals. There were 213 pending matters at year's end.

There were 206 filings in the occupational and related stream, an increase of 30 over last year, but in line with the figure two years ago. There were 149 filings in the information law stream, one less than last year. It would appear that filings in this category of business have settled at around this level, now more than two years since the *Government Information (Public Access) Act 2009* (GIPA) commenced (it replaced the FOI Act). This stream divided into 96 GIPA filings and 53 privacy filings (40 under PPIPA, 13 under HRIPA). This distribution pattern is very similar to last year.

The main further category is the trustee review filings, of which there were 20 (see separate report).

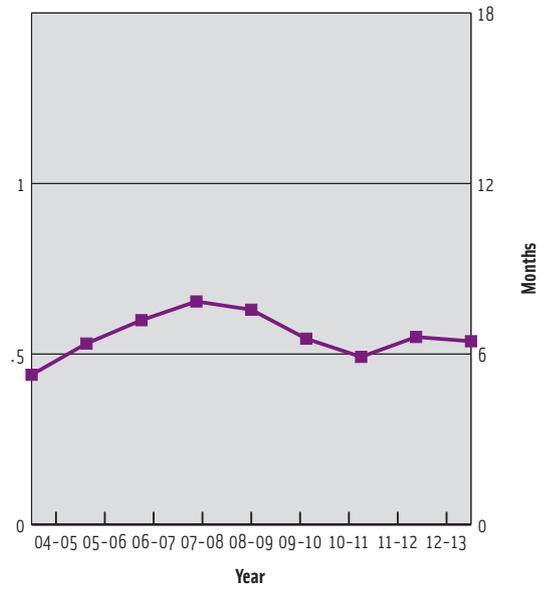
## Case Management

Two case management processes are used in the Division. All information law review applications go to a case conference process known as planning meetings. These usually succeed in either resolving the dispute entirely or narrowing its scope. Other applications for review go to a directions hearing, and in most instances there is only one event of this kind, at which a timetable is set which provides for exchange of submissions and relevant material between the parties and fixes the date for hearing. The President and the full-time Deputy President alternate in presiding at the fortnightly directions list. These procedures have contributed to a good record of timely disposal in the Division over many years.

### Timeliness

The average disposal time for a matter in the General Division therefore is 28 weeks, the same as last year. This is in line with the historic pattern in the Division. It is good given the variety and complexity of the work. May I again thank the Division's members for their efforts in achieving this outcome.

General Division - Average Disposal Time



# Guardianship and Protected Estates List

Deputy President Hennessy manages the Guardianship and Protected Estates List.

The Tribunal has jurisdiction to hear appeals from certain decisions of Magistrates, the Guardianship Tribunal and the Mental Health Review Tribunal. These appeals are known as external appeals because they are appeals from bodies other than the Tribunal. The Tribunal also has jurisdiction to hear appeals from:

1. decisions of Magistrates relating to Dependency Certificates under the *Drug and Alcohol Treatment Act 2007*;
2. certain decisions made by the Guardianship Tribunal under the *Guardianship Act 1987* including:
  - reviewing the appointment of, or replacing, an enduring guardian
  - making or reviewing a guardianship order
  - making or reviewing a financial management order, reviewing the appointment of a financial manager; and
  - giving directions about a guardian's functions.
3. decisions of the Mental Health Review Tribunal (MHRT) made under the *NSW Trustee and Guardian Act 2009* that the estate of a person be subject to financial management.

This List also manages merits review applications heard at first instance in the General Division for:

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

Three member panels with specialist expertise in this area hear external appeals. Usually first

instance reviews are heard by a judicial member with special knowledge of the area. Sometimes a second (non-judicial) member sits, for example an actuary with expertise in the long-term administration of large estates.

## Case Load

### *External Appeals*

As at 30 June 2012, there were four external appeals pending. During the year 19 new appeals were lodged, 17 from decisions of the Guardianship Tribunal and two from decisions of Magistrates under the *Drug and Alcohol Treatment Act 2007*. Nineteen appeals were finalised, leaving four appeals pending at the end of the year. The two appeals from Magistrates were withdrawn without a hearing. Of the 17 appeals from decisions of the Guardianship Tribunal, ten were dismissed and eight were withdrawn. In one case the Appeal Panel decided that it did not have jurisdiction.

### *Timeliness*

The time standards for appeals is 80% to be finalised in 6 months and 100% in 12 months. Those time standards were exceeded as 100% of appeals were disposed of in less than 6 months.

### *Review Decisions*

As at 30 June 2012, there were four review applications pending. During the year 19 applications were lodged and 19 were finalised leaving four review applications pending at the end of the year.

Of the 19 applications that were finalised, the administrator's decision was set aside or varied in one case and affirmed in 8 cases. In the other 10 cases, the matter was dismissed for various reasons either with or without a hearing.

### *Timeliness*

The time standard for merits review decisions is that 85% should be finalised in less than 6 months and 100% in less than a year. Those standards were met. Seventeen of the nineteen (89%) took less than 6 months to complete. The remaining two matters (11%) took between 6 and 12 months to complete.

# Revenue Division



Deputy President  
Rashelle Seiden

- Barrister since 1996
- Director, Barristers' Sickness and Accident Fund Pty Ltd
- Member, Revenue List Users Group, Supreme Court of New South Wales, 2010 – 2012
- Member, Bar Association Professional Conduct Committee, 2010 – 2013
- Member, Bar Association Mediation Committee, 2006–2007

The Divisional Head is Rashelle Seiden, a barrister who specialises in revenue law.

## Case Load

The case load of the Revenue Division decreased from 138 filings last year to 91 filings this year. The decrease has mainly resulted from a significant drop in land tax disputes (down from 69 to 31) and in first home owner grant disputes (down from 19 to 7, an expected decline due to the phasing out of that legislation). The average disposal time has extended to 48 weeks. The clearance rate for the last year has been better than 100%. As noted by the President in the foreword to this report, the disposal rate should improve markedly in the next year.

In some instances the delay in disposal is due to the factual and legal complexity of some matters, in particular land tax disputes where expert evidence is often relied upon and payroll tax disputes. Further, the preliminary conference system which was introduced to identify matters which could be resolved expeditiously without the need for a hearing, has led to some delays

with matters being referred back to the decision maker or parties delaying commencing evidence preparation. Nevertheless, the preliminary conference system continues to benefit the parties, in particular unrepresented litigants. A new practice guideline has issued with a view to eliminating unneeded delays in these processes.

## Themes and Issues

The main categories of business continue to be land tax disputes and payroll tax disputes.

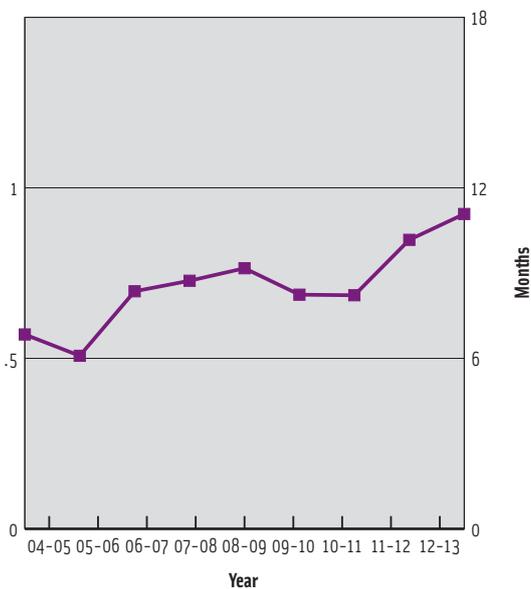
In the case of land tax the main areas of dispute concern the interpretation and application of the primary place of residence exemption and the primary production exemption. The law distinguishes between land zoned rural and other land. The primary production use must meet a commerciality standard in all cases where the exemption is claimed for non-rural land. The commerciality issue has been the source of a good deal of litigation in the Tribunal and the Supreme Court in recent years.

With respect to payroll tax the main areas of dispute concern grouping of entities. A group can only utilise the non-tax threshold once. Therefore businesses seen by the Commissioner as grouped often contest that finding or request the exercise of discretion to permit de-grouping.

Applicants for review in the Revenue Division are required to satisfy an onus of proof in relation the factual basis upon which they assert their entitlement to special treatment as compared to other taxpayers, by way of an exemption or concession. The balance is tipped against a taxpayer in a way not seen in the Tribunal's other merits review jurisdiction where the Tribunal simply has regard to all relevant material with fixed onus of proof requirements falling on review applicants. This difference and its consequences was canvassed in a recent Appeal Panel decision, *Cornish Investments Pty Limited v Chief Commissioner of State Revenue* (RD) [2013] NSWADTAP 25

The Court of Appeal decisions affecting the Revenue Division in the last year are reviewed later in this annual report.

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 a merits review and original decision-making function. The original decision-making function pertains to applications for child-related work declarations sought under the CCYP Act by persons with proscribed criminal offence histories.

The merits review function is wide-ranging, and allows people affected by many types of administrative decisions in the family and community services portfolio and the ageing and disability portfolio to apply for review. A detailed list appears in previous annual reports.

## Case Load

Thirty-four new applications were filed during the year. This represents 4% of the ADT's intake.

There were 11 applications in the ADT's original jurisdiction for a declaration under the CCYP Act. The other 23 applications sought review of a reviewable decision. The Division finalised 46 applications, clearing a backlog from the previous year, and returning the Division's average disposal time to 22 weeks, in line with the good rate seen over most previous years.

Mediation continues to be used to resolve disputes involving decisions about authorised carers and the child(ren) in their care. Eight review applications were referred to mediation and of these, five applications settled at mediation and two settled after the mediation.

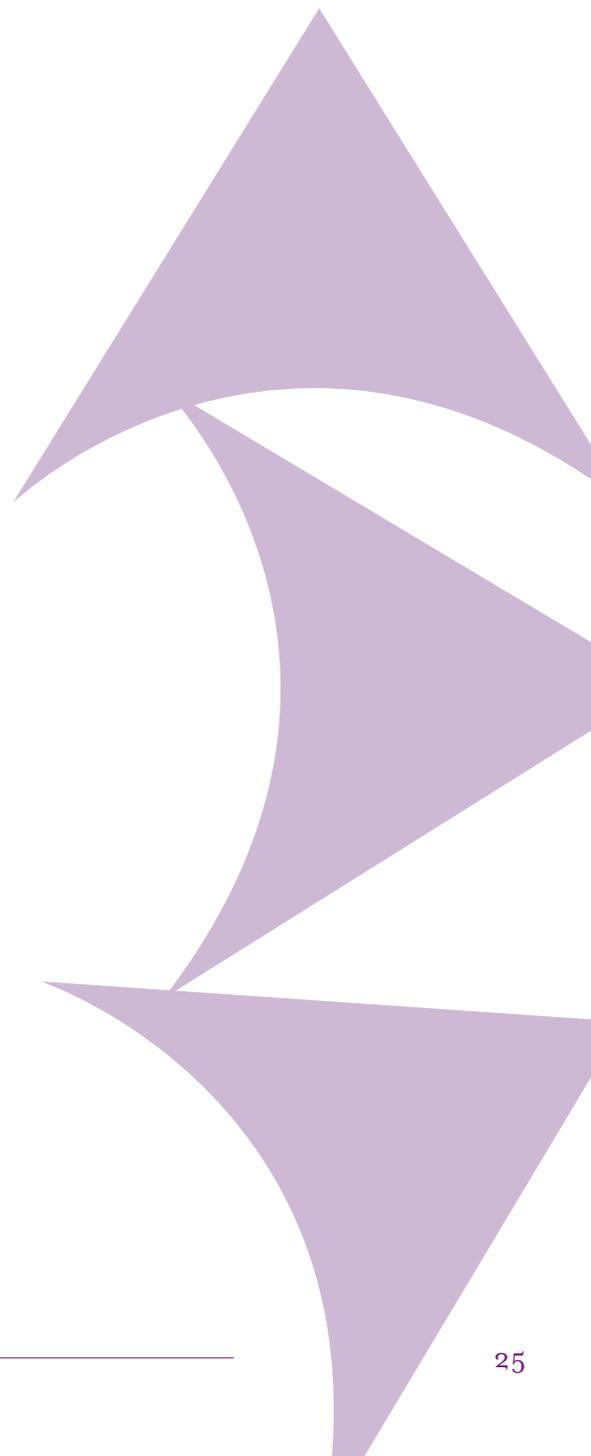
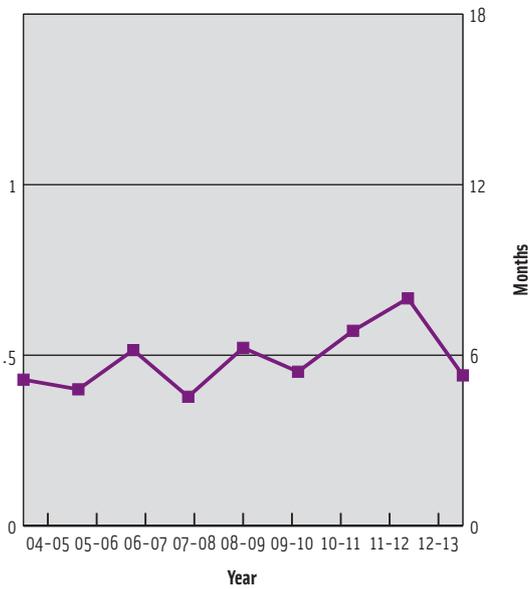
## Review Jurisdiction: New Regime

The child-related employment declaration jurisdiction has been restructured: see the *Child Protection (Working with Children) Act 2012*. The features of most significance for child protection is the expansion of those covered to include volunteers, and the requirement that all people working with children must receive a clearance. All of these people must in future obtain a clearance check from the Children's Guardian unless they are 'disqualified' by reason of a proscribed criminal history.

A disqualified person may apply to the Tribunal for an 'enabling order'. An application for such an order is akin to an order under the repealed s 331 of the CCYP Act. In addition a person who is the subject of an adverse decision of the Children's Guardian may apply to the ADT for review.

Without going into the detail here, we note that some uncertainty surrounds the question of whether home based carers still have a right to apply for review of an adverse decision by a local council refusing them registration to operate such a service. The uncertainty arises from the terms of the new laws covering this area.

**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 Head of the LSD and is a part-time Deputy President.

## Structure and functions

The Division hears professional discipline cases relating to the conduct of legal practitioners. Applications for original findings and orders may be made by the Bar Council, the Law Society or the Legal Services Commissioner. Practitioners may apply for review of internal disciplinary decisions made by the relevant committees of the Bar Council and the Law Society. The Division may also hear and determine client claims for compensation arising from misconduct, practitioner applications to allow employment in their practice of persons with convictions for serious offences.

Hearings in the Division are conducted by a panel of three members comprising two judicial members and a non-judicial member from the general community. A senior judicial member presides and the hearings are normally conducted in public. The presiding member in many cases is a judge (the Divisional Head) or one of the Deputy Presidents who is a former judge. In addition, the Supreme Court has an inherent jurisdiction 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

During the reporting year 33 matters were filed and 57 finalised. This has led to a substantial improvement in the Division's clearance rate, to the best in its history as part of the ADT. The average disposal time is now 42 weeks. This outcome follows a concerted effort over recent years to improve case management procedures and to ensure that matters were allocated a hearing date in a prompt and timely way. The Tribunal has previously recognised that there are legitimate reasons that may cause delay (including, appeals or related appeals in a similar matter, intervening illness or obtaining expert evidence) but delays of this nature are relatively rare. The Tribunal will continue to closely monitor the case management of matters to ensure that the recent good results are built upon.

## Disciplinary outcomes

The 33 matters filed in the past year all related to solicitors, there were no filings this year relating to barristers. There were 21 applications for disciplinary orders, ranging from orders for striking off (deregistration), to reprimands and compensation orders; as well as 2 applications for review of a disciplinary decision. They other 10 matters were made up

5 applications for employment of employment of convicted persons (LPA s 18), 4 applications for approval of lay associates with convictions (LPA s 17), and one application for removal of suspension of a practising certificate.

In summary, the 57 matters disposed of during the year resulted in 15 practitioners having their names removed from the Roll (deregistration). There were 21 practitioners the subject of reprimands, and 15 the subject of fines. Nine had conditions imposed on their right to practise and in one case the Tribunal the practitioner was ordered to undertake further legal education. (It is to be noted that multiple orders affecting the same practitioner were made in some cases.) In the reporting year, no orders were made requiring a practitioner to pay compensation.

## Significant Decisions

There were two successful practitioner appeals to the Court of Appeal against decisions of the Division, each dealing with important points of principle.

Last year's report referred to the decisions in related cases involving the same firm where gross overcharging was proven and findings of professional misconduct entered: *Legal Services Commissioner v Keddie* [2012] NSWADT 106 (removal from the Roll) and *Legal Services Commissioner v Scroope* [2012] NSWADT 107 (reprimand, fine of \$5000). Mr Scroope was an employee in Mr Keddie's firm. In both cases the practitioners had admitted that gross overcharging had occurred. The evidence demonstrated that office practices were inadequately supervised such that numerous entries were made on the bill without clearly indicating the appropriate level of charge-out and there was virtually no checking of whether work was indeed performed or, appropriately performed. There were also other practices that led to gross overcharging.

Mr Scroope appealed against the finding of professional misconduct and the fine which related to the bill he sent to a particular client. The Court of Appeal reduced the finding to one of unsatisfactory professional conduct, and reduced the fine to \$2000: *Scroope v Legal Services Commissioner* [2013] NSWCA 178. The Court accepted that overcharging and over-servicing a client was a serious matter but noted that the practitioner was only to be disciplined for wrongful conduct: it was the underlying conduct upon which the charge was based that determined the proper characterisation of the conduct. In mitigation of the solicitor's conduct, the court noted that the firm's billing system was seriously deficient and over which the practitioner had no control: a significant cause of the inaccuracies in the bill was the entirely inadequate computerised system operated by the firm.

The court noted that the bill had been approved by the supervising partner but, nevertheless, the appellant should have realised that some entries were inappropriate and warranted further consideration considering the size of the bill and the admission that it represented approximately 63% more than the client should have been charged. In failing to be astute to the possibility of overcharging in these circumstances, the practitioner was found to have allowed a bill to be forwarded to the client with the serious deficiencies reflected in the charged allegation.

Considered against all the background, the conduct amounted to unsatisfactory professional conduct rather than professional misconduct. In terms of overall principle, it is significant that the Court accepted that an employed solicitor, supervised by a partner, could be guilty of overcharging but such a determination would depend upon the facts and circumstances of each case.

### *Nature of the Division's review jurisdiction in relation to internal disciplinary orders*

In *Donaghy v The Council of the Law Society of New South Wales* [2013] NSWCA 154, the Court of Appeal considered the role of the Tribunal when reviewing a decision of the Council of the Law Society. In relation to the particular complaint made against the practitioner, the Council, through its Professional Conduct Committee, resolved that it was satisfied that there was a reasonable likelihood that the practitioner would be found by the Tribunal to have engaged in unsatisfactory professional conduct. Being satisfied of the matters raised, the Committee resolved to reprimand the practitioner.

On review, the Tribunal found the facts alleged as established and then proceeded to determine whether those findings amounted to unsatisfactory professional conduct or was conduct capable of being unsatisfactory professional conduct on behalf of the practitioner. The Tribunal concluded

that the practitioner's conduct amounted to unsatisfactory professional conduct.

The Court of Appeal noted that the Council, in proceeding under LPA, s 540(1) was to be satisfied that it was reasonably likely that the practitioner would be found by the Tribunal to have engaged in unsatisfactory professional conduct. This provision required the Council to predict or forecast the outcome of a hearing before the Tribunal on a "test of reasonable likelihood" (applying *Murray v Legal Services Commissioner* [1999] NSWCA 70; 46 NSWLR 224 at [88]; *Carson v Legal Services Commissioner* [2000] NSWCA 308 at [43]).

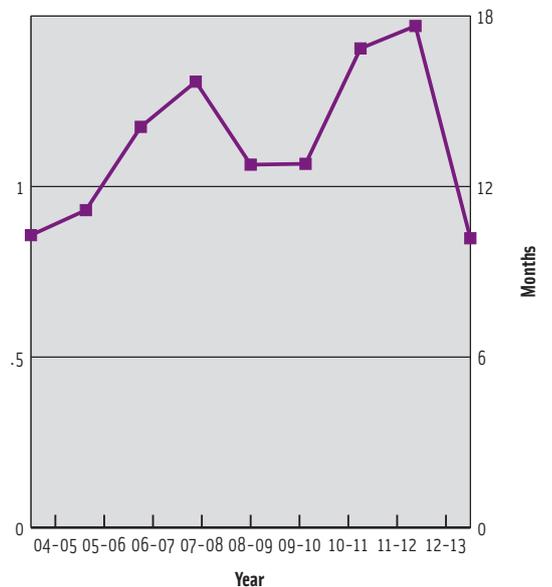
The Court of Appeal noted that test did not require satisfaction that the practitioner had engaged in such conduct but required satisfaction that there was a reasonable likelihood of that outcome following a hearing before the Tribunal. The Court noted that ADT Act, s 63(1) required that when determining a review of a "reviewable decision", the Tribunal was to decide what was the correct and preferable decision having regard to the material then before them. The Tribunal's decision was set aside and remitted to the Tribunal for redetermination.

*Solicitor purporting to have instructions when none obtained*

In *Council of the Law Society of New South Wales v Hancock* [2013] NSWADT 63, the Tribunal found the practitioner guilty of professional misconduct on three grounds. The Tribunal considered that a legal practitioner who assumed the role of solicitor acting for parties who were borrowing substantial funds on the security of their residence, without instructions and in the knowledge that no instructions had been provided, acted in a "disgraceful and dishonourable manner." Such a practitioner violated the fundamental principle that legal practitioners must only perform the professional tasks that they know, or reasonably believe, to have been entrusted to them. Further, the Tribunal was satisfied that in misleading fellow practitioners and other professional people,

through representations known to be false, into believing that instructions to act for a borrower/mortgagor had been received, was similarly "disgraceful and dishonourable conduct." In addition, the practitioner's use of a purported authority to give directions for the payment of a mortgage in order to appropriate, without entitlement, a portion of the funds being lent was to be categorised in the same way.

Legal Services Division - Average Disposal Time



**Other Professional Discipline Jurisdictions**

The General Division deals with the other professional discipline categories vested in the ADT. Hearings are conducted before a presidential member of the ADT, a non-judicial member with relevant professional qualifications and standing, and (other than in the instance of accredited certifiers) a community member who is familiar with the profession. There was one filing under the Veterinary Practice Act, one under the Architects Act and five under the Buildings Professionals Act (accredited certifiers).

# 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
- Previously solicitor, law reform researcher, law teacher, University of Sydney

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)*.

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

- *referred complaints*: complaints of discrimination, harassment, vilification and victimisation that have been referred to it by the President of the Anti-Discrimination Board (ADB);
- *applications for leave*: when a complaint has been declined by the President of the ADB the applicant must obtain the Tribunal's leave or permission before the complaint can proceed;
- *applications for the registration of conciliation agreements made at the ADB*;

- *applications for interim orders*; and
- *reviews of exemption decisions*: the Tribunal can conduct a merits review of a decision made by the President of the ADB in relation to applications for exemption from the *ADA*.

## Membership

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

Apart from Deputy President Hennessy, there are three other Deputy Presidents who sit part-time in the Equal Opportunity Division: Deputy Presidents Chesterman, Patten and Higgins. In addition there are six judicial and fifteen non-judicial members all of whom sit on a sessional basis.

## Outcomes and Disposal Rates

There were 104 matters pending at the beginning of the year. One hundred and twelve new applications were received. Of those, 88 were referred complaints, 16 were applications for leave to proceed and six were applications for an interim order. There was one application for the registration of a conciliation agreement and one application for a review of an exemption decision.

The Division finalised 138 matters, 26 more than it received, leaving 78 applications pending at the end of the year.

The Equal Opportunity Division's time standard for disposal of matters is 80% of matters to be finalised within 12 months and 100% within 2 years. This year 108 (78%) were finalised within 12 months and 28 (21%) within 2 years. The remaining 2 (1%) of matters were more than two years old when they were finalised.

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

### **Referred complaints**

If a complaint cannot be conciliated or it cannot be resolved for some other reason, the President of the ADB may refer it to the Tribunal. One hundred and six referred matters were finalised this year. Of those matters, orders were made in the applicant's favour in 14 cases (13%), the application was dismissed after hearing in 3 cases (3%) and 5 applications (5%) were summarily dismissed. Eighty-four cases (79%) were dismissed for reasons including that they had been settled or withdrawn.

### **Mediation**

For referred complaints, the Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 106 referred matters which were finalised during the year, mediation was conducted in 55 matters (52%). Of those matters, 50 settled at or after mediation and 5 proceeded 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 may ultimately be awarded.

### **Grounds of complaint**

A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were race (24), disability (19), sex discrimination (13) and victimisation (8). Smaller numbers of complaints were lodged on other grounds. There were no complaints of marital status discrimination or HIV/AIDS vilification.

### **Applications for leave to proceed**

Where the President of the ADB declines a complaint because, for example, it lacks substance or is frivolous or vexatious, the complainant may require the President to refer

the complaint to the Tribunal. Once referred, the applicant must obtain the Tribunal's "leave" or permission before it can go ahead. Five applications for leave were pending at the beginning of the year and the Tribunal received 24 new applications. Of the 24 leave applications disposed of during the year, leave was granted in 6 cases and refused in 12 cases (84%). The applicant withdrew or settled the application in the remaining 6 cases. All the applications were finalised in less than 6 months. Five applications remain pending at 30 June 2013.

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

The Tribunal has jurisdiction to register conciliation agreements made when complaints are still with the President of the ADB. The agreement, once registered, can be enforced as an order of the Tribunal. One new application for registration was made this year and the agreement was registered.

### **Applications for interim orders**

The President of the ADB, or a party to a complaint, may apply to the Tribunal for an interim order to preserve the status quo between the parties, or the rights of the parties, pending determination of the complaint. This year 6 new applications for an interim order were made, 6 were finalised and one remains pending. An order was made in two cases and refused in three cases. In the remaining case the applicant withdrew the application.

### **Significant Cases**

Costs awarded in three racial vilification cases - Trad v Jones (No. 3) (EOD) [2013] NSWADTAP 13 Trad v Jones (No 5) [2013] NSWADT 127 and Jones and Anor v Ekeremawi (No. 2) (Costs) (EOD) [2013] NSWADTAP 18

In December 2009, the Tribunal found that broadcaster Alan Jones and the licensee of radio station 2GB, Harbour Radio Pty Limited, had breached the racial vilification provisions of the *Anti-Discrimination Act 1977*. Comments made

by Mr Jones in 2005 during the “Cronulla riots” were found to have vilified Lebanese Muslims on the ground of their race. The applicant, Mr Trad, applied for costs.

The normal rule is that each party pays their own costs. Costs may only be awarded if it is fair to do so. Mr Trad had offered to settle the entire proceedings by way of an on-air and a written apology before any significant legal costs had been incurred. The Tribunal found that Alan Jones and 2GB had unreasonably rejected that offer. The Tribunal ordered Alan Jones and 2GB to pay Mr Trad’s costs because the terms of the offer were more favourable to the respondents than the orders that the Tribunal ultimately made. In the decision, the Tribunal made the following comment at [3]:

It is a fundamental human right recognised by the Anti-Discrimination Act 1977 (AD Act) that every person should be able to live free from racial vilification. High profile public figures like Alan Jones have ready access to legal advice. If, either inadvertently or intentionally, Mr Jones vilifies a person or a group of people on the ground of race he should, at least, respond quickly and acknowledge and apologise for any wrongdoing. That did not happen in this case.

The respondents have appealed to the Appeal Panel.

In two other cases involving Alan Jones and Radio 2GB, the Appeal Panel ordered them to pay costs.

In the first case, the Appeal Panel ordered Mr Jones and 2GB to pay half of Mr Trad’s costs on appeal. The main reason for that order was the complexity of the proceedings that required experienced legal representation: *Trad v Jones* (No. 3) (EOD) [2013] NSWADTAP 13.

The second case, *Jones and Anor v Ekermawi* (No. 2) (Costs) (EOD) [2013] NSWADTAP 18, involved a different applicant. The Appeal Panel ordered Mr Jones and 2GB to pay Mr Ekermawi most of the costs of an appeal against an interlocutory

decision of the Tribunal. The main reasons the Appeal Panel gave for ordering costs were that Mr Jones and Radio 2GB had exposed Mr Ekermawi to “a second round of litigation at the appeal level; the appeal has been unsuccessful; and, three of the four grounds relied upon by the appellants were manifestly weak.” The Appeal Panel commented at [12] that:

Interlocutory skirmishes have the potential to lengthen considerably the time a matter is before the Tribunal, particularly when first instance proceedings are themselves divided to deal first with interlocutory issues, and then appeals are brought against those interlocutory rulings.

Third parties who “aided and abetted” discriminatory conduct joined as parties

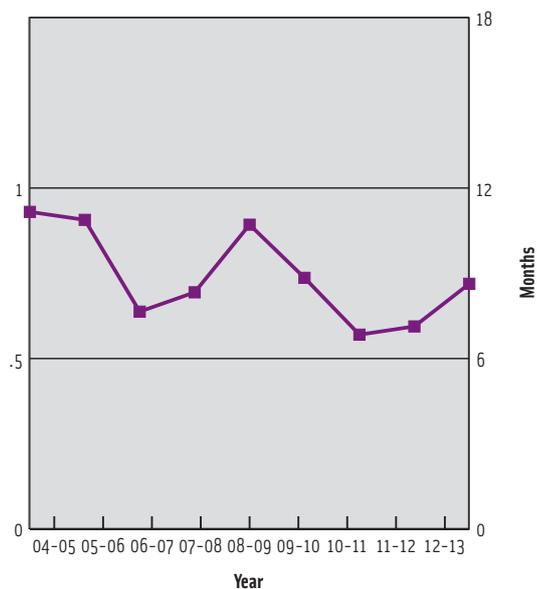
In two cases heard this year, the Tribunal joined third parties to complaints because it accepted the applicant’s submission that the third parties may have “aided and abetted” or contributed to the unlawful act of another person.

In the first case, *TU v Vaisman* (No 2) [2013] NSWADT 97, the Tribunal joined Dr Balafas, a doctor contracted by AMI Australia Holdings Pty Ltd, as a respondent. The Tribunal had previously ordered AMI to pay the applicant, TU, \$30,000 in damages for refusing to provide services relating to erectile dysfunction on the ground that he is HIV positive. AMI had not complied with the orders before it went into liquidation. TU lodged a fresh complaint with the President of the Anti-Discrimination Board against Dr Vaisman, the former Chief Executive Officer and sole director of AMI, and Karen Baker, a nurse employed by the company. That complaint alleged that Dr Vaisman and Ms Baker are jointly liable to pay the damages awarded to TU because they caused, instructed, induced, aided or permitted AMI to discriminate against him: *Anti-Discrimination Act* 1977, s 52. After the complaint had been referred to the Tribunal, TU applied to join Dr Balafas, a doctor contracted by AMI.

The question for the Tribunal was whether Dr Balafas instructed, induced, aided or permitted AMI to discriminate against TU and, if so, whether he is liable to pay some or all of the damages for that unlawful act. The Tribunal decided that Dr Balafas was a person “whose joinder is necessary to the determination of all matters in dispute in the proceedings.” If TU can prove that Dr Balafas contributed to AMI’s wrongdoing in a way that is unlawful under s 52 of the *AD Act*, he will be jointly liable for the damages that the Tribunal has awarded.

In the second case, *Roach v James* [2013] NSWADTAP 1, the Appeal Panel upheld a decision by the Tribunal to join Ms Roach, the wife of the director of a company, as a respondent to the proceedings. The company, which employed the applicant, had been voluntarily wound up. As the applicant could not bring proceedings against the company, she applied to join Ms Roach to her complaint of sexual harassment against a fellow employee. The Tribunal accepted that if Ms Roach had “permitted” the alleged harasser to sexually harass the applicant, she could be liable under s 52, the “aiding and abetting” provision of the *Anti-Discrimination Act 1977*. The Appeal Panel held that Ms Roach’s joinder was necessary to the determination of all matters in dispute in the proceedings.

Equal Opportunity Division - Average Disposal Time



# Retail Leases Division



Deputy President  
Michael Chesterman

- Divisional Head and Deputy President 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)
- Previously law teacher, Universities of London, Nairobi and Warwick

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* ('RLA') 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 Act establishes a general principle that retail tenancy disputes 'should be dealt with by the Tribunal rather than by a court'.

On 26 November 2012, the Tribunal published a new Guideline relating to the appointment of specialist retail valuers. Its predecessor (Practice Note No. 20, published in July 2006)

dealt only with applications for the appointment by the Tribunal of a single specialist retail valuer to determine the current market rent of leased premises under s 19(1A) or s 31(1A) of the RLA. The new Guideline deals with these, and also with applications under section 32A(1) for the appointment of two specialist retail valuers to conduct a review of a determination that has been made by a single valuer (who may have been previously appointed by the Tribunal or by agreement of the parties to the lease). Applications under section 32A(1) are relatively few in number.

On 1 January 2014, the Administrative Decisions Tribunal will cease to exist and its various Divisions will be absorbed into a newly created tribunal, the Civil and Administrative Tribunal ('NCAT'). It is intended that within NCAT the Retail Leases Division will form part of a Division to be called the Consumer and Commercial Division.

## Case load, disposal rates and outcomes

The figures discussed here appear in tabular form in Appendix E to this Report.

During recent years, though not in 2011–2012, the number of new applications filed in the Division has declined significantly. In the year under review, this trend downwards continued. The number of new applications fell from 196 (in 2011–2012) to 175.

At the beginning of the year under review, 69 applications were pending. The number of applications disposed of was 185, exceeding by 10 the number filed. This left 59 pending applications at the end of the year.

Among the 175 new applications, 44 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; 95 were retail tenancy claims in other categories; 3 were unconscionable conduct claims; and 33 were 'combined' claims, involving both retail tenancy claims and unconscionable conduct claims.

Of the 185 applications that were disposed of, the outcomes were as follows: 90 were withdrawn, dismissed on the ground of no appearance, or settled without orders being made; 11 were settled with consent orders being made; 5 were dismissed after a hearing; 5 were dismissed on the ground of lack of jurisdiction; and in 74, orders (non-consensual) were made.

It should be pointed out that these 74 applications in which non-consensual orders were made included a significant number – around 40 – involving the appointment of one or (occasionally) two specialist retail valuers. In most instances, these appointments are made in chambers by judicial members of the Division, without the parties being required to attend at any stage. Accordingly, the number of contested applications in which a hearing was required was only about 44. These comprised the 5 applications classified as ‘dismissed after a hearing’, the 5 applications that were dismissed on the ground of lack of jurisdiction and a further 34 (or thereabouts) in which non-consensual orders were made.

The number of applications that did not require any determination by the Tribunal (other than a consent order) was 101. This represents 54.6% of the number disposed of. That proportion is higher than the equivalent figure for last year (49%), but lower than the figure for the year preceding (56.2%).

During the year, Appeal Panels delivered 9 decisions (the same number as last year) relating to appeals from decisions made by the Division. Only 6 sets of proceedings were involved, because in three of them a decision by the Appeal Panel relating to liability was followed by a decision relating to costs.

Relevant features of these appellate decisions are as follows:-

In two of them, relating to the same litigation, the Appeal Panel first assessed the damages to be awarded to an appellant who had already succeeded in its appeal on liability, then made determinations as to the costs at first instance

and on appeal. The Panel’s lengthy decisions on liability, assessment of damages and costs are the subject of a further appeal to the Court of Appeal.

In another decision, the Panel allowed the appeal to the extent of reducing the amount of damages awarded at first instance.

In three further decisions, the Panel reached the same result as the Division, though in one of them its line of reasoning differed significantly from that adopted by the Division.

Each of the three remaining decisions related to the costs of the appeal and of the proceedings conducted in the Division.

#### **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 185 applications disposed of in 2012-13, 139 (75.1%) were disposed of within six months and 168 (86.2%) within a year. These figures indicate slightly slower disposal rates than were achieved in 2011-2012.

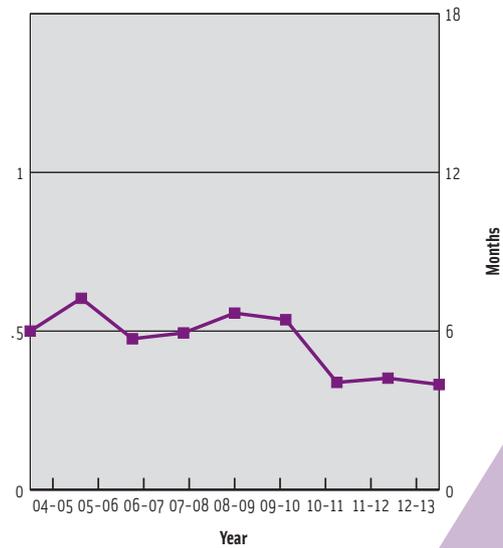
#### **Significant questions determined in decisions of the Division**

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

- Whether a brothel falls within the phrase ‘amusement and entertainment services’ in Schedule 1 to the RLA and is therefore a ‘retail shop business’.
- Whether the Tribunal, on finding that an applicant’s unconscionable conduct claim, if wholly successful, would call for an award of damages exceeding the Tribunal’s upper limit of \$400,000 (as established in section 73 of the RLA), would be required to declare that it had no jurisdiction or alternatively that the claim should be transferred to the Supreme Court under section 76A.

- The circumstances in which claims for damages under section 10 of the RLA (pre-lease misrepresentations), section 62B (unconscionable conduct) and/or section 62D (misleading or deceptive conduct) will be defeated on grounds of estoppel and/or waiver.
- The common law and statutory requirements for the creation of a retail shop lease.
- Whether either of the following clauses in a lease imposed a 'penalty' and was therefore invalid under principles of contract law: (a) a stipulation that the lessee must pay instalments of additional rent ('compliance rent'), which the lessor would waive if the lessee had not been in breach of the lease; and (b) a clause requiring the lessee to pay interest at 15% on any money owing to the lessor but unpaid.
- Whether specific obligations imposed on a lessee company relating to alterations and fit-out of the premises being undertaken by it were 'essential conditions'.
- What constitutes a 'determination' by a specialist retail valuer.

Retail Leases Division - Average Disposal Time



# Victims Support Division



Deputy President  
Brian Lulham

- Chairperson and part-time member of the Victims Compensation Tribunal, 2009-2013
- Acting Magistrate, July 2008-June 2013
- Local Courts Magistrate 1992-2008
- Solicitor, Goulburn 1967-2008

The Divisional Head is Mr Brian Lulham.

## Structure and Functions

The Victims Support Division of the ADT is the successor to the Victims Compensation Tribunal. The Division commenced operation on 3 June 2013 consequent on the enactment of the *Victims Rights and Support Act 2013*. The 2013 Act repealed the *Victims Support and Rehabilitation Act 1996*. The law regulates the administration of victims support payments from the Victims Support Fund. The law also allows for orders for restitution to be made against offenders.

Applications for victim support must be made to the Commissioner of Victims Rights. The Commissioner must determine the application by approving the giving of victims support or dismissing the application. The Commissioner may grant financial assistance for immediate needs, financial assistance for economic loss and make a 'recognition payment'. The Act sets limits on the amounts awardable as recognition payments linked to the degree of seriousness of the offence of violence, for example, \$15,000 for financially dependent family member of a homicide victim, \$7,500 for the parent, guardian or step parent of a homicide victim, \$10,000 for the victims of a sexual assault which involves serious bodily injury or an offensive

weapon or is carried out by two or more people, \$5,000 for a sexual assault which does not have those elements, an attempted sexual assault resulting in serious bodily injury, assault with grievous bodily harm or assault of a child that is a series of related events, \$1500 for indecent assault, attempted sexual assault not resulting in serious bodily injury, robbery or assault. The Commissioner may make an order for restitution against a person who has been convicted of a relevant offence. A dissatisfied applicant for a recognition payment may apply to the ADT for review of the Commissioner's determination, as may a person against whom a restitution order has been made. There is no right to appeal to the ADT Appeal Panel.

## Case load

The 2013 Act provided for all applications pending before the Victims Compensation Tribunal to be transferred to the ADT. As a result, approximately 200 files have been transferred. As at the 30 June 2013, the Victims Support Division had just commenced to process the transferred business. The first reviews of applications lodged under the new Act are not expected to reach the ADT until around September 2013.

This jurisdiction will become a List within the Administrative and Equal Opportunity Division of NCAT.

# Appeal Panel

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

## Case load, disposal times

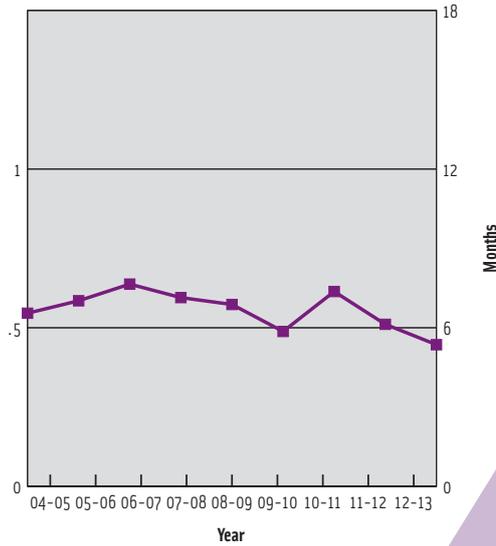
The Appeal Panel received 47 internal appeals, and 19 external appeals. There were 50 internal appeal disposals, and 19 external appeal disposals.

75% of internal appeals were either dismissed (28), found to be outside jurisdiction (1), withdrawn (5) or the subject of a consent order (1). The balance (12) resulted in orders partly or wholly allowing the appeal. In the case of external appeals 84% were either dismissed (7), withdrawn (8) or held to be outside jurisdiction (1). The balance (3) result in orders partly or wholly allowing the appeal. Most internal appeals and all external appeals were disposed of in less than 6 months.

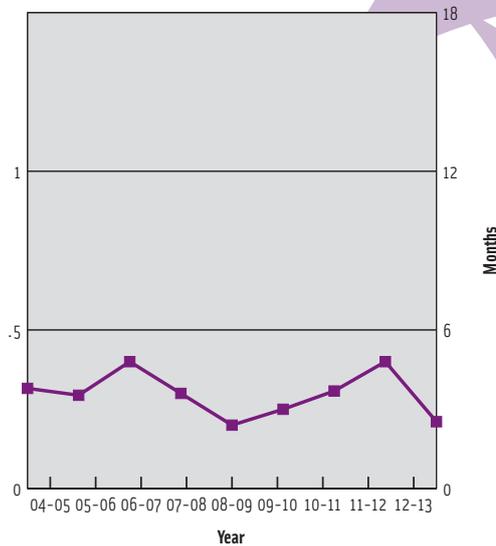
The Appeal Panel's more significant decisions are the subject of an Appendix to this report.

In recent years that Appendix has also referred to Supreme Court and Court of Appeal appeal decisions. This year the Supreme Court/Court of Appeal judgments are dealt with in the next section of this report.

Internal Appeals- Average Disposal Time



External Appeals- Average Disposal Time



# Supreme Court Oversight

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*Norrie v NSW Registrar of Births, Deaths and Marriages* [2013] NSWCA 145 was the major decision in the last year. The ADT hears applications for review of various decisions made by the Registrar of Births, Deaths and Marriages.

In this instance the Registrar refused to register a change of sex by a person from the sex recorded on the Register to 'non specific' or 'not specified'. The review applicant was born in Scotland as a male and in 1989 underwent sexual reassignment surgery involving castration and the creation of a semi-functioning vagina. The Registrar's view was that the law required him to identify the 'sex' of a person, and that only admitted of identification as either a male or female. No third possibility was open. The Registrar's decision was affirmed by the General Division, and an appeal dismissed by the Appeal Panel. The Court of Appeal upheld the review applicant's appeal, holding that the ADT had erred in law.

This is not the place for a detailed account of the reasoning. In essence, the Court held that the modern understanding of the term 'sex' as used in a statute of the present kind had evolved so as to recognise that some persons had a gender identity that fell outside the 'binary' model of male/female, and that the meaning of the term now incorporated at least a third possibility, that of 'inter-sex' people. In the principal judgment, Beazley P concluded:

*It follows from what I have said that I consider that the word "sex" in Pt 5A of the Act does not bear a binary meaning of "male" or "female" and that a person is entitled to have an entry in the Register of a sex other than either of those two identifiers. There are other sexual identifications that may be registered.*

There is no right of appeal to the Appeal Panel in professional discipline matters. Appeals go direct to the Court of Appeal. There were two cases in this category, *Donaghy v Council of*

*the Law Society* [2013] NSWCA 154 and *Scroope v Legal Services Commissioner* [2013] NSWCA 178. They have been discussed in the Legal Services Division section of this report. In each case the Court of Appeal held that the LSD had erred in law in particular respects.

Nor is there a right of appeal to the Appeal Panel in child employment exemption cases. In *LA v Commissioner for Children and Young People* [2012] NSWSC 1454 the Court dismissed an appeal in which the primary question was whether a finding of an offence proven without a conviction being entered in 1984 nevertheless amounted to a 'conviction' within the meaning of the relevant law because of an extended definition given to 'conviction'. The Court agreed with the ADT's decision that the extended meaning applied. There was a second question as to whether the offence of 'gross indecency' constituted a 'serious sex offence'. Again the Court agreed with the ADT that it did.

In *Commissioner for Children and Young People v VR* [2012] NSWSC 1385 the Court upheld the Commissioner's appeal against granting permission to an applicant with a serious sex offence history to engage in child-related employment subject to strict conditions. The Court upheld the Commissioner's objections that given the Tribunal's finding that it was not satisfied after an extensive hearing that the applicant no longer posed an unacceptable risk it was not open to it to continue as it did to allow the applicant to be involved in child-related employment (medical practice) on strict conditions.

There were three state revenue appeals from decisions of the Appeal Panel and one referral of a question of law.

The referral of the question of law was the subject of *Chief Commissioner of State Revenue v Print National Pty Ltd* [2013] NSWCA 96. The question went to the scope of the ADT's merits review jurisdiction in tax matters. The taxpayer sought

review of decisions by the Chief Commissioner to issue formal notices requiring the provision of information, instruments and records under s 72 of the Tax Administration Act. Section 86(1)(b) allows a taxpayer "dissatisfied" with any decision of the Chief Commissioner under a taxation law to lodge a written objection. Decisions made by the Chief Commissioner in relation to written objections are reviewable by the ADT. The Court held that "dissatisfied" in s 86(1)(b) is not limited to decisions having an immediate and direct effect on a person's actual or potential liability to tax. Therefore the taxpayer could lodge a written objection to an investigatory notice, and if dissatisfied apply to the Tribunal for review

In *De Marco v Chief Commissioner of State Revenue* [2013] NSWCA 86 the taxpayers had sought relief from land tax on the basis that he had occupied land he owned as his principal place of residence. They lived in a mobile home and later a caravan. This conduct was unlawful in the sense that they had lived in this way without the required council approval. Because of that, the Chief Commissioner had refused to allow the claim, a view upheld by the Revenue Division and on appeal the Appeal Panel. In each instance the view was adopted that the use and occupation of the land had to be lawful. The Court of Appeal disagreed, and held by majority that, properly construed, all that mattered was the facts as to use and occupation. The Court also observed that the definition of "residential land" required that there be use and occupation of a "building". The matter was remitted for redetermination.

In *Sayden Pty Ltd v Chief Commissioner of State Revenue* [2013] NSWCA 111 the Court allowed an appeal against a decision of the Appeal Panel, and restored the decision of the Revenue Division which had upheld the review applicant's objection to an assessment for land tax. The issue was the proper interpretation of s 3A(3B)(a)(ii) of the Land Tax Management Act, and its application to the provisions of the deed

of trust to ascertain. The Court decided that the Appeal Panel was wrong in upholding the Commissioner's assessment that the trust was a 'special trust' and not a 'fixed trust', the latter type of trust receiving special treatment.

In *Lo v Chief Commissioner of State Revenue* [2013] NSWCA 189 the Court of Appeal dismissed an appeal against a decision of the Appeal Panel which had in turn dismissed a taxpayer's appeal from the Revenue Division. The taxpayer had unsuccessfully challenged the Chief Commissioner's assessment of liability to pay land tax on the ground that the subject property was not a principal place of residence.

In *Chi v Technical and Further Education Commission* [2012] NSWCA 421; and [2013] NSWCA 15 (No 2) the Court found no error in the Appeal Panel's decision to uphold the EOD's dismissal of a complaint of racial discrimination. In *Ekeremawi v Harbour Radio Pty Ltd* [2013] NSWCA 54, the Court of Appeal refused to give leave to proceed to an originating summons purporting to appeal against an EOD decision made at first instance, noting that no appeal lay direct to the Supreme Court but must first go to the Appeal Panel. In *Schoeman v Department of Attorney General and Justice* [2013] NSWCA 88 the Court refused leave to appeal against a decision of the Appeal Panel setting aside a costs order made at first instance in favour of the appellant by the General Division. It reviewed the Appeal Panel decision and found no error.

# Alternative Dispute Resolution

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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. Appropriate matters are referred to mediation with the aim of providing a quick and effective mechanism for resolving or partly resolving applications that are before the Tribunal.

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. The ADT provides mediation at no cost to the parties. The ADT has 6 trained mediators listed at the end of the list of members in appendix B.

With rare exceptions, anything said by a party during a mediation session cannot be used as evidence in the hearing. In general, the mediator cannot disclose information provided by the parties without their consent and the parties cannot disclose information communicated during the mediation.

Mediation is frequently used in the Equal Opportunity Division (EOD) but also in Community Services Division (CSD) and the General Division (GD). There were 77 mediations conducted this year of which 61 were resolved at mediation or after mediation, and only 9 went to hearing. Mediations are used frequently in the EOD, where of 55 mediations held, 50 settled at or following mediation without the need for a hearing. In GD there were 7 mediations and 4 settled at or following mediation. In the CSD: 8 mediations, with 7 settled at or following mediation. The rate of success remains high with 85% settling at mediation or prior to hearing. This is the usual experience of courts and tribunals using annexed mediation.

The ADT has a number of other alternative dispute resolution options including, preliminary conferences, planning meetings and making decisions based on the papers. Mediation is used extensively in the Equal Opportunity, Community Services and Retail Leases Divisions.

Planning meetings and case conferences, used in the General and Equal Opportunity Divisions is an effective process in narrowing the issues in dispute and contributes to a high pre-hearing settlement rate. Where appropriate the Tribunal will remit matters for reconsideration by the agency. Preliminary conferences are commonly used in the Revenue Division. The statistics show almost 70% of Revenue Division filings do not proceed to hearing, suggesting the pre-hearing procedure is successful in achieving agreed resolutions.

In the Retail Leases Division attempts at mediation are required of the parties prior to filing. Where parties seek an urgent interim order prior to attempting mediation, the interim order application is determined and then the dispute is referred back to the Retail Tenancy Unit for mediation.

# Practice and Procedure

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The practice of the Tribunal is formally documented in its Act, Practice Notes and Rules. The Rules of the Tribunal are found in the *Administrative Decisions Tribunal Rules 1998*. The experience of the Tribunal has been that it is more practical to deal with practice and procedure issues via Practice Notes or Guidelines. The Parliament has recognised the value of using Practice Notes, and given their use statutory force (ADT Act, s 91A).

The Tribunal has five operative Practice Notes and 13 operative Guidelines. The new guidelines that have issued this year are :

- **Appointment of Specialist Retail Valuers: Guideline**
- **Professional Discipline : Legal Practitioners, Veterinary Practitioners, Architects and Building Professionals : Original Applications : Guideline**
- **Expert Witness: Guideline**

Of these, the Professional Discipline Guideline is of special significance. It is a revised version of an earlier guideline that applied to the professional discipline streams of the ADT other than legal profession discipline. The new guideline now applies to all professional discipline jurisdictions at the ADT. The detailed Rules that previously governed practice and procedure in the LSD have largely been repealed.

Subject to any special features of the Legal Profession Act or the governing Acts of the other professions, the Tribunal now pursues a universal case management approach to professional discipline filings. These changes have contributed to greater clarity around such matters as: clear separation of the disciplinary findings sought from the disciplinary orders sought; attention to the question of whether the pre-filing process met any jurisdictional requirements; the respondent's responsibilities in relation to the reply to the disciplinary application; and case management thereafter.

The Tribunal has five user groups:

- Freedom of Information
- Privacy
- Guardianship and Protected Estates
- LSD
- Revenue Division

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

## **Legislative amendments**

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

# Appendices

## Appendix A: Financial Information

### Administrative Decisions Tribunal Financial Information as at 30 June 2013<sup>1</sup>

	Actual	Budget	Variance
Employee Related Payments (including Crown Liabilities)	\$ 3,521,012	\$ 3,581,016	\$ 60,003
Other Operating Expenses	430,342	676,443	246,101
Depreciation	13,487	69,724	56,237
Maintenance	307	4,300	3,993
<b>Total Expenditure</b>	<b>3,965,148</b>	<b>4,331,482</b>	<b>366,334</b>
<u>User Charges</u> [2]	<u>(123,923)</u>	<u>(62,172)</u>	<u>61,751</u>
<u>Recoup from RBIA</u> [3]	<u>(855,905)</u>	<u>0</u>	<u>(855,905)</u>
<u>Recoup from PPF</u> [4]	<u>(1,036,223)</u>	<u>(1,287,667)</u>	<u>(251,444)</u>
<u>Other Revenue</u> [5]	<u>(19,656)</u>	<u>(22,451)</u>	<u>(2,795)</u>
<b>Total Revenue]</b>	<b>(2,035,707)</b>	<b>(1,372,290)</b>	<b>663,417</b>
<b>Net Cost Of Services</b>	<b>1,929,441</b>	<b>2,959,192</b>	<b>1,029,751</b>

#### Notes

1 This appendix is based on information supplied by Department of Attorney General and Justice's Finance Services. The Audit Office had not completed the audit of the Department's financial statements when this information was supplied.

#### 2 User Charges

The user charges are for filing fees, fees for services and sale of transcripts and sound recordings.

#### 3 Retail Leases Division

The Retail Leases Division is funded by the Retail Lease Bond Interest Account which is controlled by the Small Business Commissioner. The amount contributed towards the operating costs of the Tribunal including members' fees and transcription services is shown at [3]. The amount shown represents the balance of the contribution for 2010-11 and the contribution for 2011-12.

#### 4 Legal Services Division

The Legal Services Division is funded by the Public Purpose Fund. The amount contributed towards the operating costs of the Tribunal including members' fees and transcription services is shown at [4].

#### 5 Other Revenue

The other items of revenue include motor vehicle salary sacrifice.

## 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 31 December 2013

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

### DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY, to 31 December 2013

Assigned as set out below.

GENERAL DIVISION	Current Expiry date	Judicial Members assigned to Guardianship and Protected Estates list	
<b>Divisional Head</b>			
Judge KEVIN PATRICK O'CONNOR, AM, President	31.12.13	LOUISE ANN GOODCHILD	31.10.13
		CAROLYN HUNTSMAN	*11.07.13
<b>Deputy Presidents</b>		SUZANNE MAREE LEAL	31.10.13
PETER RAYMOND CALLAGHAN, SC	31.10.13	JULIAN JOSEPH MILLAR	31.10.12
MICHAEL RAINSFORD CHESTERMAN	19.10.14	PETER HENRY MOLONY	31.10.13
Magistrate NANCY LOUISE HENNESSY	31.12.13		
SIGRID HIGGINS	31.12.13	<b>Non-judicial Members assigned to Guardianship and Protected Estates list</b>	
Hon Acting Judge RODNEY NEVILLE MADGWICK, QC	31.10.12	MARY ELIZABETH BOLT	31.10.13
DAVID LOUTHEAN PATTEN	31.10.13	BARBARA RUTH FIELD	31.10.13
		JENNIFER GREEN	31.10.13
<b>Judicial Members</b>		RALPH WILLIAM MERRELL	31.10.14
CATHERINE LOUISE FITZGERALD	31.10.13	BRUCE GEOFFREY THOMSON	31.10.14
STEPHEN EDWARD FROST	31.10.13	ANN DOMINICA WUNSCH	31.10.13
GAIL BARTON FURNESS, SC	*06.02.13		
CAROLYN HUNTSMAN	* 11 .07.13	<b>Non-judicial Members, Public Health</b>	
NAIDA ISENBERG	31.10.13	ANNEMARIE HENNESSY	31.10.13
SUZANNE MAREE LEAL	31.10.13	RICHARD MATTHEWS, AM	31.10.13
PETER HENRY MOLONY	31.10.13		
STEPHEN HENRY MONTGOMERY	31.10.13	<b>Non-judicial Members, Accredited Certifier</b>	
GEOFFREY DENNIS DE QUINCEY WALKER (from 20.08.12)	19.08.14	PETER GABRIEL FRIEDMANN	31.10.13
		PHILIP ARTHUR HAYWARD	31.10.13
		GRAHAM JOHN MALLISON	31.10.12
<b>Non-judicial Members</b>			
ZITA ROSE ANTONIOS	31.10.14	<b>Non-judicial Members, Veterinary Surgeons Discipline</b>	
MARY ELIZABETH BOLT	31.10.13	MAGDOLINE AWAD	31.10.13
ROSS ANDREW FITZGERALD	31.12.13	TANYA LORRAINE CARTER	31.10.13
PETER CHARLES GOUDIE	31.10.13	ANDREW JONATHAN DART	31.10.13
JANETTE BELVA McCLELLAND	31.10.13	PETER KENNETH KNIGHT	31.10.13
JANE LOUISE SCHWAGER	31.10.13	FIONA JENNIFER CLARK	31.10.13
PHILIPPA JUDITH SMITH, AM	31.10.13	ROSALIE JANE MAYO-RAMSAY	31.10.13
MICHAEL VON KOLPAKOW	31.10.13	KIM FREDERIC TURNER (from 5.11.12)	31.10.13
<b>Presidential Members assigned to Guardianship and Protected Estates list</b>		<b>Non-judicial Members, Education</b>	
Magistrate NANCY LOUISE HENNESSY	31.12.13	TERENCE RICHARD BURKE, AM	31.10.13
		ALAN WILLIAM RICE, AM	31.10.13
		TREVOR WOOTTEN	31.10.13

**Non-judicial Members, Architects**

JANE MARGARET JOSE	31.10.13
PATRICK JOHN O'CARRIGAN	31.10.13
PETER ROY WATTS, AM	31.10.13

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

Magistrate NANCY LOUISE HENNESSY, Deputy President	31.12.13
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**Deputy Presidents**

MICHAEL RAINSFORD CHESTERMAN	19.10.14
SIGRID HIGGINS	31.12.13
Hon Acting Judge RODNEY NEVILLE MADGWICK, QC	31.10.12
DAVID LOUTHEAN PATTEN	31.10.13

**Judicial Members**

JENNIFER LOUISE CONLEY	31.10.13
GAIL BARTON FURNESS, SC	06.02.13
CAROLYN HUNTSMAN	*11.07.13
NAIDA ISENBERG	31.10.13
RICHARD JOHN PERRIGNON	31.10.13
ANNE SCAHILL	31.10.13
JOHN ALEXANDER STEVENS WAKEFIELD	31.10.13
ROBERTSON JAMES WRIGHT, SC	31.10.13

**Non-judicial Members**

ZITA ROSE ANTONIOS	31.10.14
MARY ELIZABETH BOLT	31.10.13
BARBARA RUTH FIELD	31.10.13
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 LEE NEWMAN	31.10.13
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	31.12.13
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**Judicial Members**

LOUISE ANN GOODCHILD	31.10.13
SUZANNE MAREE LEAL	31.10.13
PETER HENRY MOLONY	31.10.13
CAROLYN HUNTSMAN	*11.07.13
The Hon GRAHAM ROBERT MULLANE	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	31.10.13
DENNY GROTH	31.10.13
JOHN VINCENT LE BRETON	31.10.13
JAN MASON	31.10.13

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

The Hon. Justice WAYNE ROGER HAYLEN, Deputy President	15.06.14
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**Deputy Presidents**

MICHAEL RAINSFORD CHESTERMAN	19.10.14
Hon Acting Judge RODNEY NEVILLE MADGWICK, QC	31.10.12
DAVID LOUTHEAN PATTEN	31.10.13

**Barrister Members**

PAUL EDWIN BLACKET, SC	31.10.13
SHARRON NORTON, SC	31.10.14
LIONEL PHILIP ROBBERDS, QC	31.10.14
ROBERTSON JAMES WRIGHT, SC	31.10.13

**Solicitor Members**

MICHAEL JAMES BARNES	31.10.13
JOHN SYDNEY CURRIE	31.10.13
DAVID GRAHAM FAIRLIE	31.10.13
SANDRA NERYL HALE	31.10.13
NAIDA ISENBERG	31.10.13
The Hon GRAHAM ROBERT MULLANE	31.10.13
JOHANNA PHEILS	31.10.13
MICHELLE ANNE RIORDAN	31.10.13
JOHN ALEXANDER STEVENS WAKEFIELD	31.10.13

**Non-judicial Members**

CARL DONALD BENNETT	31.10.13
JUDITH FRANCES BUTLIN	31.10.13
ROSS ANDREW EDWARD FITZGERALD	31.10.13
ELAYNE HAYES	31.10.13
SIMON ROBERT HAYES	31.01.13
The Hon JOHN TINGLE	31.10.13

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

MICHAEL RAINSFORD CHESTERMAN, Deputy President	19.10.14
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**Deputy Presidents**

PETER RAYMOND CALLAGHAN, SC	31.10.13
Magistrate NANCY LOUISE HENNESSY	31.12.13
SIGRID HIGGINS	31.12.13
Hon Acting Judge RODNEY NEVILLE MADGWICK, QC	31.10.12
DAVID LOUTHEAN PATTEN	31.10.13

**Judicial Members**

DENNIS BLUTH	31.10.14
MARGARET COLLEEN HOLE, AM	31.10.13
PETER HENRY MOLONY	31.10.13
STEPHEN HENRY MONTGOMERY	31.10.13
The Hon GRAHAM ROBERT MULLANE	31.10.13
KIM BERESFORD RICKARDS	31.10.13

**Non Judicial Members**

JUDITH FRANCES BUTLIN	31.10.13
BRIAN TERRY HARRISON	31.10.13
ERIC MICHAEL JAMES LONIE	31.10.13
GARY JOHN PINTER	31.10.13
JANE LOUISE SCHWAGER, AO	31.10.13
TERENCE JAMES TYLER	31.10.13
PETA SUZANNE DRAKE (from 20.08.12)	19.08.14
MATTHEW KEITH FOLDI (from 20.08.12)	19.08.14

## REVENUE DIVISION

### Divisional Head

RASHELLE LEAH SEIDEN,  
Deputy President (from 26.07.12) 25.07.14

### Judicial Members

JULIAN BLOCK 31.10.13  
STEPHEN EDWARD FROST 31.10.13  
MARGARET COLLEEN HOLE, AM 31.10.13  
RICHARD JOHN PERRIGNON 31.10.13  
AMARJIT SINGH VERICK 31.10.13  
NORMAN ISENBERG (from 20.08.12) 19.08.13  
GEOFFREY DENNIS DE QUINCEY WALKER  
(from 20.08.12) 19.08.14

### 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

## VICTIMS SUPPORT DIVISION

### Divisional Head

BRIAN LULHAM, Deputy President (from 3.6.13) \*17.09.13

### MEDIATORS

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

## COMMUNITY SERVICES DIVISION

LEIGH BAKER  
PENELOPE HELEN GOODE  
DENNY GROTH  
SIGRID HIGGINS  
ASHLEY LIMBURY  
CAROLYN HUNTSMAN

## EQUAL OPPORTUNITY DIVISION

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

## GENERAL DIVISION – GUARDIANSHIP AND PROTECTED ESTATES MATTERS

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

## GENERAL DIVISION –GIPA AND PRIVACY MATTERS

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

\*Date of resignation

## Appendix C: Legislation

### Principal Legislation

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

### Primary Legislation

Aboriginal Lands Rights Act 1983  
Adoption Act 2000  
Agricultural Livestock (Disease Control Funding) Act  
1998  
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  
Child Protection (Working with Children) Act 2012  
Child Protection (Working with Children) Regulation  
2013  
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  
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  
Community Justices Centres Act 1983  
Community Services (Complaints, Reviews and  
Monitoring) Act 1993  
Community Services (Complaints, Reviews and  
Monitoring) Regulation 2004  
Conveyancers Licensing Act 2003  
Co-operative Housing and Starr-Bowkett Societies  
Act 1998  
Deer Act 2006  
Disability Services Act 1993  
Drug and Alcohol Treatment Act 2007  
Education Act 1990  
Electricity Supply Act 1995  
Electricity (Consumer Safety) Act 2004  
Entertainment Industry Act 1989  
Exhibited Animals Protection Act 1986  
Explosives Act 2003  
Fair Trading Act 1987  
Firearms Act 1996  
Firearms Regulation 2006  
First Home Owner Grant Act 2000  
Fisheries Management Act 1994  
Food Act 2003  
Food Regulation 2010  
Forestry Act 1916  
Game and Feral Animal Control Act 2002  
Gaming Machines Tax 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  
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 No 100  
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  
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  
Victims Rights and Support Act 2013  
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
2012-2013	841	937	474	47	50	19
<b>Total</b>	<b>12636</b>	<b>12119</b>	<b>474</b>	<b>937</b>	<b>909</b>	<b>25</b>

#### NOTES TO TABLE

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

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

(c) Date of commencement: 6 October 1998

### Appeal - External

	Appeals Lodged	Appeals Completed	Appeals Pending
2002-2003*	1	0	0
2003-2004	28	21	8
2004-2005	19	21	6
2005-2006	17	18	5
2006-2007	15	14	6
2007-2008	21	19	8
2008-2009	20	22	4
2009-2010	20	19	5
2010-2011	13	14	4
2011-2012	10	10	4
2012 - 2013	19	19	4
<b>Total</b>	<b>183</b>	<b>177</b>	<b>4</b>

\* External appeals jurisdiction commenced - 28 February 2003

## Time Standards

As at 30 June 2013 the Tribunal's performance against its time standards was:  
(target appears in brackets)

### General Division

- 60% of matters disposed of in less than 6 months (85%)
- 88% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –100%

### Community Services Division

- 60% of matters disposed of in less than 6 months (85%)
- 74% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –73%

### Equal Opportunity Division

- 78% of matters disposed of in less than 1 year (80%)
- 98% of matters disposed of in less than 2 years (100%)
- Clearance ratio\* –81%

### Retail Leases Division

- 75% of matters disposed of in less than 6 months (85%)
- 91% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –94%

### Revenue Division

- 38% of matters disposed of in less than 6 months (85%)
- 79% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –73%

### Legal Services Division

- 35% of matters disposed of in less than 9 months (90%)
- 53% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –57%

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

- 68% of matters disposed of in less than 6 months (80%)
- 92% of matters disposed of in less than 1 year (100%)
- Clearance ratio\* –95%

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

# Appendix E: Statistics

## General Division 1/7/2012 - 30/6/2013

### 1. Case flow 2012-2013

Matters pending at 30 June 2012	New Applications filed	Disposals	Pending at 30 June 2013
204	396	387	213

### 2. Applications by type 2012-2013

Applications for Original Decision	Applications for review	Professional Discipline
4	388	4

### 3. Applications by Act 2012-2013

Subject by Act	
Aboriginal Land Rights Act 1983	1
Architects Act 2003	2
Apiaries Act 1985	2
Association Incorporation Act 2009	1
Animal Research Act	1
Births Deaths and Marriages Registration Act 1995	5
Building Professionals Act 2005	3
Business Names Act 2002	
Charitable Fundraising Act 1991	
Commercial and Private Inquiry Agents Act 2004	2
Conveyancers Licensing Act 2003	
Education Act 1990	
Explosives Act 2003	1
Exhibited Animals Protection Act 1986	
Firearms Act 1996	49
Food Act 2003	2
Fisheries Management Act 1994	
Government Information (Public Access) Act 2009	96
Guardianship Act 1987	6
Higher Education Act 2001	
Home Building Act 1989	18
Health Records and Information Privacy Act 2002	13
Hemp Industry Act	
Impounding Act 1993	2
Local Government Act 1993	4
Marine Safety Act 1998	
Motor Dealers Act 1974	3
Motor Vehicle Repairs Act 1980	6
Motor Vehicle Sport (Public Safety) Act 1985	
Non Indigenous Animals Act 1987	
NSW Trustee and Guardian Act 2009	14
Occupational Health and Safety Act 2000	
Privacy and Personal Information Protection Act 1998	40
Property, Stock and Business Agents Act 2002	14
Pawnbrokers and Second-Hand Dealers Act 1996	
Passenger Transport Act 1990	85
Protected Estates Act 1983	
Road Transport (General) Act 1999	
Security Industry Act 1997	18
Shop Trading Act 2008	
Surveying and Spatial Information Act 2002	
Transport Administration Act 1988	
Travel Agents Act 1986	
Tow Truck Industry Act 1998	6
Veterinary Practice Act 2003	1
Consumer Claims and Tenancy Tribunal - NJ	1

#### 4. Outcomes in Review matters 2012-2013

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
209	102	43	1	15	4	1	8

#### 5. Outcomes in Original matters 2012-2013

Dismissed because application withdrawn/no appearance/agreement reached	Application granted	Application refused	No Jurisdiction
2	0	0	0

#### 6. Outcomes in Professional Discipline 2012-2013

Dismissed	Orders made	Application withdrawn dismissed	No jurisdiction
0	2	0	0

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

Disposed of in under 6 months	235
Disposed of in under 12 months	106
Disposed of in over 12 months	40
Disposed of in over 2 years	6

#### 8. Mediation

No. of disposals where mediation was conducted	Settled at or after Mediation	Proceeded to Hearing
7	4	3

## Guardianship and Protected Estates List 1/7/2012-30/6/2013

**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 2012-2013

Pending at 30 June 2012	New Applications Filed	Disposals	Pending at 30 June 2013
5	19	19	5

#### 2. Applications for Review 2012-2013

Subject by Act	Number
<i>NSW Trustee and Guardian Act 2009</i>	19

#### 3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2012-2013

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
9	8	1	0	1	19

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

Disposed of in under 6 months	17
Disposed of in under 12 months	2
Disposed of in over 12 months	0
Disposed of in over 2 years	0

## Community Services Division 1/7/2012 - 30/6/2013

### 1. Case flow 2012-2013

Matters pending at 30 June 2012	New Applications filed	Disposals	Pending at 30 June 2013
28	34	46	15

### 2. Applications by type 2012-2013

Applications for original decision	Applications for review
11	23

### 3. Applications by Act 2012-2013

Subject by Act	Number
Children and Young Persons (Care and Protection) Act 1988	1
Commission for Children and Young People Act 1998	11
Disability Services Act 1993	0
Children (Education and Care Services) National Law	3
Youth and Community Services Act 1973	1
Community Services (Complaints Reviews and Monitoring) Act 1993	18

### 4. Outcomes - Reviewable Decisions 2012-2013

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
20	5	6	0	3

### 5. Outcomes- Original Decisions 2012-2013

Dismissed because application withdrawn/no appearance/agreement reached	Declaration Made	Declaration Refused	No Jurisdiction
8	3	1	0

### 6. Mediation 2012-2013

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
8	5	2	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	6
Disposed of in over 12 months	10
Disposed of in over 2 years	2

## Equal Opportunity Division 1/7/2012- 30/6/2013

### 1. Case flow 2012- 2013

Matters pending at 30 June 2012	New Applications filed	Disposals	Pending at 30 June 2013
104	112	138	78

### 2. Applications by type 2012-2013

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
88	1	16	6	1

### 3. Referral of Complaints by President of Anti-Discrimination Board

Head of discrimination	Number
Race	24
Disability Discrimination	19
Sexual Harassment	3
Sex Discrimination	13
Victimisation	8
Carers responsibilities	4
Age Discrimination	5
Homosexual vilification	3
Homosexual Discrimination	5
Racial Vilification	2
Pregnancy Discrimination	
Transgender vilification	2
Marital Status Discrimination	
HIV/AIDS Vilification	

### 4A. Outcomes of Referrals 2012-2013

Dismissed because application withdrawn/no appearance/agreement reached	Summary dismissal under sections 102, 111	Dismissed after hearing	Orders made after hearing
84	5	3	14

### 4B. Mediation

No. of disposals where mediation was conducted	Settled at or after Mediation	Proceeded to Hearing	Percentage of finalised matters resolved at mediation
55	50	5	90%

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

for referrals	
Disposed of in under 6 months	75
Disposed of in under 12 months	33
Disposed of in over 12 months	28
Disposed of in over 2 years	2

### 5A. Application for registration of conciliation agreement 2012 - 2013

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

Matters pending at 30 June 2012	New applications filed	Disposals	Pending at 30 June 2013
0	1	1	0

---

**5B. Outcome of application for registration of agreement 2012-2013**

---

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

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

---

for registration of agreement

Disposed of in under 6 months	1
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 2012-2013**

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

---

Matters pending at 30 June 2012	New applications filed	Disposals	Pending at 30 June 2013
5	24	24	5

---

**6B. Outcome of applications for leave 2012-2013**

---

Leave granted	Leave not granted	Dismissed because application withdrawn / no appearance / agreement reached
6	12	6

**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 2013
6	6	1

**7B. Outcome of applications for interim orders**

---

Order granted	Order not granted	Consent orders	Application withdrawn dismissed
2	3		1

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

---

for interim orders

Disposed of in under 6 months	5
Disposed of in under 12 months	1
Disposed of in over 12 months	0
Disposed of in over 2 years	0

**8. Review of exemption decisions s 126**

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Matters pending at 30 June 2012	New applications filed	Disposals	Pending at 30 June 2013
0	1	1	0

**8B. Timeliness - time from date of application to date of disposal**

---

exemption applications

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

---

## Retail Leases Division 1/7/2012 - 30/6/2013

### 1. Case flow 2012-2013

Matters pending at 30 June 2012	Applications filed	Disposed	Pending at 30 June 2013
69	175	185	58

### 2. Applications by type 2012-2013

Retail tenancy claim	95
Unconscionable conduct claim	3
Combined retail tenancy and unconscionable conduct claim	33
Specialist Retail Valuer	44

### 3. Outcomes 2012- 2013

Dismissed because application withdrawn / no appearance/ agreement reached	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
90	5	11	74	5	0

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

Disposed of in under 6 months	139
Disposed of in under 12 months	29
Disposed of in over 12 months	16
Disposed of in over 2 years	1

## Revenue Division 1/7/2012- 30/6/2013

### 1. Case flow 2012-2013

Matters pending at 30 June 2012	Applications filed	Disposals	Matters pending at 30 June 2013
117	91	124	84

### 2. Applications by Type 2012-2013

Subject by Act	
Duties Act 1997	10
First Home Owners Grant Act	7
Land Tax Act	6
Land Tax Management Act 1956	38
Payroll Tax Act 1971	3
Payroll Tax Act 2007	23
Taxation Administration Act 1996	4

### 3. Outcomes 2012- 2013

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
91	23	10	0	0

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

Disposed of in under 6 months	47
Disposed of in under 12 months	51
Disposed of in over 12 months	24
Disposed of in over 2 years	2

## Legal Services Division 1/7/2012- 30/6/2013

### 1. Case flow 2012-2013

Matters pending at 30 June 2012	Applications filed	Disposed	Pending at 30 June 2013
50*	33	57	28

\* 52 prior to audit of database

### 2. Applications by type 2012-2013

Applications for original decision	15
Applications for review	2
Application for professional discipline	16

### 3. Applications by subject 2012-2013

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	0
Solicitor	Disciplinary action	16
Solicitor	Reprimand/Compensation order s 540	5
Lay associate	Approval of lay associate s 17(3)	3
Lay associate	Prohibition on employment s 18	5
Lay associate	Approval of lay associat s 17(4)	1
Solicitor	Review s 75	2
Solicitor	Removal of Suspension of Practising Certifi	1
		33

### 4. Outcomes in Original matters 2012-2013\*

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

Dismissed after hearing	2
Fined	15
Reprimanded	21
Practising Certificate suspended	0
Practising Certificate cancelled	0
Removed from Roll	23
Consent order	0
Conditions imposed on practising certificate	9
Compensation	0
Undertake and complete course of further Legal Education	1
Withdrawn	2
Application granted (prohibit employment)	2
Application refused	0

Approval of lay associate	
Application granted	1
Withdrawn	

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

### 5. Outcomes in Review matters 2012-2013

Application withdrawn/ Dismissed	3
Decision under review affirmed	2
Decision under review set aside/varied/remitted/recommendation made	0

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

Disposed of in under 6 months	13
Disposed of in under 12 months	17
Disposed of in over 12 months	15
Disposed of in over 2 years	12

## Appeals 1/7/2012 - 30/6/2013

### Internal Appeals to Appeal Panel

#### 1. Case Flow 2012-2013

	Appeals Pending at 30 June 2012	New Appeals filed	Disposals	Pending at 30 June 2013
General Division	10	21	24	7
Community Services Division	1	2	2	1
Equal Opportunity Division	5	4	8	1
Retail Leases Division	5	15	12	8
Revenue Division	3	5	4	4
<b>Total</b>	<b>24</b>	<b>47</b>	<b>50</b>	<b>21</b>

#### 1a Interlocutory Appeals\*

	Pending at 30 June 2012	Interlocutory Appeal filed	Disposals	Pending at 30 June 2013
	6	7	0	0

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

#### 2. Outcome of Internal Appeals 2012 - 2013

	Upheld (in full part)	Dismissed/ No jurisdiction	Consent Orders	Withdrawn/ Discontinued	<b>Total</b>
General Division	8	12 0	0	4	24
Community Services Division	1	0 1	0	0	2
Equal Opportunity Division	2	6 0	0	0	8
Retail Leases Division	4	6 0	1	1	12
Revenue Division	0	4 0	0	0	4
<b>Total</b>	<b>15</b>	<b>28 1</b>	<b>1</b>	<b>5</b>	<b>50</b>

#### 2a Interlocutory Appeals\*

	Leave to proceed refused and dismissed	Leave granted but dismissed	Leave granted & appeal upheld
	9	0	0

\*(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	28
Disposed of in under 12 months	17
Disposed of in over 12 months	3
Disposed of in over 2 years	2

## External Appeals to the Appeal Panel

### 1. Case Flow 2012 -2013

	Appeals Pending at 30 June 2012	New Appeals filed	Disposals	Pending at 30 June 2013
Guardianship Tribunal	4	17	17	4
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	2	2	0
Total	4	19	19	4

### 2. Outcome of External Appeals 2012-2013

	Dismissed	Withdrawn/Discontinued	No Jurisdiction
Upheld (in full or in part)	7	8	1
	3		

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

Disposed of in under 6 months	19
Disposed of in under 12 months	0
Disposed of in over 12 months	0
Disposed of in over 2 years	0

## Applications to the Supreme Court or Court of Appeal

### 1. Case flow 2012 - 2013

	New Appeals Filed	Disposals
General Division		
Community Services Division		2
Equal Opportunity Division		1
Retail Leases Division		
Revenue Division		
Legal Services Division	5	2
Appeal Panel	5	8
Appeal External		
Total	10	13

*NB: one disposed was an application to the High Court*

### 2. Outcome of Supreme Court matters 2012 - 2013

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Orders made following s118 referral
General Division				
Community Services Division	1	1	1	
Equal Opportunity Division				
Retail Leases Division				
Revenue Division				
Legal Services Division	2			
Appeal Panel	2	6		
Appeal External				
Total				

### Published Appeal Decisions- Presiding Member

Member	Number- Internal Decisions	Number- External Decisions	Total
O'Connor, P	25		25
Hennessy, DP	6	10	16
Chesterman, DP	13		13
Higgins, DP	2		2
Madgwick, DP	2		2
Seiden, DP	3		3

## Appendix F: Significant Appeal Cases

This Summary covers the reporting period 1 July 2012 to 30 June 2013

The following list refers only to Appeals Upheld in whole or in part

FROM GD

### **New South Wales Office of Liquor, Gaming and Racing v Fahey (GD) [2012] NSWADTAP 55**

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GOVERNMENT INFORMATION (PUBLIC ACCESS)  
- Identity of maker of Complaint to Public Agency - Weighing of Considerations For and Against Disclosure - Not a "False" Complaint - Whether that Consideration is Relevant at all - Reasonable Expectation of Confidentiality - Extension to Merits - Government Information (Public Access) Act 2009, ss 12-15, Table, cl 1(d), cl 2(a)

Appeal allowed and leave granted to extend to the merits where the agency's decision was affirmed.

### **Commissioner of Police, NSW Police Force v Roy (GD) [2013] NSWADTAP 6**

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Appeal - Respondent applies to withdraw from matter after hearing - disposal of proceedings - consent orders - no substantive reasons given by Appeal Panel - effect on decision below

Appeal allowed, the decision was set aside and the decision of the appellant was affirmed.

### **Board of Studies v ANC High School Pty Ltd (GD) [2013] NSWADTAP 8**

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SCHOOL REGISTRATION AND ACCREDITATION  
- Review of decisions of Board of Studies to recommend cancellation of registration of school

and to cancel accreditation - Varied by Tribunal - Appeal by Board - Nature of Review Jurisdiction - Scope of Power to make Orders - Tribunal decision varied; STATUTORY INTERPRETATION - Education Act - Board guidelines made pursuant to regulation-making power - Whether register of enrolments and attendances a 'requirement of registration' under section 47 - Held not - Tribunal decision upheld - Whether issues relevant to Commonwealth provider approval involve 'requirements of registration' - Held not - Tribunal decision upheld - Appeal allowed in part; EXTENSION TO MERITS - Leave Refused; COSTS - Respondent's application - No order as to Costs. Education Act 1990, s 24, s 47, s 131

Appeal allowed in part setting aside the Tribunal's orders, application to extend to the merits was declined. Respondent's application for costs of the appeal was refused and no order as to costs.

### **Australian Business Skills Pty Ltd v Australian Skills Quality Authority (GD) [2013] NSWADTAP 9**

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Merits review - decision to cancel registration of a registered training organisation (RTO) - whether RTO non-compliant with standards relating to delivery of training, assessment and support for individual trainees - whether cancellation of registration justified

The appeal was allowed in part.

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**Department of Family and Community Services,  
Housing NSW v Edwards (GD) [2013] NSWADTAP 17**

GOVERNMENT INFORMATION (PUBLIC ACCESS) - Appeal by agency against terms of Tribunal order varying its refusal to disclose information - Whether the redactions directed by the Tribunal consistent with its reasons for decision - Part of appeal settled by consent - As to remainder, leave to extend appeal to merits granted - Tribunal decision set aside in that respect, agency's decision affirmed - Public interest in disclosure to an individual adversely affected by administrative action outweighed, in the circumstances, by public interest in withholding information the disclosure of which could reasonably be expected to expose a person to a risk of harm or of serious harassment or serious intimidation. Government Information (Public Access Act) 2009, ss 12-14; s 14 Table, cl 3(f).

The Tribunal's order was varied, with leave granted to extend the appeal to the merits.

**ALY v NSW Trustee and Guardian (GD) [2013]  
NSWADTAP 23**

PROTECTED PERSON - NSW Trustee revoked authority to manage income - Affirmed by Tribunal - Appeal - Authority restored in part

Appeal allowed, the decision of trustee was varied to authorise the appellant to manage the balance of his disability support pension after deduction of the hospital accommodation fee.

**Sikka v Roads and Maritime Services  
(GD) [2013] NSWADTAP 28**

OCCUPATIONAL REGULATION - Cancellation of Taxi Driver Authority - Honesty and Integrity - Duplicate Transactions - Tribunal affirmed cancellation after delivery of oral reasons

- Appeal - Adequacy of Reasons - Standards - Held inadequate - Appeal extended to merits. Passenger Transport Act 1990, s 33(1), (3), 33F

Decision under appeal set aside and the application to extend appeal to merits granted.

**Director General, Department of Finance and  
Services v Baldacchino (GD) [2013] NSWADTAP 29**

OCCUPATIONAL LICENSING - Motor Vehicle Repairers Licence - Tribunal affirmed cancellation order, but set aside disqualification orders - Appeal by Administrator seeking reinstatement of disqualification orders - Tribunal misunderstood period of disqualification and did not address the disqualification relating to involvement in management - Tribunal decision set aside - Appeal extended to merits - Disqualification orders reinstated

Appeal allowed in part.

**Department of Attorney General and Justice v  
Schoeman [2012] NSWADTAP 31**

COSTS - matter settled - whether fair to award costs - relevance of pre-litigation conduct - primary findings of fact - exercise of evaluative judgement - relevant and irrelevant consideration - extension to the merits

The Tribunal's decision that the appellant was to pay the respondent's costs is set aside, the appeal was extended to the merits of the Tribunal's decision, the application for costs was dismissed.

From CSD

**Fairfield City Council v WI [2012] NSWADTAP 39**

Appeal - errors of law - no jurisdiction to review decision of a third party - application for review futile and of no utility - looking behind an adverse earlier finding - admissibility of evidence contradicting or inconsistent with an earlier adverse finding by a third party - applying inapplicable law - failure to give adequate reasons - taking into account irrelevant matters and failure to take into account relevant matters - making findings and reaching conclusions in the absence of a relevant third party - leave to appeal on the merits

Appeal allowed in part, the order setting aside appellant's decision to remove the respondent carer's name from its Family Day-Care Register was affirmed, while the order the respondent carer's name be restored to the appellant's Family Day-Care Register was quashed.

From EOD

**Lawson v State of New South Wales (Housing NSW) (EOD) [2013] NSWADTAP 5**

Anti-Discrimination Act 1977 - conditions applying to the registration of terms of a conciliation agreement as orders of the Tribunal - whether the terms of an agreement could have been the subject of orders under this Act

Leave was granted for the appeal to extend to the merits, appeal allowed.

From RLD

**Toga Pty Ltd v Perpetual Nominees Ltd (RLD) [2013] NSWADTAP 2**

Retail lease - construction - terms of option lease - Tribunal's powers in relation to rectification

Declaration made that the Appellant / Cross Respondent was obliged to pay to the Respondents / Cross Appellants the Annual Rent and the Lessee's Contributions under the renewed lease that came into existence upon the exercise by the Appellant / Cross Respondent of the option contained in the registered sublease.

**Christofi v Mohammady (RLD) [2013] NSWADTAP 10**

Retail lease - abatement of rent - diminished useability due to damage

The appeal was allowed in part, the amount ordered to be paid by the Respondents to the Applicant is reduced, the parties are to bear their own costs of the appeal.

## Appendix G: Decisions Organised into Divisions and Internal and External Appeal Panel, from 1 July 2012 to 30 June 2013

### INTERNAL APPEALS

NAME	MEDIUM NEUTRAL CITATION
KT v Sydney Local Health District (GD)	[2012] NSWADTAP 23
AVS Group Australia Pty Limited & Tony Sleiman v Commissioner of Police, NSW Police Force (Respondent's Application) (GD)	[2012] NSWADTAP 24
Ashleigh Developments Pty Ltd v Chief Commissioner of State Revenue (RD)	[2012] NSWADTAP 25
B & L Linings Pty Ltd v Chief Commissioner of State Revenue (No 6) (RD)	[2012] NSWADTAP 26
State of NSW (NSW Police Force) v Whitfield (EOD)	[2012] NSWADTAP 27
Department of Attorney General and Justice v Schoeman (GD)	[2012] NSWADTAP 31
Campbell v Director-General, Department of Finance and Services (GD)	[2012] NSWADTAP 32
Trad v Jones (No. 3) (EOD)	[2012] NSWADTAP 33
QQ v NSW Ombudsman (EOD)	[2012] NSWADTAP 34
Spuds Surf Chatswood Pty Ltd v PT Ltd (No 2) (RLD)	[2012] NSWADTAP 35
AHB v NSW Trustee and Guardian (GD)	[2012] NSWADTAP 37
Fairfield City Council v WI (CSD)	[2012] NSWADTAP 39
Valentino Franchise Pty Ltd (ACN 114 469 662) v Brookfield Multiplex WS Retail Landowner Pty Ltd (CAN 109 033 794) (No 2) (RLD)	[2012] NSWADTAP 40
LN v Sydney Local Health District (No. 2) (GD)	[2012] NSWADTAP 41
IO v Department of Family and Community Services (CSD)	[2012] NSWADTAP 42
KT v Sydney Local Health District (GD)	[2012] NSWADTAP 43
Bristol Custodians Limited v Chief Commissioner of State Revenue (RD)	[2012] NSWADTAP 44
AF v Roads and Maritime Services (GD)	[2012] NSWADTAP 45
CY v AEF and Northern Sydney Local Health District (GD)	[2012] NSWADTAP 46
State of New South Wales (NSW Police Force) v Whitfield (No. 2) (EOD)	[2012] NSWADTAP 48
Jones and Anor v Ekeremawi (EOD)	[2012] NSWADTAP 50
Gelin v Sumner (RLD)	[2012] NSWADTAP 52
Molyneux v Chief Commissioner of State Revenue (RD)	[2012] NSWADTAP 53
Yu v University of Newcastle (EOD)	[2012] NSWADTAP 54
New South Wales Office of Liquor, Gaming and Racing v Fahey (GD)	[2012] NSWADTAP 55
Roach v James (EOD)	[2013] NSWADTAP 1
Toga Pty Ltd v Perpetual Nominees Ltd (RLD)	[2013] NSWADTAP 2
AGU v Commonwealth of Australia (GD)	[2013] NSWADTAP 3
B & L Linings Pty Ltd v Chief Commissioner of State Revenue (No 7) (RD)	[2013] NSWADTAP 4
Lawson v State of New South Wales (Housing NSW) (EOD)	[2013] NSWADTAP 5
Commissioner of Police, NSW Police Force v Roy (GD)	[2013] NSWADTAP 6
KT v Sydney Local Health District (No 2) (COSTS) (GD)	[2013] NSWADTAP 7

Board of Studies v ANC High School Pty Ltd (GD)	[2013] NSWADTAP 8
Australian Business Skills Pty Ltd v Australian Skills Quality Authority (GD)	[2013] NSWADTAP 9
Christofi v Mohammady (RLD)	[2013] NSWADTAP 10
Spuds Surf Chatswood Pty Ltd v PT Ltd (No 3) (RLD)	[2013] NSWADTAP 11
Trad v Jones (No. 3) (EOD)	[2013] NSWADTAP 13
Gelin v Sumner (No 2) (RLD)	[2013] NSWADTAP 14
Toga Pty Ltd v Perpetual Nominees Ltd (No 2) (RLD)	[2013] NSWADTAP 15
Constantin v Commissioner of Police, NSW Police Force (GD)	[2013] NSWADTAP 16
Department of Family and Community Services, Housing NSW v Edwards (GD)	[2013] NSWADTAP 17
Jones and Anor v Ekermawi (No. 2) (Costs) (EOD)	[2013] NSWADTAP 18
FX v NSW Trustee and Guardian (GD)	[2013] NSWADTAP 19
Dover v Lewkovitz (RLD)	[2013] NSWADTAP 22
ALY v NSW Trustee and Guardian (GD)	[2013] NSWADTAP 23
Cornish Investments Pty Limited v Chief Commissioner of State Revenue (RD)	[2013] NSWADTAP 25
AIL v Department of Premier and Cabinet (GD)	[2013] NSWADTAP 26
Turner v Director of Public Prosecutions (GD)	[2013] NSWADTAP 27
Sikka v Roads and Maritime Services (GD)	[2013] NSWADTAP 28
Director General, Department of Finance and Services v Baldacchino (GD)	[2013] NSWADTAP 29

## EXTERNAL APPEALS

AJF v NSW Trustee and Guardian	[2012] NSWADTAP 28
AJF v NSW Trustee and Guardian	[2012] NSWADTAP 29
AJJ v NSW Trustee and Guardian	[2012] NSWADTAP 30
LZ v NSW Trustee and Guardian	[2012] NSWADTAP 36
AKP v NSW Trustee and Guardian	[2012] NSWADTAP 38
LZ v NSW Trustee and Guardian (No 2)	[2012] NSWADTAP 47
AKX v NSW Trustee and Guardian	[2012] NSWADTAP 49
ALW v NSW Trustee and Guardian	[2012] NSWADTAP 51
ANR v Public Guardian	[2013] NSWADTAP 12
AMO v NSW Trustee and Guardian	[2013] NSWADTAP 20
ANI and ANL v NSW Trustee and Guardian	[2013] NSWADTAP 21
ANV v NSW Trustee and Guardian	[2013] NSWADTAP 24

## GENERAL DIVISION DECISIONS

Australian Business Skills Pty Ltd v Australian Skills Quality Authority	[2012] NSWADT 133
AFW v WorkCover Authority of New South Wales	[2012] NSWADT 136
Hanna v Commissioner of Police, NSW Police Force	[2012] NSWADT 137
AFP v Hunter New England Local Health District	[2012] NSWADT 141
Calandra Constructions Pty Ltd v Director General Department of Finances and Services	[2012] NSWADT 143
Calandra v Director General Department of Finances and Services	[2012] NSWADT 144

AJZ v NSW Trustee and Guardian	[2012] NSWADT 147
Miriani v NSW Police Force	[2012] NSWADT 149
AHG v Snowy River Shire Council	[2012] NSWADT 152
Turley v Commissioner of Police, NSW Police Force	[2012] NSWADT 162
AHW v President, Anti-Discrimination Board	[2012] NSWADT 164
BN v Hornsby Shire Council	[2012] NSWADT 165
VZ v University of Newcastle (No 2)	[2012] NSWADT 167
AEZ v Commissioner of Police, NSW Police Force	[2012] NSWADT 199
Constantin v Commissioner of Police, NSW Police Force	[2012] NSWADT 172
Pastrovic & Co Pty Limited v Department of Services, Technology and Administration	[2012] NSWADT 177
Security Training and Tactics Pty Ltd v Australian Skills Quality Authority	[2012] NSWADT 178
AGU v Commonwealth of Australia	[2012] NSWADT 179
Fahey v NSW Office of Liquor, Gaming and Racing	[2012] NSWADT 181
FX v NSW Trustee and Guardian and anor	[2012] NSWADT 184
AFC v The Sydney Children's Hospital Specialty Network (Randwick and Westmead)	[2012] NSWADT 189
AIL v Department of Premier and Cabinet	[2012] NSWADT 191
Williams v Department Industry and Investment	[2012] NSWADT 192
Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services	[2012] NSWADT 195
Camilleri v Penrith City Council	[2012] NSWADT 196
AFU v Sydney Local Health District	[2012] NSWADT 197
Turner v Director of Public Prosecutions	[2012] NSWADT 198
Syed v Commissioner of Police, NSW Police Force	[2012] NSWADT 206
AF v Roads and Maritime Services (No 2)	[2012] NSWADT 210
Dascalu v NSW Architects Registration Board	[2012] NSWADT 213
Mellini v Registrar, Registry of Births, Deaths & Marriages	[2012] NSWADT 215
Carr v Department of Services, Technology & Administration	[2012] NSWADT 216
AMC and ALQ v NSW Trustee and Guardian	[2012] NSWADT 217
AMJ v Commissioner of Police, NSW Police Force	[2012] NSWADT 228
Metro Windows Pty Ltd & Ors v Commissioner of Fair Trading (No 2)	[2012] NSWADT 232
Black v Hunter New England Local Health District & Dr Lattimore (No 2)	[2012] NSWADT 235
Hall v Roads and Maritime Services	[2012] NSWADT 239
Giri v Roads and Maritime Services	[2012] NSWADT 241
Potier v Department of Corrective Services (No 3)	[2012] NSWADT 243
Hamshere v Commissioner of Police, NSW Police Force	[2012] NSWADT 244
Irvine v Commissioner of Police, New South Wales Police Force	[2012] NSWADT 245
Sporting Shooters Association of Australia (NSW) Sydney Branch Inc v Commissioner of Police, NSW Police Force	[2012] NSWADT 249
ALE v Public Guardian	[2012] NSWADT 250
KT v Sydney Local Health Service (formerly Sydney South West Area Health Service)(No 2)	[2012] NSWADT 252
AMG v NSW Trustee and Guardian	[2012] NSWADT 254

ALY v NSW Trustee and Guardian	[2012] NSWADT 255
AHC v Fire and Rescue New South Wales AHC v Charles Sturt University	[2012] NSWADT 258
Foong v Director-General, Department of Finance and Services NSW Fair Trading	[2012] NSWADT 261
Rosenstrauss v Department of Finance and Services	[2012] NSWADT 264
ANQ v Department of Attorney General and Justice, Corrective Services	[2012] NSWADT 271
Bourke v Roads and Maritime Services	[2012] NSWADT 272
Edwards v Department of Family and Community Services, Housing NSW (No 2)	[2012] NSWADT 273
Mattar v Roads and Maritime Services	[2012] NSWADT 274
MJ v Department of Education and Communities	[2012] NSWADT 275
Choy v Willoughby City Council	[2012] NSWADT 277
AMC and ALQ v NSW Trustee and Guardian and AOD (No. 2)	[2012] NSWADT 279
Rowe v Roads & Maritime Services	[2012] NSWADT 281
George v Commissioner of Police, NSW Police Force	[2013] NSWADT 1
NSW Henry George Foundation v Director General, NSW Department of Attorney General and Justice	[2013] NSWADT 2
AML v Commissioner of Police, NSW Police Force	[2013] NSWADT 5
Assadourian v Roads and Traffic Authority	[2013] NSWADT 6
Davos v Commissioner of Police, NSW Police Force	[2013] NSWADT 7
Woolley v Lismore City Council	[2013] NSWADT 10
Sullivan v Okeno	[2013] NSWADT 12
Kaldas v Road and Maritime Services	[2013] NSWADT 14
Rida v Roads & Maritime Services	[2013] NSWADT 18
AIF v The University of Western Sydney	[2013] NSWADT 20
Baldacchino v Director General, Department of Finance and Services	[2013] NSWADT 24
Davison v NSW Department of Education and Training	[2013] NSWADT 25
Byrne v Cowra Shire Council	[2013] NSWADT 26
AEC v NSW Police Force	[2013] NSWADT 32
Clarke v Blacktown City Council	[2013] NSWADT 36
Turner v Corrective Services NSW	[2013] NSWADT 39
Colefax v Department of Education and Communities (No1)	[2013] NSWADT 42
APB v Illawarra Shoalhaven Local Health District	[2013] NSWADT 43
Clarkin v Newcastle City Council	[2013] NSWADT 44
Inaizi v Roads and Maritime Services	[2013] NSWADT 45
AFW v WorkCover Authority of New South Wales	[2013] NSWADT 51
Schettler v Commissioner of Police, NSW Police Force	[2013] NSWADT 52
McMillan v Commissioner of Police, NSW Police Force; Brady v Commissioner of Police, NSW Police Force	[2013] NSWADT 53
Jacobs v Commissioner of Police, NSW Police Force	[2013] NSWADT 54
BN v Hornsby Shire Council (2)	[2013] NSWADT 55
Grenfell v Director General of the Department of Finance and Services	[2013] NSWADT 57
Miriani v Commissioner of Police, NSW Police Force	[2013] NSWADT 59

Australian Vaccination Network v Department of Finance & Services	[2013] NSWADT 60
Selby v Commissioner of Police, NSW Police Force	[2013] NSWADT 61
Leving v Commissioner of Police, NSW Police Force	[2013] NSWADT 62
Saboune v Department of Finance and Services	[2013] NSWADT 71
Brown v Roads and Maritime Services	[2013] NSWADT 72
Battin v University of New England	[2013] NSWADT 73
Colefax v Department of Education and Communities	[2013] NSWADT 75
George v Commissioner of Police, NSW Police Force	[2013] NSWADT 76
Camilleri v Commissioner of Police, NSW Police Force	[2013] NSWADT 80
Terzic v Registrar of Births, Deaths and Marriages	[2013] NSWADT 82
Vella v Department of Finance and Services	[2013] NSWADT 84
Lane v Commissioner of Police, NSW Police Force	[2013] NSWADT 85
AEZ v Commissioner of Police, NSW Police Force	[2013] NSWADT 90
SF v Shoalhaven City Council	[2013] NSWADT 94
AFC v The Sydney Children's Hospital Specialty Network (Randwick and Westmead) (No 2)	[2013] NSWADT 99
Saggers v Environment Protection Authority	[2013] NSWADT 109
AIN and Medical Council of NSW	[2013] NSWADT 112
McLennan v University of New England	[2013] NSWADT 113
Potts v Commissioner of Police, NSW Police Force	[2013] NSWADT 114
Donnellan v Ku-ring-gai Council	[2013] NSWADT 115
Chapman v NSW Architects Registration Board	[2013] NSWADT 120
Leda Developments Pty Ltd v Tweed Shire Council	[2013] NSWADT 121
Mohamed v Roads and Maritime Services	[2013] NSWADT 122
Kumar v Director General, Department of Finance and Services	[2013] NSWADT 124
Giann v Department of Finance and Services (Commissioner for Fair Trading)	[2013] NSWADT 129
Colefax v Department of Education and Communities No 2	[2013] NSWADT 130
Johnston v Department of Education and Communities	[2013] NSWADT 132
AFW v WorkCover Authority of New South Wales	[2013] NSWADT 133
Attar v Roads and Maritime Services	[2013] NSWADT 135
OD v Department of Education & Communities	[2013] NSWADT 136
Petas v Commissioner of Police, NSW Police	[2013] NSWADT 137
AOB v Commissioner of Police	[2013] NSWADT 138
Monte v Commissioner of Police, NSW Police Force	[2013] NSWADT 139
Chris v Commissioner of Police	[2013] NSWADT 142
Ghachame v Roads and Maritime Services	[2013] NSWADT 144
Sodiki v Roads and Maritime Services	[2013] NSWADT 145
Kocic v Commissioner of Police, NSW Police Force	[2013] NSWADT 146
AKL v University of Western Sydney	[2013] NSWADT 147
Turner v Commissioner of Police, NSW Police Force	[2013] NSWADT 157

## COMMUNITY SERVICES DIVISION DECISIONS

ABL & ABK v Department of Family and Community Services	[2012] NSWADT 130
IO v Department of Family and Community Services, Community Services	[2012] NSWADT 158
AEM and AEL v Life without Barriers	[2012] NSWADT 240
AHV v NSW Commission for Children and Young People	[2012] NSWADT 263
FZ v Commission for Children and Young People (No 2)	[2013] NSWADT 22
AKM v Ngunga Jarjum Child and Family Network Inc	[2013] NSWADT 89
People with Disability Australia Incorporated v The Minister for Disability Services	[2013] NSWADT 92
AHD and AHE v William Campbell College and AHD and AHE v Department of Family & Community Services	[2013] NSWADT 98
APT and APS v Director General Department of Family and Community Services	[2013] NSWADT 116
AKA v Commission for Children and Young People	[2013] NSWADT 131
ABV v Department of Human Services, Community Services	[2013] NSWADT 134
AMS and AMT v Department of Family and Community Services	[2013] NSWADT 140
AIR v Department of Family Community Services	[2013] NSWADT 141

## EQUAL OPPORTUNITY DIVISION DECISIONS

Wong v Office of the Board of Studies NSW (No 4)	[2012] NSWADT 128
Gellel v GIO General Ltd	[2012] NSWADT 134
Whiteoak v State of New South Wales (Department of Justice and Attorney General - Corrective Services NSW)	[2012] NSWADT 135
Cooper v Western Area Local Health Network (No 2)	[2012] NSWADT 138
Alchin v Rail Corporation NSW	[2012] NSWADT 142
AKU v Department of Education and Communities	[2012] NSWADT 154
Parkes v The University of Newcastle	[2012] NSWADT 155
Bestwick v Adecco Australia Pty Ltd	[2012] NSWADT 156
Hughes v Narrabri Bowling Motel Limited	[2012] NSWADT 161
ALI on behalf of ALJ & ALK v NSW Department of Education & Communities	[2012] NSWADT 174
Hillie v Henson Properties Group	[2012] NSWADT 194
Yu v University of Newcastle (No 2)	[2012] NSWADT 201
Alabadla v State of NSW (NSW Police Force)	[2012] NSWADT 205
Obieta v Australian College of Professionals Pty Ltd	[2012] NSWADT 208
Ratnayake v Bondi Surf Bathers Life Saving Club	[2012] NSWADT 214
Mihnyak v Woolworths Limited	[2012] NSWADT 219
Mead v NSW Department of Attorney General and Justice	[2012] NSWADT 224
Murtough v NSW Bar Association (No. 3)	[2012] NSWADT 234
Fox v Office of the Board of Studies	[2012] NSWADT 236
Burns v Sunol	[2012] NSWADT 246
Burns v Sunol (No 2)	[2012] NSWADT 247
Brown v Bourke Bowling Club	[2012] NSWADT 248
Shvetsova v State of New South Wales (Department of Education and Communities)	[2012] NSWADT 253
Trevanion v Wyangala Country Club Ltd	[2012] NSWADT 257

Hughes v Narrabri Bowling Motel Limited (No 2)	[2012] NSWADT 260
Trad v Jones (No 4)	[2012] NSWADT 265
Hammond v Kelky Pty Ltd t/as Tattersalls Hotel Gilgandra	[2013] NSWADT 4
TU v Vaisman	[2013] NSWADT 8
McElroy v Sutton (No 2)	[2013] NSWADT 9
Kitchener v Awabakal Local Aboriginal Land Council	[2013] NSWADT 11
Shandil v Animal Welfare League NSW	[2013] NSWADT 15
Court v University of Western Sydney	[2013] NSWADT 16
Trevanion v Wyangala Country Club Ltd (No 2)	[2013] NSWADT 27
Attia v Jetstar Airways Pty Ltd	[2013] NSWADT 28
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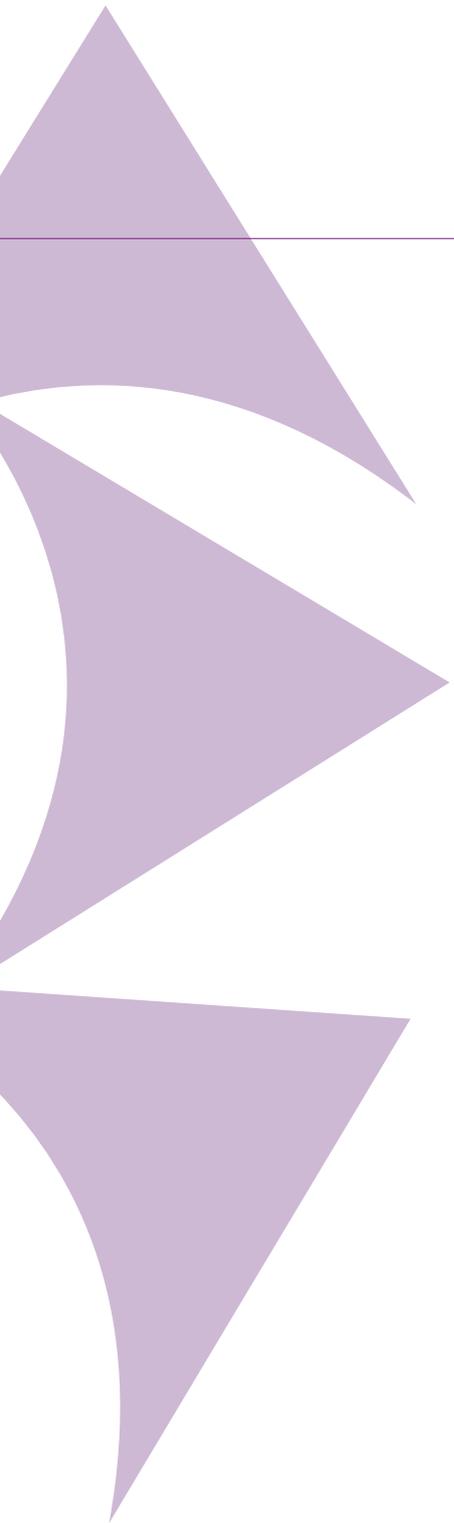
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