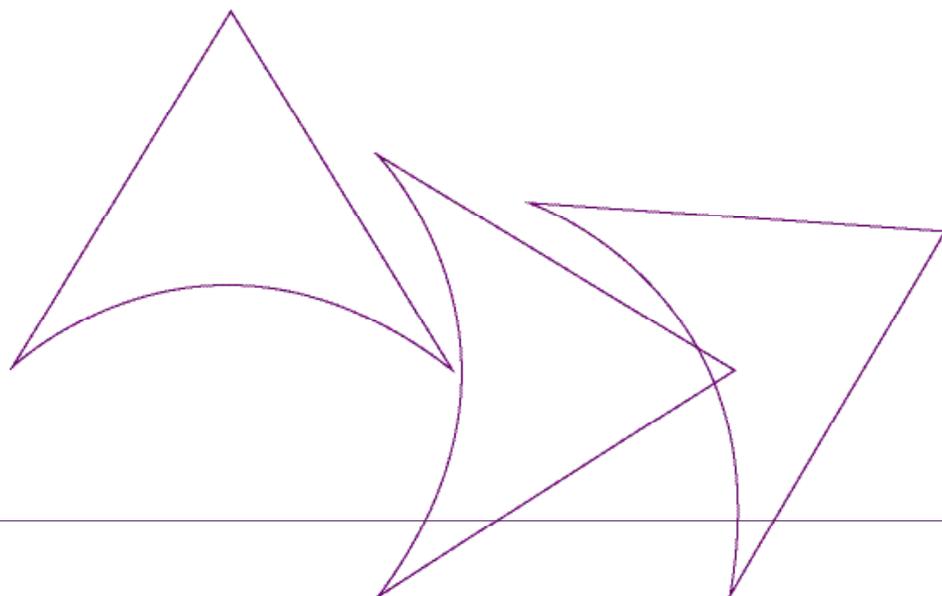




Administrative Decisions Tribunal
New South Wales

Annual Report

2009-2010





Administrative Decisions Tribunal
New South Wales

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

Dear Attorney,

In accordance with section 26 of the *Administrative Decisions Tribunal Act 1997*, I am pleased to present the eleventh annual report of the Tribunal, covering the period 1 July 2009 to 30 June 2010.

Yours sincerely,

Judge KEVIN O'CONNOR AM
President
15 November 2010

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Table of Abbreviations

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

The Year in Review

In the last year the Tribunal recorded its highest-ever annual (first instance) disposal rate, at 998. The lower than usual annual intake 871 combined with a record disposal rate has meant that the average turnaround time from filing to disposal in the Tribunal has now reduced to 32 weeks.

I must thank members for the effort they have put in during the last year to improve our performance in this area. All Divisions improved their disposal rates, with the exception of the Legal Services Division. The LSD Divisional Head comments on the factors affecting that Division's disposal rate in its section of the annual report.

Appeal Panel filings were at a similar level to the last five years, at 105 total. The disposal rate for appeals is 23 weeks.

We saw several new members join the Tribunal during the year after completion of expressions of interest processes for the Legal Services Division and the Community Services Division. We saw one promotion, of long-serving member Mrs Sigrid Higgins, to Divisional Head, Community Services Division. She will remain an active member of the General Division and the Retail Leases Division, as she has been for many years.

As I write, the future development of most interest is the new freedom of information jurisdiction by way of the Government Information (Public Access) Act 2009. There are 14 types of decision which are made reviewable by the Tribunal, the most important being the fundamental decision to refuse access. The major change in the external tapestry is the creation of the office of Information Commissioner. Hopefully, some of the less realistic agency refusals that the Tribunal has seen over the years will be reduced by the influence of the Information Commissioner and the more pro-disclosure approach of the new Act. Similarly, the Commissioner's office may provide a facility for agencies responding to applications for documents spread around several agencies but going to the one policy or activity of the government.

This Tribunal has an unusual business structure when compared to other tribunals doing similar

work such as the Commonwealth Administrative Appeals Tribunal and 'super-tribunals' such as that in Victoria. It has only two full-time members and relies otherwise for the discharge of its business on part-time and sessional members.

The part-time and sessional members receive little to no administrative or resources support for their work. They are expected to manage hearings on their own, and to have their decisions typed without assistance.

Moreover, now for over six years their remuneration has gone unadjusted. Judicial and Ministerial remuneration, and remuneration in comparable Commonwealth administrative review tribunals, increased in the range of 22-46% in the same period.

Our members are called on to exercise judicial responsibility albeit outside the court system. They should be treated consistently with the basic tenets of judicial independence in respect of remuneration. This is particularly important in a tribunal set up to deal with disputes involving government agencies and ministers, whose number includes those that control member remuneration.

I am now awaiting the outcome of another formal submission on this issue.

The Government announced some additional capital funding in the latest budget for ADT accommodation, as part of a move of the Tribunal to the John Madison Tower to take effect during 2011.

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



Judge Kevin O'Connor AM

Judge Kevin O'Connor AM
President

Our Objectives

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

3. Objects of Act

The objects of this Act are as follows:

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

Access, Assistance, Support and Resources



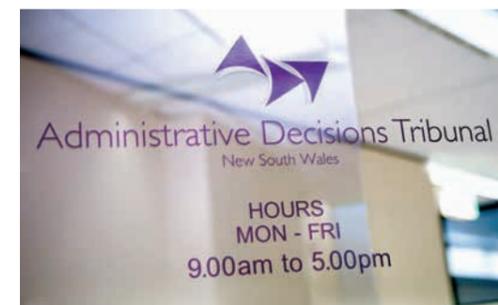
The Tribunal is committed to providing a forum accessible to all users. This includes a commitment to ensuring that proceedings are fair, informal, efficient and effective.

Location and Facilities

The Tribunal is located centrally, at Level 15, St James Centre, 111 Elizabeth St, Sydney.

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

Adjacent to these rooms is a small meeting room and some work stations for part-time members.



Remote Users and Regional Access

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

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

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

The Tribunal rarely uses video links.

Where an applicant requests it, and it is justified, the Tribunal will sit at a location outside Sydney. In the last year the Divisions of the Tribunal sat at more than 20 locations in regional New South Wales. The usual venue for remote sittings is at the local courthouse. The Tribunal has sat at the Local Court at Albury, Armidale, Ballina, Bathurst, Bega, Coffs Harbour, Dubbo, East Maitland, Griffith, Kempsey, Lismore, Moruya, Murwillumbah, Newcastle, Nowra, Orange, Tamworth, Tweed Heads, Wagga Wagga, Wollongong and Wyong. The Tribunal also sat at the Industrial Relations Commission.

Access by persons with disabilities

Access by people with disabilities is aided by:

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

Access to Tribunal Information, Tribunal Proceedings and Tribunal Decisions

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

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

Most hearings are conducted without restriction. The Annual Report for the year ending 30 June 2006, under the heading 'Open Justice' gave a brief outline of the Tribunal's practice in relation to anonymisation of the identity of parties or witnesses, and material that is suppressed either by statute or specific order.



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

In the reporting year, the Tribunal published a total of 408 decisions with the following break-up: Appeal Panel, 81 (Internal 72, External 9); General Division, 138; Community Services Division, 10; Revenue Division, 51; Legal Services Division, 29; Equal Opportunity Division, 55; and Retail Leases Division, 44.

Decisions are published first on the Attorney General's Department Caselaw NSW website (http://www.lawlink.nsw.gov.au/lawlink/caselaw/ll_caselaw.nsf/pages/cl_adt). The aim is to load the decisions on the day of delivery or soon after. Decisions may also be located on the main Australia-wide service covering decisions of courts and tribunals, AUSTLII (Australasian Legal Information Institute) (www.austlii.edu.au). A number of specialist reporting services also publish Tribunal decisions in their areas of specialty.



Pauline Green
Registrar

Registry

The Registry has 11 positions, including the Registrar and Deputy Registrar. Registry staff work in small teams specialising in case management, client services and support services. In order to develop and maintain individual skills, officers are rotated between the teams.

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

The Registry provides the following services: enquiries; registrations; management of listings; support services for part-time members and, if required, hearing room assistance; remuneration and other administrative support for part-time members; maintenance of the of the Tribunal's web-site; and preparation and uploading of written decisions. The Registry system remains essentially a manual one, with limited provision of electronic and computerised support systems.

Staff development

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

Budget and Financial Information

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



Membership

As at 30 June 2010, the Tribunal had 102 members. Two are full-time judicial members, the President and the full-time Deputy President. The remainder of the membership is part-time and sessional.

Overall, there were as at 30 June 2010, 102 members, made up of 10 presidential judicial members (including the two full-time members mentioned), 51 judicial members and 51 non-judicial members. The list with appointment details appears in Appendix B.

The gender division, overall, is 54 male, 48 female. The division within judicial members (including presidential judicial members) is 27:24; and within non-judicial members 27:24.

New Members: There were 10 new members appointed during the year, 9 judicial and 1 non-judicial.

There were two rounds of appointments resulting from calls for expressions of interest by the Attorney General. In the case of the Legal Services Division, the Hon G Mullane (a retired judge), Mr Fairlie, Mr Wakefield and Ms Isenberg joined the Tribunal as solicitor members. In the case of the Community Services Division, Ms Goodchild joined the Tribunal as a judicial member, with present members, Ms Higgins and Ms Leal, joining the Division; and in the case of Ms Higgins being promoted to Deputy President and Divisional Head.

Two retired judges were appointed as part-time Deputy Presidents, Mr David Patten and the Hon R Madgwick QC. Mr Frost was appointed to the Revenue Division. Mr Le Breton joined the Community Services Division as a non-judicial member.

Retirements: The following members resigned from the Tribunal, or retired on expiry of their appointment: Deputy Presidents Britton and Handley (to the Commonwealth Administrative Appeals Tribunal, noted in last year's annual report); Judicial Members: Bishop; Bitel; Brennan; Pearson (noted last year, to the Land and Environment Court); Pritchard; and Stenmark SC; Non Judicial Members: Karaolis AM, Thompson and Wren resigned or retired. We thank them all for their distinguished service to the Tribunal, especially Ms Bishop (formerly Gailey), Mr Brennan (both Legal Services) and Mr Bitel (Equal Opportunity) who served on the predecessor tribunals before coming to the Tribunal in 1998.

Professional Development

The major collegiate event for the Tribunal is the annual members' conference, held this year on Thursday 5 November at the Australian Museum. Barrister, author and editor of the NSW Administrative Law Service, Mark Robinson delivered the Administrative Law Update with commentary from Dr John Griffiths SC. The morning session dealt with Developments in NSW FOI and Privacy Law with presenters Paul Miller, Department of Premier and Cabinet on the new *Government Information (Public Access) Act* and Professor Michael Tilbury, NSWLRC on Privacy Law Reforms.



Mark Robinson

The Honourable Justice Peter Johnson of the NSW Supreme Court delivered a paper on Controlling Unreasonable Cross Examination and the final session, constituted a Panel Discussion on Alternative Dispute Resolution Policy in NSW, including Government as Model Litigant, with presenter Tom Chisholm, Senior Policy Advisor, ADR Directorate, Department of Justice and Attorney General and commentary by Ann Fieldhouse, Solicitor; Member, ADRA NSW, IAMA, LEADR.

In September 2009 the retired Chief Justice of the Constitutional Court of South Africa, Arthur Chaskalson visited the Tribunal. He conducted a very successful seminar on the new South African Constitution and human rights.

Conferences and Papers

The President presented a paper on the role and operation of the Appeal Panel to the AGS Administrative Law Symposium: Commonwealth and NSW held at the University of Sydney Law School on Friday 26 March 2010.

Deputy President Magistrate Nancy Hennessy gave a Legalwise Seminar on "Improving your

decision writing", held at the University of New South Wales, CBD Campus on Thursday 25 March 2010.

Council of Australasian Tribunals

The President was elected convenor of the NSW Chapter of COAT in September 2007, and in that capacity is a member of the National Executive of COAT. Deputy President Hennessy is a member of the Chapter Committee. COAT NSW's major events each year are its annual conference held in May and the Whitmore Lecture held in September. The May conference was a great success attended by over 150 members of State and Commonwealth tribunals. The keynote speaker was Justice John Basten of the Court of Appeal. The Whitmore Lecture was delivered by the Commonwealth Ombudsman John McMillan.

Other

The President, Judge O'Connor, attended the 75th meeting of the Commission for the Control of Interpol's Files, in his capacity as alternate chair of the Commission. The meeting was held at Interpol headquarters in Lyon, France in October 2009. The Commission advises Interpol on compliance with to international privacy and data protection standards, monitoring adherence



Dr John Griffiths



Professor Michael Tilbury



The Hon Justice Peter Johnson

and dealing with complaints from persons aggrieved over the way in which personal data about them has been obtained, used or disseminated by Interpol. The President is also a member,

part-time, of the NSW Law Reform Commission, and served on the Division responsible for the Privacy Reference, and is presently attached to the Division responsible for the Family Violence Reference.

The Divisions and the Appeal Panel



From left: Deputy Presidents Wayne Haylen, Jane Needham, Nancy Hennessy, President Kevin O'Connor, Deputy Presidents Sigrid Higgins and Michael Chesterman

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

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

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

The second category is less exact in its coverage. It covers any application to the Tribunal where the Tribunal makes the first binding decision (i.e. the 'original' decision). The applications heard in the Equal Opportunity Division and the Retail Leases Division fall into this category. They are analogous to civil suits. In the disciplinary jurisdictions, sometimes the application is an 'original' one and other times it may be a 'review' one, by way of an appeal from a decision made by an internal disciplinary one.

The ADT Act establishes six Divisions and an Appeal Panel.

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

Three Divisions have as their only or principal business the making of 'original decisions' (the Equal Opportunity Division, the Retail Leases Division and the Legal Services Division).

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

ADMINISTRATIVE OR PUBLIC LAW DIVISIONS

- **General Division:** operative 6 October 1998. Hears most applications by citizens for the review of administrative decisions or administrative conduct. Disciplinary matters (whether original application or review applications) not involving lawyers or licensed conveyancers are located in this Division.
- **Community Services Division:** operative 1 January 1999. Hears applications for review of various administrative decisions made in the Community Services and Ageing, Disability and Home Care portfolios and applications for original decisions for exemption from prohibition on being engaged in child-related employment.

- **Revenue Division:** operative 1 July 2001. Hears applications for review of various State taxation decisions.
- **Legal Services Division:** operative 6 October 1998. Hears complaints against legal practitioners.

THE CIVIL OR PRIVATE LAW DIVISIONS

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

Appeal Panel

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

The General Division

The President is the Divisional Head of the General Division.

Case Load

There were 334 new applications filed in the reporting year, as compared to 357 last year. This number represents 38% of the Tribunal's first instance filings for they year, a very similar proportion to that of the last two years.

The business of the Division falls into two main streams - reviews of adverse decisions affecting individuals who hold occupational and similar licences; and review of agency decisions in relation to applications for access to documents, and discharge their personal information management responsibilities.

There were 209 filings in the licensing stream, an increase of 31 on last year; while in the 'information law' stream there were 100 filings, 63 under the FOI Act, 33 under PPIPA and 7 under HRIPA.

The major change in the latter category is the significant decrease in FOI filings, down from 104 last year and 117 the previous year. This marked drop is probably attributable to reduced activity by a handful of serial applicants. Consequently the licensing stream now takes up 63% of the Division's business, and information cases 30% as compared with a 49%/41% split last year.

Licences issued by the Director General of Transport accounted for almost half of the occupational licensing business, 90 of the 209 filings (mainly taxi driver cases); those issued by the Commissioner for Fair Trading (mainly building trades and real estate agents), 53; and by the Commissioner of Police (mainly security and firearms), 50.

The balance of the Division's work mainly relates to professional discipline (architects, veterinary practitioners, accredited certifiers) and reviews of administrative decisions made by the NSW Trustee and Guardian.

The one significant area that falls outside the above groupings is the review of accreditation decisions made by the Vocational Education and Training Board. The General Division has dealt with a number of applications from business and trade colleges seeking review of adverse decisions relating to accreditation and approvals for the provision of courses to overseas students.

In these cases the Tribunal has usually sat as a two member panel, made up of a presidential judicial member and a non-judicial member experienced in tertiary education and curriculum issues.

The FOI Act expired on 30 June 2010. Its successor, the *Government Information (Public Access) Act 2009* (GIPA), No 52, commenced on 1 July 2010. In preparation, the President has consulted the new Information Commissioner. Paralleling the position that has applied to the Privacy Commissioner for some time in privacy cases, the Information Commissioner has a right of appearance in GIPA cases. We are hopeful that this right of appearance will contribute to the early and amicable resolution of cases, and the development of a sound body of case law.

Case Management

Information law cases have always been handled by a specialist group of members. The list for the year 2010-11 comprises Deputy President Higgins and Judicial Members Montgomery, Molony and Isenberg. The emphasis will remain on seeking to reduce the scope of disputes and possibly obtain an agreed outcome via case



Mr Stephen Montgomery,
Judicial Member

conferences (known in the past as planning meetings).

For the vocational education and training cases a guideline has been developed to assist the parties in bringing the case to hearing

in an orderly state. The regulator, VETAB, relies on the findings of its audit process when making a decision affecting accreditation or overseas students course approvals. The material, reflective of the complexities of a tertiary teaching environment, is often complex and voluminous. The cases are often heard under the pressure of time and in an environment where students are part way through their courses, the position in relation to future student enrolments is uncertain and the continued financial viability of the education provider is seriously at risk.

In the usual run of occupational licensing cases (taxi drivers, security guards, building trades) the procedure is to have a directions hearing followed by a concise timetable that usually brings the matter on for hearing within 6 weeks of the directions hearing and 10 weeks after the filing of the application.

Over the last year or so the regulator of security industry licensing, the Commissioner of Police, has taken disciplinary action against major businesses in the security industry - 'master' licence holders. Sometimes the persons affected have not been given any reasons, and the

Commissioner has applied to the Tribunal, in effect, for any information upon which his office has relied to be examined in a hearing that is not open to the applicant. The question of the procedural steps that should be taken by the Tribunal in these cases have led to interlocutory applications before the General Division, sometimes accompanied by judicial review applications in the Supreme Court as well as appeals to the Appeal Panel and the Court of Appeal. Some of the issues await the guidance of the Court of Appeal.

Timeliness

The disposal rate has improved markedly in the last year. The average is now 26 weeks, as compared to 33 weeks last year and 34 weeks the year before. Members are to be complimented on the efforts they have put in during the last year to improving turnaround.

Legislative Developments

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

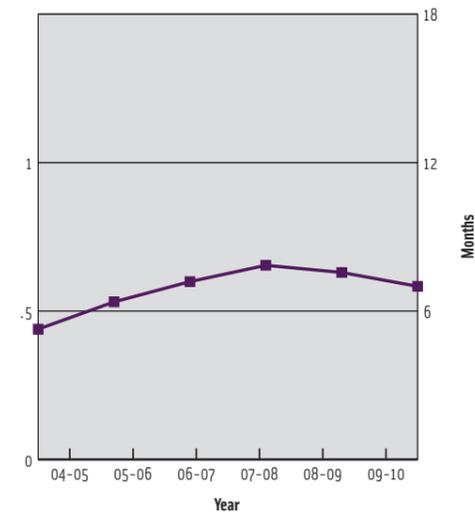
Professional Discipline Jurisdictions other than Legal Services

The Tribunal has professional discipline jurisdictions affecting registered architects, registered surveyors, veterinary practitioners, licensed conveyancers and accredited certifiers. The cases are heard in the General Division.

During the year there were 3 applications brought under the Veterinary Practice Act, 4 under the Building Professionals Act (accredited certifiers) and 1 under the Architects Act.

As explained in earlier annual reports, the applications now tend to be review applications rather than ones brought by the regulatory body

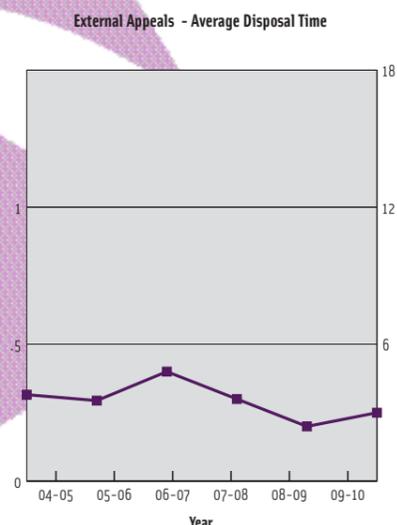
General Division - Average Disposal Time



applying for original orders. In all of these areas the first instance decision-making is usually made by a statutory functionary, and the practitioner is given a right to apply for review to the Tribunal.

In all of these matters a multi-member panel is constituted. There are special provisions governing veterinary practitioner discipline requiring a 3-member panel. The practice is to have the panel headed by a presidential judicial member, who is joined by a veterinary practitioner of eminence and a non-judicial member with an animal welfare background. In accredited certifier cases the practice is again to have a 2-member panel made up of a presidential judicial member and a non-judicial member with a relevant professional background (such as a registered surveyor or a registered architect).

Guardianship and Protected Estates List



The Tribunal has jurisdiction to hear appeals from the Guardianship Tribunal, the Mental Health Review Tribunal and the Local Court against decisions including the making or refusal to make guardianship and financial management orders. These

appeals are known as external appeals because they are appeals from bodies other than the Tribunal. They are heard by the Appeal Panel. The Tribunal also has jurisdiction to review decisions made by the NSW Trustee and Guardian when administering those orders. The external appeals and the review decisions make up the Guardianship and Protected Estates List. Members with specialist expertise in this area conduct the hearings.

Deputy President Hennessy manages the Guardianship and Protected Estates List.

Case Load

As at 30 June 2009, there were 3 external appeals pending. During the year, 20 appeals were lodged, all from decisions of the Guardianship Tribunal. Eighteen appeals were finalised. In seven cases the appeal was upheld either in part or in full. In five cases the appeal was dismissed and in six cases the appeal was withdrawn because it was resolved or the appellant did not wish to continue. Five appeals remained pending at the end of the year.

Timeliness

The time standards for appeals is 80% to be finalised in 6 months and 100% in 12 months. These standards were almost met this year with 14 (78%) disposed of in under six months and a

further 4 (100%) finalised in less than 12 months.

Review Decisions

As at 30 June 2009, there were 6 review applications pending. During the year 10 applications were lodged and 14 were finalised leaving 2 review applications pending at the end of the year.

Of the 14 applications that were finalised, the administrator's decision was affirmed in 5 cases and set aside, varied or remitted in 2 cases. Seven applications were withdrawn, settled or dismissed.

Significant Cases

The most common reason for the Appeal Panel setting aside decisions of the Guardianship Tribunal is breach of procedural fairness. Examples include:

- failure to advise a party that it would not obtain relevant documents from doctors in circumstances where the party had advised the Tribunal that the doctors would only provide the information directly to the Tribunal: [OX v OW, OZ \[2010\] NSWADTAP 12](#);
- failure to provide a party with a copy of a letter containing adverse allegations prior to the hearing or to adjourn the hearing to give him an adequate opportunity to understand and respond to those allegations: [PV v Public Guardian \[2009\] NSWADTAP 68](#); and
- failing to give the person who was the subject of the proceedings proper notice of the hearing or information about the nature of the hearing, failing to provide him with copies of relevant documents, not affording him a proper opportunity to prepare his case, and not affording him a proper opportunity to be heard and to respond to evidence adverse to his interests: [HE v Murarotta \[2009\] NSWADTAP 37](#).

Revenue Division



Deputy President Jane Needham SC

The Divisional Head of Revenue Division is Deputy President Ms Jane Needham SC.

The 2009/2010 year has seen a number of changes in the practice of the Revenue Division. Most notably the system of preliminary conferences (see s 74, *Administrative*

Decisions Tribunal Act) commenced in February 2010.

The purpose of the preliminary conferences is to seek to narrow or clarify issues in dispute in revenue cases, thus resulting in a quicker, and therefore more cost-effective, resolution of the dispute (or part of the dispute).

Matters are considered by the Office of State Revenue, when compiling the s 58 documents, for their suitability for a preliminary conference.

Matters which may be suitable for a Preliminary Conference

- First Home Owner Grant (FHOG) matters where the main issue in dispute is the residency requirement;
- Land tax matters based on a claim for the principal place of residence exemption;
- Land tax matters based on a claim for the primary production land exemption where the main issue appears to be a lack of evidence;
- Duties matters that are straightforward, for example, where the issue relates to the calculation of the assessment;
- Matters involving a dispute about only interest and/or penalty;

- All matters where the insufficient information provided by the applicant at objection stage was a significant factor in the objection decision being unfavourable to the applicant; and

- Matters where the applicant is not legally represented.

Matters which are less likely to be suitable for Preliminary Conference

- Payroll tax disputes;
- Duties matters, especially those involving trusts or land rich duty;
- Parking space levy matters; and
- Matters involving a novel or complex issue of law.

Where a matter is considered suitable for a preliminary conference, the issue is raised at the first directions hearing and, if appropriate, the matter is given a date within the next month for a conference before a Tribunal Member.

The Preliminary Conference provides a forum for the applicant and the representatives of the Office of State Revenue to sit down, with a neutral Tribunal member and to work through any factual or other issues which may need clarification. The objective is to ascertain areas of conflict and, if possible, to narrow those areas so that if the matter does proceed to hearing, the parties are better able to focus on the real issues in dispute.

At the time of writing, there are no formal statistics available as to the success of the preliminary conferencing procedure, but anecdotally (both from members of the Division, and from parties involved in the conferences) the procedure is seen as being useful.

Community Services Division

Statistics

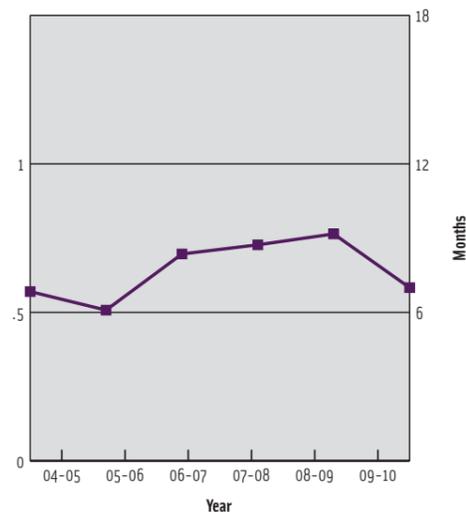
The Division has had a good year in reducing the number of matters pending. More matters were disposed of than were filed – 154 versus 99.

60 matters were disposed of in under six months, and a further 49 in under 12 months. Thirty-two were disposed of in between 1-2 years, and some 13 matters took more than two years. These matters are usually complex matters or alternatively matters which are awaiting determination of a related, or definitive, dispute in the Supreme Court of NSW.

Membership

Stephen Frost has joined the Tribunal in the Revenue Division. His expertise in revenue matters and in Tribunal procedures, he is also a member of the Commonwealth AAT, is warmly welcomed.

Revenue Division - Average Disposal Time



Deputy President
Sigrig Higgins

The Divisional Head of the Community Services Division is part-time Deputy President Mrs Sigrig Higgins.

Deputy President Ms Anne Britton continued as Divisional Head until September 2009. She had been Division Head for three years and resigned following

her appointment as a Senior Member of the Commonwealth Administrative Appeals Tribunal. Deputy President Magistrate Nancy Hennessy was appointed acting Division Head until May 2010, when Deputy President Mrs Sigrig Higgins was appointed to the position.

Structure and Functions

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

In its merits review function the Division reviews decisions made by government and non-government agencies in the Community Services Sector. The type of decisions that can be reviewed by the Division include decisions:

- granting to or removing from an authorised carer (foster carer) the responsibility for the day-to-day care and control of a child or young person,
- authorising or not authorising a person to be an authorised carer;
- providing financial assistance where the provision of assistance does not conform with the objects and principles of the *Disability Services Act 1993*,
- accrediting or refusing to accredit an adoption service provider;
- failing to provide information or assistance under the *Adoption Act 2000*;
- de-register a family day care carer;

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

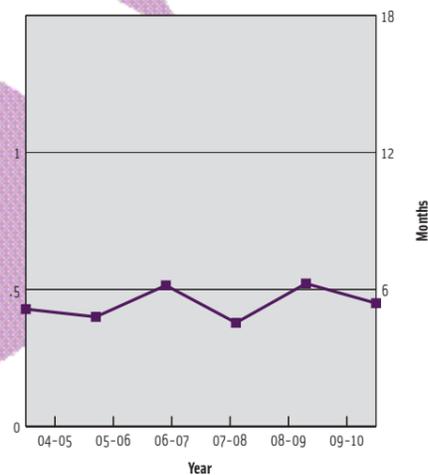
The decisions reviewed by the Division in this year have again primarily concerned the granting to or removal of children from authorised carers. Generally applications to review a decision to remove a child from an authorised carer are accompanied by an application to stay the decision of removal until the substantive application has been determined. These applications are listed at short notice. The substantive applications are also dealt with as quickly as possible and a guardian is appointed to represent the child/ren. Under the *Children and Young Persons (Care and Protection) Act 1998* there is a requirement that in any action or decision about a particular child or young person is to be administered under the principle that the safety, welfare and well-being of that child or young person is paramount. This requirement equally applies to the Tribunal in its merit review function.

A panel of three members of the Division determine most of the merit review applications that are brought in the Division. The members are all part-time members and the Division's non-judicial members come from across the spectrum of the community sector and have expertise in diverse areas including psychology, mental health, children's and disability services.

In its original-decision making function the Division makes original decisions in applications made under the *Commission for Children and Young People Act 1998*. That Act prohibits persons convicted of certain sex offences or offences involving the use of violence against a child from undertaking or continuing in child-related employment unless the person has obtained an order declaring that the Act does not apply in regard to the offences of which the person was convicted. The Act requires the Tribunal to be satisfied that the applicant does not pose a risk to the safety of children before

Legal Services Division

Community Services Division - Average Disposal Time



granting an application.

A judicial member sitting alone determines applications that are brought under the *Commission for Children and Young People Act 1998*.

Case Load

Thirty-one new applications were filed in the Division during

the year. This was 15 (33%) fewer than the previous year. There were 8 new applications under the *Commission for Children and Young People Act 1998* and the remainder were applications for review of a reviewable decision.

Seventy nine percent (79%) of applications that were finalised during the year were finalised in less than 6 months during the year. This was less than what had been achieved in the previous year and as a consequence the average disposal time of applications during this year increased slightly.

Mediation continues to be used to resolve disputes involving authorised carers. Three applications were referred to mediation and of these, two applications settled immediately after the mediation.

The Tribunal's website continues to contain few reported decisions as oral reasons for decision were given at the conclusion of a hearing in a number of applications.

Appeals

Parties have a right to appeal to an Appeal Panel of the Tribunal, except in relation to decisions made under the *Commission for Children and Young People Act 1998*, where an appeal only lies to the Supreme Court.

The Appeal Panel determined 2 appeals from decisions of the Division in its merit review decision-making function (*Department of*

Human Services v RA [2010] NSWADTAP 23 and *Minister for Disability Services v People with Disability Australia Inc. (CSD)* [2010] NSWADTAP 44). These are summarised in the Overview of Appeal Cases in Appendix F.

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

Case examples

NV and OA were the authorised carers of two children from the same family who were placed in their care in 2002. In 2009, NV and OA sought to have two substantially younger siblings of the children also placed into their care. The Director-General of the then Department of Community Services refused their application and NV and OA made an application to the Division, seeking review of that decision. The Director-General contended that the Tribunal had no jurisdiction to hear and determine the application as it was not a decision that fell within s 245(1)(c) of the *Children and Young Persons (Care and Protection) Act 1998*. That provision gives the Tribunal jurisdiction to review a decision 'of the relevant decision-maker to grant to, or to remove from, an authorised carer the responsibility for the daily care and control of the child or young person.' The Director-General argued that the provision did not include the situation where it was decided not to place a child or young person with a particular authorised carer. The Tribunal did not accept this argument and found that the Tribunal did have jurisdiction to hear and determine the applicants' application for review. In its reasons for decision, the Tribunal said that it would be anomalous if Parliament's intention, as expressed in that provision, had been to make the decision to grant responsibility for day to day care a reviewable decision but the decision not, a non reviewable decision. (*NV & OA v Director-General, Department of Community Services* [2009] NSWADT 209)

The applications for original decisions under the *Commission for Children and Young People Act 1998* were all determined on their own particular facts.



Deputy President, the Honourable Justice Wayne Haylen

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

Structure and functions

The Division hears applications for disciplinary orders from the Law Society,

the Bar Council or the Legal Services Commissioner in relation to alleged misconduct by legal practitioners. The Division may also deal with client claims for compensation arising from misconduct and considers practitioner applications allowing employment of persons convicted of a serious offence. In the past the Division dealt with disciplinary applications relating to licensed conveyancers: that function has now been transferred by legislation to the General Division. In addition, practitioners may apply to the Tribunal for review of disciplinary orders made by the Law Society or the Bar Counsel under the (lower tier) disciplinary powers vested in those bodies by the legislation.

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

Case Load

During the reporting year there were 45 applications filed in the Division, the highest number of filings since 2000-2001: 29 applications were finalised. There are now 48 applications pending.

While there was a significant increase in applications over the previous year (31 applications filed), there was a significant reduction in the number of cases disposed of (49 applications were finalised last year). The usual

rate of filings averages between 2 and 4 matters per month with some months having no matters filed.

In the reporting period there were two months when a large number of matters were filed: 11 matters were filed in December 2009 and 8 matters were filed in June 2010. It is unlikely that the December matters or a significant number of them were able to be finalised by the end of June 2010.

The Tribunal's approach to case management over the past few years has been to urge practitioners to promptly file their replies and their evidence in contested proceedings and to set a hearing date as soon as possible. That approach continued throughout the current year with little to indicate that, in a significant number of cases, the parties were dilatory in their approach to the matters in the list.

While there were 9 applications in which the decision was reserved as at the conclusion of the reporting period, nearly all these applications had been reserved for only a short time.

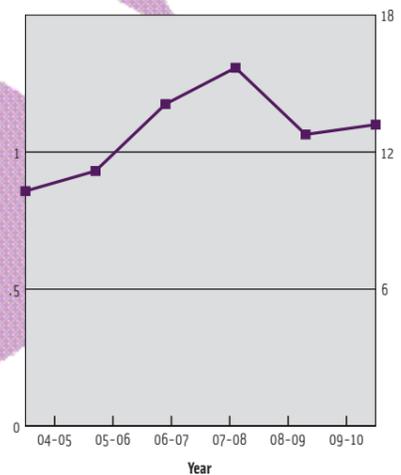
Importantly, there is no pool of cases that are ready to be heard that might amount to a backlog of cases which have not been referred to a panel.

The normal practice of the Tribunal is to allocate a date as soon as the parties indicate that they are ready for a hearing. While there has been a significant increase in the number of applications filed, the relatively low number of finalised cases will require the Tribunal to closely scrutinise adjournment applications and proposed timetables that do not represent a timely preparation of the case for hearing. The goal for the coming year will be to increase the number and proportion of finalised cases.

In relation to the applications filed, 7 were brought against barristers, 33 were brought against solicitors (in both categories, for disciplinary action), 4 were brought in relation to lay associates (approvals under s 17(3) LPA) and 1 in relation to a prohibition of employment of a lay associate brought under s 18 LPA.

In relation to outcomes, 9 matters involved the Tribunal imposing fines, with 13 practitioners

Legal Services Division - Average Disposal Time



being reprimanded. There was 1 case in which the practising certificate was suspended and in another case the practising certificate was cancelled. Three people were removed from the Roll. There were 9 cases in which conditions were imposed on the Practising Certificate and 1 case where compensation was ordered to be paid. In 5 cases the practitioner was directed to undertake and complete a course of further legal education. There were 2 applications granted for the approval of lay associates and 1 application was withdrawn.

Cases of Significance

The decision in *Council of the New South Wales Bar Association v Archer (No 13)* [2010] NSWADT 90 appeared to finally bring to a conclusion this long running saga. The Bar Association had commenced proceedings in the Tribunal alleging professional misconduct for the practitioner's failure to discharge his civic and legal obligation to pay adequate taxation and the failure to make any adequate provision to pay taxation.

In *Legal Services Commissioner v Bechara (No 3)* [2009] NSWADT 313 the Tribunal concluded that, in the circumstances of this case, the deliberate charging of grossly excessive costs and the failure to apportion costs of a joint hearing involving three clients, while constituting professional misconduct, nevertheless, constituted a breach of professional conduct that placed the matter in the lower end of the appropriate range of fines. The Tribunal found the effect of that rate of charging resulted in the respondent practitioner receiving fees for eighteen hearing days when attendance was only required on six hearing days. That level of

charging was not in accordance with the costs agreement with each plaintiff. The practitioner has appealed to the Court of Appeal.

Three matters decided by the Court of Appeal deserve mention. In *Hagipantelis v Legal Services Commissioner of New South Wales* [2010] NSWCA 79, the Court held lawful a choice by the Commissioner to first proceed with disciplinary charges rather than criminal proceedings where both possibilities are open. The Court noted that, if there was any prospect of criminal proceedings being instituted, the Tribunal would not conduct a hearing.

In *Prothonotary of the Supreme Court of New South Wales v Leon Nikolaidis* [2010] NSWCA 73, the evidence indicated that the practitioner had engaged in a deliberate and planned course of action involving third parties to deceive a costs assessor appointed by the Supreme Court in order to advance his position against a former client. The practitioner had been convicted of the crime of dishonesty in relation to these matters. The Court had earlier removed the name of the practitioner from the Roll of Local Lawyers of the Supreme Court of New South Wales on an interim basis. In this case it continued the removal, declaring that the practitioner was guilty of professional misconduct, was not of good fame and character and was not a fit and proper person to remain on the Roll. The events had occurred more than 10 years previously and the Court considered whether the effluxion of time should be taken into account. The Court stated that it had no doubt that the gravity of the misconduct demonstrated a present unfitness to practise, and there was no contemporary evidence to displace that conclusion.

In *Chang Yuan Zu v The Council of the Law Society of New South Wales and anor* [2009] NSWCA 430, the Court overturned a finding of professional misconduct and substituted a finding of unsatisfactory professional conduct in circumstances where the findings of the Tribunal did not establish a substantial or consistent failure to reach or maintain a reasonable standard of competence. The situation was more one of momentary and isolated lapses.



Equal Opportunity Division



Deputy President
Magistrate Nancy Hennessy

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* ('AD Act').

The Division hears and determines matters falling into the

following five categories:

1. complaints of discrimination, harassment, vilification and victimisation that have been referred to it by the President of the Anti-Discrimination Board (ADB);
2. applications for leave to proceed when a complaint has been declined by the President of the ADB;
3. applications for the registration of conciliation agreements made at the ADB;
4. applications for interim orders; and
5. review of decisions made by the President of the ADB in relation to applications for exemption from the AD Act.

There were 125 matters pending at the beginning of the year. One hundred and fifty two new applications were received. Of those, 124 (82%) belonged to the first category, 17 (11%) to the second category. The remaining 7% of applications comprised five applications in the third and fourth categories and one application in the fifth category.

The Division finalised 162 matters, 10 more than it received, leaving 112 applications pending at the end of the year.

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 four other Deputy Presidents who sit part-time in the Equal Opportunity Division: Deputy President Needham, Deputy President Chesterman, Deputy President Patten and Deputy President Madgwick. In addition there are 10 judicial and 13 non-judicial members all of whom sit on a sessional basis.

Case Load

The outcomes for each category of application is 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 twenty four original complaints were referred this year and 137 were finalised.

Mediation

The Tribunal conducts a preliminary case conference at which parties are offered the opportunity of mediation if their case is suitable. Of the 137 original complaints finalised during the year, mediation was conducted in 35 matters. Of those matters which did go to mediation, 32 (91%) settled at or after mediation and 3 (9%) proceeded to a hearing. There is a significant incentive for parties to resolve complaints without having a hearing because of the time and cost considerations. In particular, if parties are legally represented, legal costs can consume a considerable proportion of any compensation that is ultimately awarded.

Grounds of complaint

A complaint may allege more than one ground of discrimination. The most frequently cited grounds of discrimination were disability (46), race (25), sex discrimination (22) and age discrimination (20).

Applications for leave to proceed

Where a complaint is declined by the President of the ADB because, for example, it lacks substance or is frivolous or vexatious, the complainant must obtain the Tribunal's "leave" or permission before being allowed to proceed. Three applications for leave were pending at the beginning of the year and the Tribunal received 17 new applications. Of the 16 leave applications disposed of during the year, leave was granted in 3 cases (18%) and refused in 12 cases (75%). The applicant withdrew the application or settled the complaint in the remaining 4 cases. Two applications remain pending at 30 June 2010.

Applications for the registration of conciliation agreements made at the ADB

The Tribunal also has jurisdiction to register conciliation agreements made when complaints are still with the President of the ADB. The point of registration is that, as long as it contains terms that the Tribunal has power to order, the agreement, once registered, can be enforced as an order of the Tribunal. Five new applications for registration were made this year and five were finalised. The Tribunal registered one agreement and declined to register another. The remaining three applications for registration were withdrawn or an agreement was reached between the parties.

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 five new applications for interim orders were made. In one case, the application was refused and in three cases the application was withdrawn or the parties reached an agreement. One application remained pending at the end of the year.

Outcomes and Disposal rates

Of the 162 matters finalised during the year, orders were made in the applicant's favour in 33 cases (20%), the application was dismissed after hearing in 36 (22%) cases and 3 applications were summarily dismissed. Ninety applications (55%) were withdrawn because they settled or for some other reason.

The Equal Opportunity Division's time standards for disposal of matters is 80% of matters to be finalised within 12 months and 100% within 2 years. This year 116 (72%) were finalised within 12 months and 146 (90%) within 2 years. The remaining 16 matters were more than two years old when they were finalised.

Significant Cases

First exemption application

The President of the ADB may grant an exemption from the AD Act authorising an applicant to engage in conduct that would otherwise be unlawful discrimination. In 2009 the AD Act was amended, and gave the Tribunal jurisdiction to hear applications for review of decisions relating to an exemption application. The first review application has been filed with the Tribunal and heard in June 2010, decision reserved. A motor vehicle insurance company applied for an exemption from the marital status provisions so that it could price its motor vehicle

policies differently based on a customer's marital or domestic status. The insurance company claimed that cohabiting and married males and females have a lower claims ratio than other categories of people.

Relative or associate of a deceased person

Two similar cases have raised the issue of whether it is unlawful to discriminate against a person on the ground of the disability of their friend or relative, when that friend or relative was dead when the discrimination was said to have occurred. Both cases concern the policy of an Area Health Service not to reconstruct an HIV positive body after a post mortem examination has occurred. The policy was said to be based on occupational health and safety concerns. The Tribunal found that the word 'person' in the *AD Act* is consistently used to refer to a living as distinct from a deceased person, and dismissed the claim. On appeal, the Appeal Panel took the opposite view. It held that that it was unlikely that the legislature intended that rights given to a person discriminated against because of his or her association with another person might be terminated because of that other person's death. The Appeal Panel added that while it was true that the discrimination arose after death, the deceased was HIV positive before death and his body was still HIV positive after death: *QY & QZ v Sydney South West Area Health Service* (EOD) [2010] NSWADTAP 48.

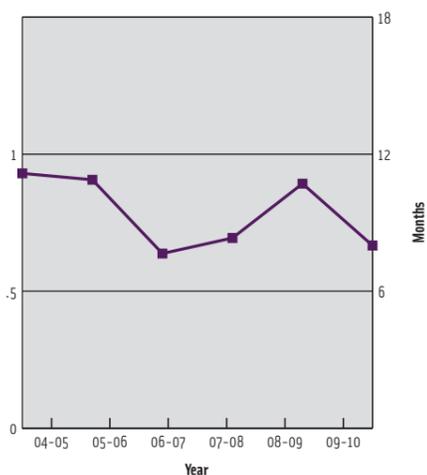
The Area Health Service has filed a Notice of Intention to appeal to the Court of Appeal against this decision.

The second case involving similar issues is *QT v Sydney South West Area Health Service* [2010] NSWADT 74. The applicants have sought judicial review in the Supreme Court of the Tribunal's decision to refuse leave for the complaint to go ahead.

Test for granting leave clarified

If a complaint is declined by the President of the Anti-Discrimination Board, an applicant needs the Tribunal's permission before it can go ahead. The Supreme Court has clarified the test to be applied in deciding whether a declined complaint should proceed. In *Jones & Anor v Ekermaui* [2009] NSWSC 143 Schmidt AJ said that the correct test is to determine whether it would be "fair and just" to grant leave in the particular circumstances of the case. The onus is on the applicant to satisfy the Tribunal that leave should be granted. The discretion to grant or refuse leave must be exercised having regard to the purpose of the legislative scheme and the Tribunal should bear in mind that the refusal of leave will effectively determine finally the complainant's rights under the AD Act. On appeal, the Court of Appeal did not criticise this approach: *Jones & Anor v Ekermaui* [2009] NSWCA 388.

Equal Opportunity Division - Average Disposal Time



Retail Leases Division



Deputy President
Michael Chesterman

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

Structure and functions

The Retail Leases Division exercises jurisdiction conferred by the *Retail Leases Act 1994* on the

Tribunal to determine applications relating to 'retail shop leases' as defined in this Act. The Supreme Court, the District Court and the Local Court may also exercise jurisdiction in civil proceedings brought under this Act. But 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'.

The *Retail Leases Act* requires in s 68 that, except where a party to a lease applies for an order in the nature of an interim injunction, mediation by the Retail Tenancy Unit must be attempted, or must be found to be unlikely to resolve the dispute, before any proceedings may be taken in the Tribunal or in any other court or tribunal.

The Act makes provision for two categories of claim: retail tenancy claims and unconscionable conduct claims. An application may be a 'combined claim', involving claims in both these categories.

Case load

At the beginning of the year, 136 applications under the *Retail Leases Act* were pending. During the year, 209 new applications were filed and 233 applications were disposed of, so that at the end of the year the number of applications pending had decreased by 24 to 112. This is a welcome result, as in a number of recent years the Division has not been able to dispose of as many applications as were filed.

The number of new applications filed (209) was distinctly lower than the numbers in recent years (in 2008-09, for instance, there were 255 new applications). There was also a decrease in the number of new applications within a significant type of jurisdiction that was acquired by the Division relevantly recently: that is, the appointment of specialist retail valuers to determine, or review a determination of, the current market rent payable under a lease. This year, the Tribunal received 50 of these 'valuer applications', compared with 58 in the preceding year and 64 in the year before that.

Under the *Retail Leases Act*, valuer applications fall within the category of retail tenancy claims. But because the task undertaken by the Tribunal is primarily administrative, they differ significantly from other types of retail tenancy claim. It is preferable, when setting out statistics relating to the Division's work, to treat them as a separate category.

Among the 209 new applications, 50 (23.9%), as just mentioned, were valuer applications; 120 (57.4%) were retail tenancy claims in other categories; 5 (2.4%) were unconscionable conduct claims; and 34 (16.3%) were 'combined' claims, involving both retail tenancy claims and unconscionable conduct claims.

The proportion of unconscionable conduct claims and 'combined' claims filed this year was lower than in the two preceding years. This may reflect a growing awareness that the requirements of success in an unconscionable conduct claim, as set out in s 62B of the Act and the associated case law, are more demanding than may appear at first sight. During the pre-trial period, Judicial Members of the Division have on a couple of occasions dismissed an applicant's unconscionable conduct claim summarily, leaving the accompanying retail tenancy claim(s) on foot. Judicial Members, sitting alone, are authorised to do so by s 24A of the *Administrative Decisions Tribunal Act 1997*.

Of the 233 applications that were disposed of, the outcomes were as follows: 43 (18.5%) were withdrawn, dismissed on the ground of no appearance or settled without orders being made; 82 (35.2%) were settled with consent orders being made; 1 (0.4%) was transferred to the Supreme Court; 3 (1.3%) were dismissed on the ground of lack of jurisdiction; 21 (9%) were dismissed after a hearing; and in 83 (35.6%), orders (non-consensual) were made.

The rate of disposal of claims (53.7%) without a determination by the Tribunal (other than a consent order) or a transfer to the Supreme Court was lower than usual.

This was, accordingly, a year in which both the number of applications filed and the proportion of applications withdrawn or settled were lower than usual.

During the year, 9 appeals (including 2 applications for leave to appeal) were determined by an Appeal Panel on appeal from the Division. In the two preceding years, the numbers of appeals disposed of were 11 and 9 respectively. Only 2 appeals were allowed in whole or in part, and the remaining 7 were dismissed.

Timeliness

According to time standards adopted by the Division, 85% of the applications made to it should be disposed of within six months and 100% within one year. As is frequently the case, it has not proved possible to adhere to these standards. Of the 233 applications disposed of in 2009-10, 151 (64.8%) were disposed of within six months and 193 (82.8%) within a year. These percentages are about the same as in the preceding year.

Significant themes

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

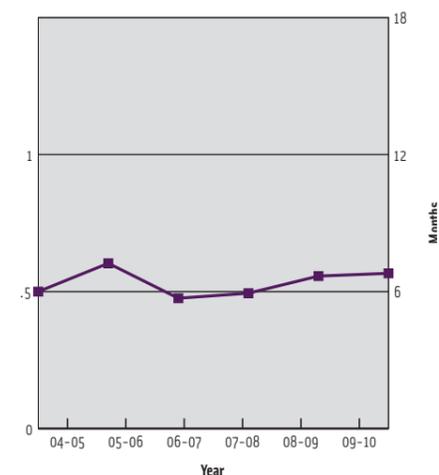
- The applicability of the *Retail Leases Act* to the occupancy by stallholders of stalls in a market;
- The operation of statutory provisions requiring proceedings to be instituted within a specified period after the alleged obligation or liability arose;
- Whether the terms of a written lease should be rectified so as to accord with the intentions of the parties;
- The meaning of the phrase 'internet café' as used in a lease;
- Whether outgoings claimed by a lessor from a lessee were 'reasonably and properly' incurred;
- Whether a lessor gave deemed consent to an assignment of the lease by the lessee;
- Whether a change of core trading hours required by the owner of a retail shopping centre was binding on the lessees;
- What constitutes breach of the lessor's covenant for quiet enjoyment when the lease confers a right to carry out renovations in the building where the premises are located;

- Whether employees of an estate agency, when demanding the payment of arrears of rent in an aggressive and intimidating way, acted unconscionably; and
- How damages for breach of a lessor's covenant should be assessed where the business carried on in the premises does not belong to the lessee, but to a company wholly owned and managed by the lessee.

Legislative developments

Section 77A of the *Retail Leases Act* provides that awards of costs in Tribunal proceedings under the Act are to be governed by s 88 of the *Administrative Decisions Tribunal Act 1997*. The principles to be applied have been significantly affected by the substitution, as from 1 January 2009, of a criterion of 'fairness' for one of 'special circumstances' in s 88. In several decisions delivered in the Division during 2009-10, it was held that this legislative change has the effect of making it easier for the successful party to obtain an order for the payment of costs.

Retail Leases Division - Average Disposal Time



Appeals: Appeal Panel; Supreme Court

Appeal Panel

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

Structure and Functions

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

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

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

Case Load

There was a small increase in the number of internal appeals filed this year, from 75 to 84. The turnaround time remained the same as last year (27 weeks), with 83 appeals being finalised. Two-thirds are dealt with in less than 27 weeks.

About one-third of the appeals are 'interlocutory', i.e. they are made before the case at Divisional level is completed, or involve a decision treated as 'interlocutory' by the ADT Act, such as a summary dismissal or a finding that the application is outside jurisdiction. The

Tribunal has established a 'short matters' list to which is usually referred the application for leave to proceed required of an appellant against an interlocutory decision.

For an ordinary appeal and where leave is granted in an interlocutory appeal, the respondent to an appeal has three weeks to file a notice in reply, which is followed by a directions timetable usually allowing each party four weeks to file written submissions and other material.

Of the 83 external appeals finalised, 16 were withdrawn, 41 dismissed, 2 gave rise to consent orders and 24 were upheld in full or in part.

In addition there were 20 external appeals filed, and 18 disposals, with a disposal rate of 12 weeks. Of these, 7 were successful in full or in part, 6 withdrawn and 5 dismissed.

The overall average appeal disposals time is 23 weeks.

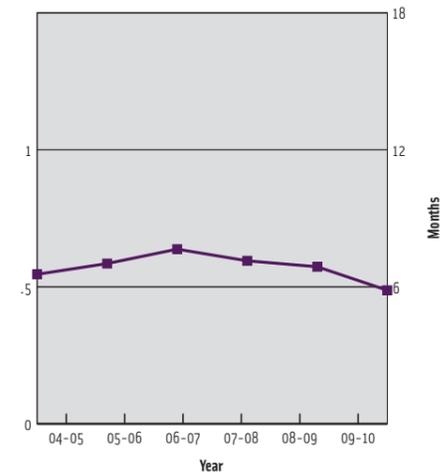
Themes

Rather than give an account in the body of the annual report, as in previous years, this year there is an appendix, Appendix F. It gives sets of catchwords of major appeal rulings that briefly describe the issues dealt with by the Appeal Panel in the cases that gave rise to published reasons for decision (25 General Division appeals, 10 EOD appeals, 6 RLD, 8 Revenue Division and 2 CSD). Notably as compared to previous years there was a relatively high number of Revenue Division appeals.

The Appeal Panel and the Supreme Court have dealt with a number of cases raising the extent to which the Police Commissioner, as regulator, is obliged to disclose the reasons for decision, and the material relied upon, to licensees in the security industry. The question has arisen in cases where there has been a revocation of a security industry master licence, and no or little information has been given as to why.

The Appeal Panel has also given some guidance on the way the (new) leave discretion is to be

Internal Appeals - Average Disposal Time



exercised in dealing with applications from non-lawyers to represent a party. The Tribunal has experienced situations where the non-lawyer applicant is a partisan, serial litigant in the Tribunal in their own right, and having as a client a person who might be no more than a dummy plaintiff.

One of the unusual features of the State's disability legislation is that it gives the Tribunal power to review decisions of the Minister going to aspects of their portfolio's budget as it affects disability services, and the adequacy of the provision of disability services. In *Minister for Disability Services v People With Disabilities* [2010] NSWADTAP 44, the Appeal Panel dealt with the question of what circumstances give rise to a decision by a Minister to 'continue to provide a service'. Such a decision may be reviewed for its compliance with the national disability human rights principles. The case also dealt with what kind of interest was sufficient to give a person or organisation the right to apply for review ('standing'). This decision is being appealed to the Court of Appeal.

SUPREME COURT: APPEALS FROM APPEAL PANEL; OR JUDICIAL REVIEWS

There were 12 Court of Appeal decisions, of which two concerned the Legal Services Division (there is no internal appeal from the LSD). The LSD section of this report refers to the two LSD appeals.

Of the 10 other decisions, 3 resulted in orders upholding in part or full the appeal, and the others were dismissed.

The question of the extent of any 'residual' public interest discretion under which the Tribunal may order release has been a contentious one. Until 2006 the Tribunal proceeded on the basis that there was no such residual discretion. After a Supreme Court ruling that year the Tribunal adopted the opposite view. A decision in 2009, while not ruling directly on the Supreme Court decision of 2006, would appear to suggest that the earlier Tribunal position was the correct one. In any event, this issue is not significant for the future, as the new GIPA legislation has clarified the extent to which the Tribunal can have regard to public interest as a basis for overriding an agency decision refusing to release documents.

Another decision of general importance dealt with the religious exemption in the Anti-Discrimination Act, which allows religious bodies to practise discrimination that would otherwise be unacceptable. The case involved a refusal by a church adoption service to allow adoption by a homosexual couple: [2010] NSWCA 155.

All of the single judge Supreme Court decisions this year (reaching the single judge via originating summonses) concerned the effect on ordinary procedural rights where the Commissioner relies on confidential intelligence in security industry revocations, a theme, as already mentioned, of a number of Appeal Panel decisions.

Legislative Amendments

In 2010, the *Administrative Decisions Tribunal Act 1997* ('the ADT Act') was amended by the *Courts Legislation Amendment Act 2010* on 28 June 2010.

Section 24A has been amended to allow the Tribunal to be constituted by a single judicial member (in proceedings at first instance) or by a presidential judicial member (in proceedings on appeal) for the purpose of determining costs or whether a matter is within the Tribunal's jurisdiction. These two functions are defined as **ancillary functions** in s 24A(1), which are additional to **interlocutory functions**, which may also be exercised by a single judicial member (in proceedings at first instance) or by a presidential judicial member (in proceedings on appeal). Section 113 of the Act was also amended so that in an appeal against the exercise of an ancillary function, the Appeal Panel may be constituted in the same way as it is in relation to an appeal against the exercise of an interlocutory function: see ss 113(2B) and 113(2E).

The Tribunal has power to dismiss proceedings if the applicant has failed to appear in proceedings by s 73(5)(g)(3) and power to reinstate proceedings that have been dismissed because of an applicant's failure to appear if the Tribunal considers that there is a reasonable explanation for that failure by s 73(5)(h). The *Courts Legislation Amendment Act 2010* has inserted a new s 75(5A) into the Act so that an application to reinstate proceedings dismissed under subs (5)(h) must be made within 28 days after the Tribunal dismissed the proceedings, or within such time as the Tribunal may allow.

Schedule 2 of the ADT Act now allows the Community Services Division to be constituted in certain circumstances by 3 Division members, one of whom must be a judicial member. Before this amendment, the Act required that the Division be constituted by 3 Division members, one of whom must be a practising legal practitioner.

Alternative Dispute Resolution

Mediation is one of two forms of alternative dispute resolution available to parties under the ADT Act. The other form, neutral evaluation, is not currently in use. Case conferences are held in freedom of information and privacy matters. Those conferences also provide parties with an opportunity to limit the issues in dispute and, in many cases, to resolve the application without a hearing.

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

Six trained mediators comprise the list of mediators. A list of Mediators follows the List of Members in Appendix B. Three of the six are also members of the Tribunal. Mediators who are members take no part in the hearing of the matter if mediation is unsuccessful.

Mediation is most widely used in the Equal Opportunity Division. It is also used, to a lesser extent, in the Community Services Division and the General Division. Before an application, other than an application for an interim injunction, can be heard in the Retail Leases Division, the parties must attempt mediation through the Retail Tenancy Unit of NSW Fair Trading. Alternatively, it must be found that mediation would be unlikely to resolve the dispute. Mediation is not permitted in the Legal Services Division.

The number and outcome of mediations held in matters which were disposed of in the financial year were as follows:

- Equal Opportunity - 35 mediation, 32 of which settled at or following mediation
- General Division - 5 mediations, 5 of which settled at or following mediation
- Community Service - 3 mediations, 2 of which settled at or following mediation

In total 43 mediations took place in matters disposed of during the year and 39 (over 90%) settled.

Practice and Procedure

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

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

Section 91A provides:

91A Practice notes

- (1) Subject to the rules of the Tribunal, the President may issue practice notes for the Tribunal in relation to any matter with respect to which rules may be made.
- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

The Tribunal has fifteen operative Practice Notes: no. 1; nos. 4-5, 8-11 and 13-20 and 3 operative Guidelines: Revenue Division - Preliminary Conference Guideline, Costs Guideline and Summons Guideline.

The Tribunal has three user groups: Freedom of Information; Privacy; and Guardianship and Protected Estates. The groups met as needed. None of the groups have met in the last year.

At the less formal level, planning meetings in the FOI and Privacy Lists are used to encourage parties to negotiate a settlement or limit the issues and documents in dispute.

Mediators are appointed under s 106 of the ADT Act. Appointments have been limited to serving members of the Tribunal. A list of Mediators follows the List of Members in Appendix B.

Appendices

Appendix A: Financial Information

Administrative Decisions Tribunal & Legal Services Division
Financial Information as at 30 June 2010¹

	ADT			LSD ¹	TOTAL
	Actual	Budget	Variance	Actual	Actual
	\$	\$	\$	\$	\$
Employee Related Payments (Including Crown Liabilities)	2,373,071	1,758,905	(614,166)	22,665	2,395,736
Property Items	385,386	319,086	(66,300)		385,386
Other Operating	1,117,447	1,065,348	(52,099)	149,511	1,266,958
Depreciation	75,059	53,724	21,335		75,059
Total Expenditure	3,950,963	3,197,063	(753,900)	172,176	4,123,139
Total Revenue²	(916,839)	(873,544)	43,295	(172,176)	(1,089,015)
Net Cost Of Services	3,034,124	2,323,519	(710,605)	0	3,034,124
Less Depreciation	(75,069)	(53,724)	21,335	0	(75,069)
Less Crown Liabilities	(579,992)	(205,046)	374,946	0	(579,992)
Controlled Net Cost Of Services	2,379,063	2,064,749	(344,314)	0	2,379,063

Notes

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

2. Legal Services Division

The Legal Services Division is funded by the Public Purpose Fund. A global amount is contributed towards the operating costs of the Tribunal and is included in the "actual" and "budget" columns of the ADT. Additionally the costs of members' fees and associated costs and transcription services provided to that Division are separately recouped. These are the amounts shown in the LSD column.

3. Revenue

The Tribunal received \$1,089,015 in revenue. Of this, \$1,190,495 was by way of recoupment from the Public Purpose Fund for the cost of operating the Legal Services Division. The balance was general revenue items.

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 appointments are shown next to their names. 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 continued under transitional provisions.

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

The President is assigned to all Divisions.

PRESIDENT

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

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

DEPUTY PRESIDENT (Full-time)

Magistrate NANCY LOUISE HENNESSY, to 7 March 2013

Assigned as set out below.

GENERAL DIVISION	Current Expiry date	Judicial Members assigned to Guardianship and Protected Estates list	
Divisional Head		SUZANNE MAREE LEAL	31.10.12
Judge KEVIN PATRICK O'CONNOR, AM, President	09.08.12	JULIAN JOSEPH MILLAR	31.10.12
Deputy Presidents		PENELOPE HELEN GOODE	31.10.11
PETER RAYMOND CALLAGHAN, SC	31.10.10	LOUISE ANN GOODCHILD (25.05.10)	31.10.12
MICHAEL RAINSFORD CHESTERMAN	02.10.11	Non-judicial Members assigned to Guardianship and Protected Estates list	
ROBIN PATRICK HANDLEY*	31.07.09	MARY ELIZABETH BOLT	31.10.10
Magistrate NANCY LOUISE HENNESSY	07.03.13	BARBARA RUTH FIELD	31.10.12
JANE ANNABEL DARLING NEEDHAM, SC	02.11.11	JENNIFER GREEN	31.10.11
Hon Acting Judge RODNEY NEVILLE MADGWICK, QC (15.12.09)	31.10.12	RALPH WILLIAM MERRELL	31.10.11
DAVID LOUTHEAN PATTEN (15.12.09)	31.10.12	BRUCE GEOFFREY THOMSON	31.10.11
SIGRID HIGGINS (10.05.10)	09.05.13	ANN DOMINICA WUNSCH	31.10.12
Judicial Members		Non-judicial Members, Public Health	
CATHERINE LOUISE FITZGERALD	31.10.10	ANNEMARIE HENNESSY	31.10.10
GAIL BARTON FURNESS	31.10.10	RICHARD MATTHEWS, AM	31.10.10
YVONNE GRANT	31.10.10	Non-judicial Members, Accredited Certifier	
SUZANNE MAREE LEAL	31.10.12	PETER GABRIEL FRIEDMANN	31.10.12
PETER HENRY MOLONY	31.10.10	PHILIP ARTHUR HAYWARD	31.10.12
STEPHEN HENRY MONTGOMERY	31.10.10	GRAHAM JOHN MALLISON	31.10.12
LINDA MARY PEARSON*	10.07.09	GORDON PATRICK WREN	31.10.09
ROBERT BRUCE WILSON	31.10.10	Non-judicial Members, Veterinary Surgeons Discipline	
ERAINIE ELIZABETH GROTTÉ	31.10.10	MAGDOLINE AWAD	31.10.12
NAIDA ISENBERG (01.11.09)	31.10.12	TANYA LORRAINE CARTER	31.10.12
Non-judicial Members		FIONA JENNIFER CLARK	31.10.11
ZITA ROSE ANTONIOS	31.10.11	ANDREW JONATHAN DART	31.10.12
CLIFFORD DOUGLAS BLAKE, AO	31.10.10	PETER KENNETH KNIGHT	31.10.12
MARY ELIZABETH BOLT	31.10.10	ROSALIE JANE MAYO-RAMSAY	31.10.11
ROSS ANDREW FITZGERALD	31.10.11	RUTH ROSEMARY THOMPSON *	30.07.09
LESHIA OLGA BUBNIUK	31.10.10	Non-judicial Members, Education	
Presidential Members assigned to Guardianship and Protected Estates list		TERENCE RICHARD BURKE, AM	31.10.10
ANNE KATHLEEN BRITTON*	11.10.09	JOLYN MARGARET KARAOULIS, AM	12.05.10
ROBIN PATRICK HANDLEY*	31.07.09	JOSEPH RIORDAN, AO	31.10.10
Magistrate NANCY LOUISE HENNESSY	07.03.13		

Non-judicial Members, Architects

JANE MARGARET JOSE 31.10.10
 PATRICK JOHN O'CARRIGAN 31.10.10
 PETER ROY WATTS, AM 31.10.10

EQUAL OPPORTUNITY DIVISION**Divisional Head**

Magistrate NANCY LOUISE HENNESSY, Deputy President 07.03.13

Deputy Presidents

ANNE KATHLEEN BRITTON* 11.10.09
 MICHAEL RAINSFORD CHESTERMAN 02.10.11
 JANE ANNABEL DARLING NEEDHAM, SC 02.11.11
 Hon Acting Judge RODNEY NEVILLE MADGWICK, QC (15.12.09) 31.10.12
 DAVID LOUTHEAN PATTEN (15.12.09) 31.10.12
 SIGRID HIGGINS (10.05.10) 09.05.13

Judicial Members

DAVID LEE BITEL 31.10.09
 JENNIFER LOUISE CONLEY 31.10.10
 GAIL BARTON FURNESS 31.10.10
 PENELOPE HELEN GOODE 31.10.11
 ERAINE ELIZABETH GROTTÉ 31.10.10
 CAROLYN HUNTSMAN 31.10.11
 RICHARD JOHN PERRIGNON 31.10.10
 SARAH PRITCHARD 31.10.09
 SIMON JAMES RICE, OAM 31.10.11
 ANNE SCAHILL 31.10.10
 MARGARET MARY SMYTH 31.10.10
 STEPHANIE VASS 31.10.10
 NAIDA ISENBERG (01.11.09) 31.10.12
 JOHN ALEXANDER WAKEFIELD (01.11.09) 31.10.12
 ROBERTSON WRIGHT, SC (15.12.09) 31.10.12

Non-judicial Members

ZITA ROSE ANTONIOS 31.10.11
 MARY ELIZABETH BOLT 31.10.10
 MAREE JANE GILL 30.10.11
 DENNY GROTH 31.10.10
 ELAYNE HAYES 31.10.10
 NOEL ARTHUR HIFFERNAN 31.10.11
 DINO KELLEGHAN 31.10.10
 ANTHEA ELISABETH LOWE 31.10.11
 LINDA MARILYN MONAGHAN-NAGLE 31.10.10
 MAURICE MICHAEL O'SULLIVAN 31.10.11
 JOACHIM SCHNEEWEISS, AM 31.10.10
 BETTY LORRAINE WEULE 31.10.10
 BARBARA RUTH FIELD (15.12.09) 31.10.12

COMMUNITY SERVICES DIVISION**Divisional Head**

ANNE KATHLEEN BRITTON, Deputy President* 11.10.09
 SIGRID HIGGINS (10.05.10) 09.05.13

Deputy President

Magistrate NANCY LOUISE HENNESSY 07.03.13

Judicial Members

MARGARET MARY SMYTH 31.10.10
 SUZANNE MAREE LEAL 31.10.12
 LOUISE ANN GOODCHILD (25.02.10) 31.10.12

Non-judicial Members

MARY ELIZABETH BOLT 31.10.10
 PHILIP FOREMAN 31.10.10
 JANE GOODMAN-DELAHUNTY 31.10.10
 JENNIFER GREEN 31.10.11
 DENNY GROTH 31.10.10
 JAN MASON 31.10.10
 LINDA MARILYN MONAGHAN-NAGLE 31.10.10
 JEANETTE McDONALD MOSS, AM 31.10.11
 JOHN LE BRETON (04.05.10) 31.10.12

LEGAL SERVICES DIVISION**Divisional Head**

The Hon. Justice WAYNE ROGER HAYLEN, Deputy President 08.06.11

Deputy Presidents

MICHAEL RAINSFORD CHESTERMAN 02.10.11
 Acting Judge JOHN McGUIRE 20.09.09
 Hon Acting Judge RODNEY NEVILLE MADGWICK, QC (15.12.09) 31.10.12
 DAVID LOUTHEAN PATTEN (15.12.09) 31.10.12

Barrister Members

PAUL EDWIN BLACKET, SC 31.10.12
 SHARRON NORTON, SC 31.10.11
 LIONEL PHILIP ROBBERDS, QC 31.10.11
 WENDY LOUISE ROBINSON, QC 31.10.11
 ALISON PATRICIA STENMARK, SC 31.10.09
 ROBERTSON WRIGHT, SC 31.10.12

Solicitor Members

MICHAEL JAMES BARNES 31.10.10
 CHRISTINE ANNE BISHOP 31.10.09
 JOHN WILLIAM FRANCIS BRENNAN, RFD 31.10.09
 JOHN SYDNEY CURRIE 31.10.12
 SANDRA NERYL HALE 31.10.12
 GRAHAM BRIAN MOLLOY 31.10.11
 JOHANNA PHEILS 31.10.10
 MICHELLE ANNE RIORDAN 31.10.10
 The Hon GRAHAM ROBERT MULLANE (01.11.09) 31.10.12
 DAVID GRAHAM FAIRLIE (01.11.09) 31.10.12
 JOHN ALEXANDER WAKEFIELD (01.11.09) 31.10.12
 NAIDA ISENBERG (01.11.09) 31.10.12

Licensee Member

JANICE LOUISE HEDISON 31.10.10

Non-judicial Members

CARL DONALD BENNETT 31.10.10
 LESHIA OLGA BUBNIUK 31.10.10
 ROSS ANDREW EDWARD FITZGERALD 31.10.11
 ELAYNE HAYES 31.10.10
 JOHN TINGLE 31.10.10

RETAIL LEASES DIVISION**Divisional Head**

MICHAEL RAINSFORD CHESTERMAN, Deputy President 02.10.11

Deputy Presidents

PETER RAYMOND CALLAGHAN, SC 31.10.10
 Magistrate NANCY LOUISE HENNESSY 07.03.13
 ELIZABETH MARGARET OLSSON, SC 29.08.11

Hon Acting Judge RODNEY NEVILLE MADGWICK, QC (15.12.09) 31.10.12
 DAVID LOUTHEAN PATTEN (15.12.09) 31.10.12
 SIGRID HIGGINS (10.05.10) 09.05.13

Judicial Members

DENNIS BLUTH 31.10.11
 ROBERT JOHN FOX 31.10.11
 MARGARET COLLEEN HOLE, AM 31.10.10
 GRAHAM BRIAN MOLLOY 31.10.11
 STEPHEN HENRY MONTGOMERY 31.10.10
 KIM BERESFORD RICKARDS 31.10.12

Non Judicial Members

NEIL FAGG 31.10.10
 GARTH WARREN GRIFFITHS 31.10.10
 BRIAN TERRY HARRISON 31.10.12
 TERENCE JAMES TYLER 31.10.12
 ROBERT VAUGHAN WARD 31.10.10
 BETTY LORRAINE WEULE 31.10.10

REVENUE DIVISION**Divisional Head**

JANE ANNABEL DARLING NEEDHAM, SC 02.11.11

Deputy President

ROBIN PATRICK HANDLEY* 31.07.09

Judicial Members

JULIAN BLOCK 31.10.10
 MICHELLE JOSEPHINE HIRSCHHORN 31.10.10
 MARGARET COLLEEN HOLE, AM 31.10.10
 RICHARD JOHN PERRIGNON 31.10.10
 AMARJIT SINGH VERICK 31.10.10
 STEPHEN EDWARD FROST (04.05.10) 31.10.12

Non Judicial Members

CARL DONALD BENNETT 31.10.10
 CLIFFORD DOUGLAS BLAKE, AO 31.10.10
 DANNY KOUTOULAS 31.10.10

MEDIATORS

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

COMMUNITY SERVICES DIVISION

PENELOPE HELEN GOODE
 DENNY GROTH
 SIGRID HIGGINS
 ASHLEY LIMBURY

EQUAL OPPORTUNITY DIVISION

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

GENERAL DIVISION – GUARDIANSHIP AND PROTECTED ESTATES MATTERS

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

GENERAL DIVISION – FREEDOM OF INFORMATION AND PRIVACY MATTERS

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

Legend

* Date of resignation

Appendix C: Legislation

Principal Legislation

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

Primary Legislation

Aboriginal Lands Rights Act 1983
Adoption Act 2000
Agricultural Livestock (Disease Control Funding) Act 1998
Agricultural Tenancies Act 1990
Air Transport Act 1964
Animal Research Act 1985
Anti-Discrimination Act 1977
Apiaries Act 1985
Architects Act 2003
Banks and Bank Holidays Act 1912
Births Deaths and Marriages Registration Act 1995
Building and Construction Industry Security of Payment Act 1999
Building Professionals Act 2005
Business Names Act 2002
Charitable Fundraising Act 1991
Child Protection (Offenders Registration) Act 2000
Children (Care and Protection) Act 1987
Children and Young Persons (Care and Protection) Act 1998
Children and Young Persons (Care and Protection) Regulation 2000
Children's Services Regulation 2004
Coal Mine Health and Safety Act 2002
Coal Mine Health and Safety Regulation 2006
Commercial Agents and Private Inquiry Agents Act 2004
Commission for Children and Young People Act 1998
Community Justices Centres Act 1983
Community Services (Complaints, Reviews and Monitoring) Act 1993
Community Services (Complaints, Reviews and Monitoring) Regulation 2004
Conveyancers Licensing Act 2003
Co-operative Housing and Starr-Bowkett Societies Act 1998
Deer Act 2006
Disability Services Act 1993
Drug and Alcohol Treatment Act 2007
Education Act 1990
Electricity Supply Act 1995
Electricity (Consumer Safety) Act 2004
Entertainment Industry Act 1989
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
Forestry Act 1916
Freedom of Information Act 1989
Freedom of Information Regulation 2005
Game and Feral Animal Control Act 2002
Gas Supply Act 1996
Guardianship Act 1987
Guardianship Regulation 2005
Health Care Complaints Act 1993
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
Institute of Teachers Act 2004
Impounding Act 1993
Legal Profession Act 2004
Licensing and Registration (Uniform Procedures) Act 2002
Liquor Act 2007
Local Government Act 1993
Marine Safety Act 1998
Mental Health Regulation 2007
Mine Health and Safety Act 2004
Mine Health and Safety Regulation 2007
Motor Dealers Act 1974
Motor Vehicle Repairs Act 1980
Motor Vehicle Sports (Public Safety) Act 1985
Native Title (New South Wales) Act 1994
Non-Indigenous Animals Act 1987
NSW Trustee and Guardian Act 2009
Occupational Health and Safety Act 2000
Occupational Health and Safety Regulation 2001
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
Private Health Facilities Act 2007
Privacy and Personal Information Protection Act 1998
Property, Stock and Business Agents Act 2002
Public Health Act 1991

Public Lotteries Act 1996
Rail Safety Act 2008
Racing Administration Act 1998
Registered Clubs Act 1976
Registration of Interests in Goods Act 1986
Retail Leases Act 1994
Rice Marketing Act 1983
Road Transport (General) Act 2005
Road Transport (Safety and Traffic Management) Act 1999
Security Industry Act 1997
Shop Trading Act 2008
State Water Corporation Act 2004
Surveying Act 2002
Sydney Water Act 1994
Sydney Water Catchment Management Act 1998
Taxation Administration Act 1996 ie
 Betting Tax Act 2001
 Duties Act 1997
 Gaming Machine Tax Act 2001
 Health Insurance Levies Act 1982
 Insurance Protection Tax Act 2001
 Land Tax Act 1956
 Land Tax Management Act 1956
 Parking Space Levy Act 1992
 Payroll Tax Act 2007
Timber Marketing Act 1977
Thoroughbred Racing Act 1996
Tow Truck Industry Act 1998
Travel Agents Act 1986
Valuers Act 2003
Veterinary Practice Act 2003
Vocational Education and Training Act 2005
Weapons Prohibition Act 1998
Wine Grapes Marketing Board (Reconstitution) Act 2003
Wool Hide and Skin Dealers Act 2004
Workers Compensation Regulation 2003
Workplace Injury Management and Workers Compensation Act 1998
Youth and Community Services Act 1973

Appendix D: Case Load and Time Standards

CASE LOAD

	All Divisions			Appeal Panel - Internal		
	Applications Lodged	Applications Completed	Applications Pending#	Appeals Lodged	Appeals Completed	Appeals Pending#
1998-1999*	625**	234	391*	8	2	6
1999-2000	568	619	340*	44	20	30
2000-2001	666	629	377	53	45	38
2001-2002	695	642	430	61	59	40
2002-2003	766	817	379	73	67	46
2003-2004	908	791	496	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
Total	9975	9404	(537)	786	741	41

* Date of commencement: 6 October 1998

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

Pending and filed figures have been adjusted following an audit and manual reconciliation of files in 2008.

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
Total	140	134	5

*External appeals jurisdiction commenced - 28 February 2003

TIME STANDARDS

As at 30 June 2010 the Tribunal's performance against its time standards was:
(target appears in brackets)

Review decisions

54.5% of matters disposed of in less than 6 months (85%)

75.7% of matters disposed of in less than 1 year (100%)

Clearance ratio* - 121%

Original Decisions (other than Equal Opportunity Division matters)

64.8% of matters disposed of in less than 6 months (85%)

82.8% of matters disposed of in less than 1 year (100%)

Clearance ratio* - 111%

Original Decisions (Equal Opportunity Division matters)

71.6% of matters disposed of in less than 1 year (80%)

90.2% of matters disposed of in less than 2 years (100%)

Clearance ratio* - 106%

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

41.3% of matters disposed of in less than 9 months (90%)

55.1% of matters disposed of in less than 1 year (100%)

Clearance ratio* - 64%

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

71.8% of matters disposed of in less than 6 months (80%)

95.1% of matters disposed of in less than 1 year (100%)

Clearance ratio* - 123%

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

Appendix E: Statistics

GENERAL DIVISION 1/7/2009 - 30/6/2010

1. Case flow 2009-2010

Matters pending at 30 June 2009	New Applications filed	Disposals	Pending as at 30 June 2010
225*	334	370	182

* 218 adjustment made to pending 30/06/2009 after audit with new database

2. Applications by type 2009-2010

Applications for Original Decision	Applications for review	Professional Discipline
2	331	1

3. Applications by Act 2009-2010

Subject by Act	Number
Apiaries Act 1985	6
Architects Act 2003	1
Births Deaths and Marriages Registration Act 1995	4
Building Professionals Act 2005	4
Commercial and Private Inquiry Agents Act 2004	1
Education Act 1990	1
Firearms Act 1996	16
Freedom of Information Act 1989	63
Guardianship Act 1987	6
Home Building Act 1989	25
Health Records and Information Privacy Act 2002	7
Impounding Act 1993	1
Marine Safety Act 1998	1
Motor Dealers Act 1974	4
Motor Vehicle Repairs Act 1980	3
NSW Trustee and Guardian Act 2009	1
Occupational Health and Safety Act 2000	1
Privacy and Personal Information Protection Act 1998	30
"Property, Stock and Business Agents Act 2002 "	16
Pawnbrokers and Second-Hand Dealers Act 1996	1
Passenger Transport Act 1990	83
Protected Estates Act 1983	4
Road Transport (General) Act 1999	1
Security Industry Act 1997	33
Travel Agents Act 1986	1
Tow Truck Industry Act 1998	6
Vocational Education and Training Accreditation Act 2005	3
Vocational Education and Training Act 2005	7
Veterinary Practice Act 2003	3

4. Outcomes in Review matters 2009-2010

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
193	100	33	22	7	0	3	9

5. Outcomes in Original matters 2009-2010

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

6. Outcomes in Professional Discipline 2009-2010

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

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

No. disposed of in under 6 months	219
No. disposed of in under 12 months	85
No. disposed of in over 12 months	46
No. disposed of in over 2 years	20
	370

8. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
5	5	0	0

Guardianship and Protected Estates List 1/7/2009 - 30/6/2010

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

1. Case Flow-Guardianship and Protected Estates Review Matters 2009-2010

Pending as at 30 June 2009	New Applications Filed	Disposals	Pending as at 30 June 2010
6	10	14	2

* incorrect figure of 10 in 2007-2008

2. Applications for Review by Act 2009-2010

Subject by Act	Number
NSW Trustee and Guardian Act 2009	10

3. Outcomes in Review Matters under the Guardianship Act and the Protected Estates Act 2009-2010

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
7	5	2	0	0	14

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

No. disposed of in under 6 months	7
No. disposed of in under 12 months	4
No. disposed of in over 12 months	3
No. disposed of in over 2 years	0

COMMUNITY SERVICES DIVISION 1/7/2009 - 30/6/2010

1. Case flow 2009-2010

Matter pending as at 30 June 2009	New Applications filed	Disposals	Pending as at 30 June 10
24*	31	40	14

*figure amended to 23 after new database audit

2. Applications by type 2009-2010

Applications for original decision	Applications for review
11	20

3. Applications by Act 2009-2010

Subject by Act	Number
Children and Young Persons (Care and Protection) Act 1988	3
Commission for Children and Young People Act 1998	8
Disability Services Act 1993	2
Community Services (Complaints Reviews and Monitoring) Act 1993	18

4. Outcomes - Reviewable Decisions 2009-2010

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
11	1	1	0	0

5. Outcomes - Original Decisions 2009-2010

Dismissed because application withdrawn/no appearance/agreement reached	Declaration Made	Declaration Refused	No Jurisdiction
21	1	3	2

6. Mediation 2009-2010

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

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

No. disposed of in under 6 months	31
No. disposed of in under 12 months	6
No. disposed of in over 12 months	3
No. disposed of in over 2 years	0

EQUAL OPPORTUNITY DIVISION 1/7/2009 - 30/6/2010

1. Case flow 2009-2010

Matters pending at 30 June 2008	New Applications filed	Disposals	Pending as at 30 June 09
125*	152	162	1

*figure amended to 122 after new database audit

2. Applications by type 2009-2010.

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
124	5	17	5	1
Disposals				
137	5	16	4	0

3. Referrals of Complaints by President of Anti-Discrimination Board by Ground 2009-2010

Head of discrimination**	Number
Race	25
Disability Discrimination	46
Sexual Harassment	7
Sex Discrimination	22
Victimisation	4
Carers responsibilities	3
Age Discrimination	20
Homosexual vilification	3
Homosexual Discrimination	6
Racial Vilification	2
Pregnancy Discrimination	1

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

4A. Outcomes of Referrals 2009-2010

Dismissed because application withdrawn/no appearance/agreement reached	Summary dismissal under section 111,s 102	Dismissed after hearing	Orders made
90	3	36	33

4B. Mediation

No. of disposals where mediation was conducted	Settled at Mediation	Settled after Mediation	Proceeded to Hearing
35	12	20	3

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

for referrals	
No. disposed of in under 6 months	81
No. disposed of in under 12 months	35
No. disposed of in over 12 months	30
No. disposed of in over 2 years	16

5A. Application for registration of conciliation agreement 2008 - 2009

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

Matters pending at 30 June 2009	New Applications filed	Disposals	Pending as at 30 June 10
0	5	5	0

5B. Outcome of application for registration of agreement 2009-2010

Agreement registered	Agreement not registered	Dismissed because application withdrawn / no appearance/ agreement reached
1	1	3

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

for registration of agreement

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

6A. Applications for leave to proceed 2009-2010

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

Matters pending at 30 June 2009	New applications filed	Disposals	Pending at 30 June 2010
3	17	18	2

6B. Outcome of applications for leave 2009-2010

Leave granted	Leave not granted	Dismissed because application withdrawn / no appearance/ agreement reached
3	12	4

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

for leave applications

No. disposed of in under 6 months	18
No. disposed of in under 12 months	1
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

7A. Applications for interim orders

New Applications Filed	Disposals
5	4

7B. Outcome of applications for interim orders

Order granted	Order not granted	Consent orders	Application withdrawn dismissed
0	1	0	3

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

for interim orders

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

8. Review of exemption decision s126

New Applications Files	Disposals	Pending
1	0	1

RETAIL LEASES DIVISION 1/7/2009 - 30/6/2010

1. Case flow 2009-2010

Matters pending at 30 June 2009	Applications filed	Disposed	Pending as at 30 June 10
142*	209	233	1 1 2

* figure amended to 136 after new database audit

2. Applications by Type 2009-2010

Retail tenancy claim	120
Unconscionable conduct claim	5
Combined retail tenancy & unconscionable conduct claim	34
Specialist Retail Valuer	50

3. Outcomes 2009- 2010

Dismissed because application withdrawn / no appearance/ agreement reached	Dismissed after hearing	Settled - Orders made	Orders made	No Jurisdiction	Transfer to Supreme Court
43	21	82	83	3	1

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

No. disposed of in under 6 months	151
No. disposed of in under 12 months	42
No. disposed of in over 12 months	27
No. disposed of in over 2 years	13

REVENUE DIVISION 1/7/2009- 30/6/2010

1. Case flow 2009-2010

Matters pending at 30 June 2009	Applications filed	Disposals	Matters pending as at 30 June 10
123	99	154	68

2. Applications by Type 2009-2010*

Subject by Act	
Duties Act 1997	13
First Home Owners Grant Act	8
Land Tax Act	14
Land Tax Management Act 1956	45
Parking Space Levy Act 1992	1
Payroll Tax Act 1971	5
Payroll Tax Ac 2007	4
Stamp Duties Act	1
Taxation Administration Act 1996	8

3. Outcomes 2009- 2010

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
107	32	15	0	0

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

No. disposed of in under 6 months	60
No. disposed of in under 12 months	49
No. disposed of in over 12 months	32
No. disposed of in over 2 years	13

LEGAL SERVICES DIVISION 1/7/2009 - 30/6/2010

1. Case flow 2009-2010

Matters pending at 30 June 2009	Applications filed	Disposed	Pending as at 30 June 10
33*	45	29	48

*figure amended to 32 after new database audit

2. Applications by type 2009-2010

Applications for original decision	0
Applications for review	0
Application for professional discipline	45

3. Applications by subject 2009-2010

Type of Practitioner	Type of conduct	Number
Barrister	Disciplinary action	7
Solicitor	Disciplinary action	33
Solicitor	Reprimand/Compensation Order s.540	0
Lay associate	Approval of lay associate s. 17(3)	4
Lay associate	Prohibition on employment s.18	1

4. Outcomes in Original matters 2009-2010*

Disciplinary - Penalty imposed by type

Dismissed after hearing	9
Fined	13
Reprimanded	1
Practising Certificate suspended	1
Practising Certificate cancelled	3
Removed from Roll	0
Consent order	9
Conditions imposed on practising certificate	1
Compensation	5
Undertake and complete course of further Legal Education	0
Withdrawn	0
Application granted	0
Application refused	0
Approval of lay associate	2
Application granted	0
Withdrawn	0

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

5. Outcomes in Review matters 2009-2010

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

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

No. disposed of in under 6 months	7
No. disposed of in under 12 months	9
No. disposed of in over 12 months	6
No. disposed of in over 2 years	7

APPEALS 1/7/2009 - 30/6/2010

Internal Appeals to Appeal Panel

1. Case Flow 2009 -2010

	Appeals Pending as 30 June 2009	New Appeals filed	Disposals	Pending as at 30 June 10
General Division	22	44	43	23
Community Services Division**	*0 (7)	2	8	1
Equal Opportunity Division	*8 (0)	13	6	7
Retail Leases Division	*6 (5)	12	14	3
Revenue Division	6	13	12	7
Total	*28	84	83	41

* adjustment made to pending figure after new database audit

1a. Interlocutory Appeals

	Interlocutory Appeal	Disposals	Pending as at 30 June 2010
	25	27	9

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

2. Outcome of Internal Appeals 2009 - 2010

	Upheld (in full or part)	Dismissed	No Jurisdiction	Consent Orders	Withdrawn/ Discontinued	Total
General Division	13	22	0	0	8	43
Community Services Division	4	3	0	0	1	8
Equal Opportunity Division	1	3	0	0	2	6
Retail Leases Division	2	8	0	1	3	14
Revenue Division	4	5	0	1	2	12
Total	24	41	0	2	16	83

2a. Interlocutory Appeals

	Leave to proceed refused and dismissed	Leave granted but dismissed	Leave granted & appeal upheld
	14	6	7

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

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

No. disposed of in under 6 months	59
No. disposed of in under 12 months	19
No. disposed of in over 12 months	4
No. disposed of in over 2 years	1

External Appeals to the Appeal Panel

1. Case Flow 2009 -2010

	Appeals Pending as 30 June 2009	New Appeals filed	Disposals	Pending as at 30 June 10
Guardianship Tribunal	3	20	18	5
Mental Health Review Tribunal	0	0	0	0
Magistrate	0	0	0	0
Total	3	20	18	5

2. Outcome of External Appeals 2009-2010

	Upheld (in full or in part)	Dismissed	Withdrawn/Discontinued	No Jurisdiction
	7	5	6	0

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

No. disposed of in under 6 months	14
No. disposed of in under 12 months	4
No. disposed of in over 12 months	0
No. disposed of in over 2 years	0

Appeals to the Supreme Court

1. Case flow 2009 - 2010

	Appeals Pending as 30 June 2009	New Appeals filed	Disposals	Pending as at 30 June 2010
General Division	2	3	1	4
Community Services Division	0	0	0	0
Equal Opportunity Division	1	1	0	2
Retail Leases Division	0	0	0	0
Revenue Division	0	0	0	0
Legal Services Division	6	7	2	11
Appeal Panel	17	14*	4	27
Appeal External	1	0	0	1
Total	27	25	7	45

* includes an appeal to High Court

2. Outcome of Appeals 2009 - 2010

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

Published Appeal Decisions- Presiding Member

Member	Number- Internal Decisions	Number- External Decisions	Total
O'Connor, P	34	1	35
Hennessy, DP	15	6	21
Chesterman, DP	10	1	11
Needham, DP	8	0	8
Britton, DP	0	1	1
Patten, DP	1	0	1

Appendix F: Appeal Cases: Overview

(I) APPEAL PANEL

Internal Appeals

from General Division

(A) Freedom of Information

Confidential information and personal affairs exemptions – relevant considerations – law enforcement exemption – meaning of “confidential source” – informer – appeal allowed – *Freedom of Information Act* 1989, Sch 1, cl 4(1)(b) and 13(b) *Dept of Education and Training v GJ* [2009] NSWADTAP 33

Law enforcement exemption – confidential source of information – breach of procedural fairness by Tribunal – appeal allowed – *Freedom of Information Act* 1989, Sch 1, cl 4(1)(b) *Martin v Cmr of Police, NSW Police* [2009] NSWADTAP 67

Exempt document – law enforcement and public safety – ‘confidential source of information’ – relevance of truth or falsity of information – public interest immunity – override discretion – appeal dismissed – *Freedom of Information Act* 1989, Sch 1, cl 4(1)(b) *Crowther-Wilkinson v NSW Police Force* [2009] NSWADTAP 49

Legal professional privilege – communications to and from Agency’s legal clerk – independence – adequacy of search – jurisdiction – appeal dismissed *Chan v Dept of Education and Training* [2010] NSWADTAP 7

Agency response consistent with existence of documents – claims that no documents exist – Tribunal declines jurisdiction – appeal allowed – agency assertion lacked credibility – no notice under s 28(1)(b) – access application remitted to agency – *Freedom of Information Act* 1989, ss 24, 25, 28 *White v NSW Dept of Education and Training* [2009] NSWADTAP 73

Scope of request – form of access – no jurisdiction – sufficiency of search – no jurisdiction – exempt matter – unreasonable disclosure of personal affairs – not proven – appeal allowed – *Freedom of Information Act* 1989, s 27, s 28(1)(b), s 53(3) – Sch 1, cl 6 *Kiernan v Cmr of Police, NSW Police* [2010] NSWADTAP 18

Notice that documents not held – effect – Tribunal procedure – closed session – objection to member – procedural fairness – appeal dismissed – *Freedom of Information Act* 1989, s 28(1)(b) *KT v Cmr of Police, NSW Police* [2010] NSWADTAP 39

Personal records – amendment – collateral attack – Tribunal procedure – hearing on papers – appeal dismissed – *Freedom of Information Act* 1989, s 15 – *Privacy and Personal Information Protection Act* 1998, s 39 *GA v The University of Sydney* [2010] NSWADTAP 31

Procedure – interlocutory appeal by Agency – Tribunal direction to Agency – whether consistent with scope of original request and matters that remain in dispute – leave to appeal refused *WorkCover NSW v Steadfast Group Pty Ltd* [2010] NSWADTAP 24

Appeal – Tribunal decision made ‘on the papers’ – procedural fairness – Agency refusal to deal with request – unreasonable diversion of resources – appeal dismissed – respondent’s application for costs of appeal – dismissed – *Administrative Decisions Tribunal Act* 1997 – s 76 – *Freedom of Information Act* 1989, s 25(1)(a1) *Challita v Dept of Education and Training* [2009] NSWADTAP 70

(b) Privacy

Appeal – attribution of conduct to agency – union meeting – jurisdiction – scope of internal review – whether conduct in issue involved collection – appeal dismissed – *Privacy and Personal Information Protection Act* 1998 Dept of Education and Training v ZR [2009] NSWADTAP 69

Jurisdiction – conduct not raised by original complaint – not considered by internal review – whether conduct can be subject of application to Tribunal – held not permissible – appeal allowed – application for review dismissed – *Privacy and Personal Information Protection Act* 1998, s 53, s 55 Dept of Education and Training v ZR [2009] NSWADTAP 44

(c) Security Licensing

Review of reviewable decision – administrator's statutory obligation to lodge all relevant documents – whether review applicant entitled to be informed of application for order excusing administrator from lodgment – revocation of security industry master licence for lack of fitness – whether right to notice ousted by s 29(3) – extent of repeal of procedural fairness effected by s 29(3) – held no ouster as to basic procedural information – appeal allowed – *Administrative Decisions Tribunal Act* 1997, ss 58, 59, 73 – *Security Industry Act* 1997, ss 15(5), 15(6), 29(3) AVS Group Australia Pty Ltd v Cmr of Police, NSW Police Force [2010] NSWADTAP 26

Mandatory disqualification – interpretation of “serious assault offence” – whether offence proven – public interest discretion – whether factors relevant to mandatory disqualification may be considered – appeal dismissed – *Security Industry Act* 1997, ss 16(1)(b), 15(3) Ibrahim v Cmr of Police, NSW Police Force [2010] NSWADTAP 29

Revocation of security industry licences – interlocutory application – held – not permissible to use “criminal intelligence material” pursuant to s 15(6) of the *Security Industry Act* 1997 in application pursuant to s 60(2) of *Administrative Decisions Tribunal Act* 1997 – appeal allowed AVS Group of Companies Pty Ltd v Cmr of Police, NSW [2009] NSWADTAP 48

Revocation of master licence affirmed by Tribunal – application for stay pending hearing of appeal against decision confirming revocation – stay granted Avilion Group Pty Ltd v Cmr of Police, NSW Police [2010] NSWADTAP 46

(d) Other Occupational Regulation

Firearms dealers licence – revocation – prescribed ‘offence of a sexual nature’ – whether there was a prescribed offence at relevant times – Tribunal held not – appeal by Commissioner – appeal allowed – *Firearms Act* 1996, ss 11(5)(b), 24 – *Firearms Regulation* 2006, cl 5(1)(d), 17 Cmr of Police, NSW Police Force v Esber [2010] NSWADTAP 5

Home building – qualified supervisor certificate – false documentation – integrity – appeal dismissed Strik v DG, Dept of Services, Technology and Administration [2010] NSWADTAP 33

Jurisdiction – disciplinary action – whether reprimand reviewable by Tribunal – meaning of “penalty” – reprimand not reviewable – appeal allowed – *Home Building Act 1989*, ss 62, 83B Cmr for Fair Trading v Cruz [2009] NSWADTAP 51

(e) Practice and Procedure

Representation by non-lawyer agent – Tribunal granted leave to appear under s 71 – relevant considerations – agent's past behaviour ‘threatening and bullying’ – appeal allowed – leave refused – *Administrative Decisions Tribunal Act* 1997, s 71 – *Administrative Decisions Tribunal Rules* 1998, r 20 Dept of Justice and AGv AY [2010] NSWADTAP 17

Representation by non-lawyer agent – application for leave – application refused – *Administrative Decisions Tribunal Act* 1997, s 67 – *Administrative Decisions Tribunal Rules* 1998, r 20A LN v Sydney South West Area Health Service [2010] NSWADTAP 16

Summons – legitimate forensic purpose – criterion of ‘apparent relevance’ – appeal allowed – *Administrative Decisions Tribunal Act* 1997, s 84 AF v HealthQuest [2009] NSWADTAP 42

From Equal Opportunity Division

Victimisation – meaning of “on the ground of” – burden and standard of proof in victimisation complaints – Tribunal erroneously applied shifting evidential onus – no evidential onus on respondent in Tribunal – application of *Jones v Dunkel* test – damages award – meaning and application of “by reason of” in relation to remedies – appeal allowed St Joseph's Hospital Ltd v Correy (No 2) [2009] NSWADTAP 58

Discrimination on ground of homosexuality – homosexual couple refused permission to apply to become foster carers – religious exceptions – meaning of “religion” – “doctrines of religion” – “adherents of that religion” – whether selection process prohibiting homosexual foster carers unlawful – appeal allowed – *Anti-Discrimination Act* 1977, ss 49ZP, 56(c), 56(d) Members of the Board of the Wesley Mission Council v OV and OW (No 2) [2009] NSWADTAP 57

Racial discrimination – victimisation – complaints dismissed – appeal – procedural fairness – non-admission into evidence of covert recording of conversations – fact finding – extent of duty to give reasons – lawfulness of English language requirement – appeal dismissed – *Anti-Discrimination Act* 1977, ss 7, 8, 50 Laalaa v DG, Dept of Education and Training [2009] NSWADTAP 56

Indirect discrimination – existence of requirement or condition – Tribunal held no indirect discrimination on application of principles in *State of New South Wales v Amery* (2006) 80 ALJR 753 – Appeal Panel held that Tribunal's reasoning not based on ratio of *Amery* – appeal allowed – complaint substantiated Hulena v Owner's Corporation Strata Plan 13672 [2010] NSWADTAP 27

Complaint of discrimination by reason of being an “associate” of person with protected characteristic – construction – person with protected characteristic need not be a living person at time of conduct put in issue – *Anti-Discrimination Act* 1977, ss 4, 49B QY & QZ v Sydney South West Area Health Service [2010] NSWADTAP 48

Interim orders – statutory power – power to “preserve status quo” – “preserve rights of parties” – appeal allowed – leave to review merits – decision affirmed on application of correct test – *Anti-Discrimination Act* 1977, s 105 Dhillon v Rail Corporation of NSW [2009] NSWADTAP 63

Harassment – sex discrimination – vicarious liability – damages – appeal dismissed Sharma v QSR Pty Ltd t/as KFC Punchbowl [2010] NSWADTAP 22

Challenge to findings of fact and credibility – allegation of bias – appeal dismissed MT v AA [2010] NSWADTAP 19

Appeal on question of law - identification of question of law - no error of law - appeal dismissed *Nicholls v DG, Dept of Education and Training* [2010] NSWADTAP 35

Costs - power of Appeal Panel to award costs in relation to proceedings at first instance - held no power - *Administrative Decisions Tribunal Act 1997*, s 88 *Chand v Rail Corp of NSW (No 3)* [2010] NSWADTAP 11

From Retail Leases Division

Meaning of "retail shop" - meaning of "retail shopping centre" - markets - core trading hours - s 61 had no application in present case - appeal allowed - *Retail Leases Act 1994*, s 61 *Sydney Markets Ltd v Wilson* [2010] NSWADTAP 45

Retail tenancy claim - Tribunal found breach proven - no award of damages - principles - appeal allowed in part - unconscionable conduct claim - rejected - relevant considerations - claim upheld - damages - not granted *O'Neill v Henry* [2010] NSWADTAP 40

Holding-over - whether conversation with landlord created new lease - misleading and deceptive conduct - unconscionable conduct - appeal extended to merits - appeal dismissed *Davis v Sydney Harbour Foreshore Authority* [2010] NSWADTAP 43

Company lessee - director's personal guarantee - whether signature binding in circumstances - objective approach - appeal dismissed *Plant v Meriton Properties Pty Ltd* [2009] NSWADTAP 62

Notice of exercise of option - notice of change of address of lessor - whether notice complied with clause of lease - notice effective - option not validly exercised - appeal dismissed *Jonamill Pty Ltd v Alramon Pty Ltd* [2009] NSWADTAP 59

Appeal - application for leave to proceed - notice of appeal lodged out of time - leave refused *Kokinovski v V & V Landscapers Pty Ltd* [2010] NSWADTAP 47

Revenue Division

Pay-roll tax - charitable exemption - Tribunal found respondent a "non-profit organisation having as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose" - respondent's purpose was to promote and manage football - respondent did not have charitable purpose - appeal allowed - *Pay-roll Tax Act 1971*, s 48(1)(c) *Chief Cmr of State Revenue v Northern NSW Football Ltd* [2010] NSWADTAP 28

Pay-roll tax - grouping provisions - trustee companies as employers - whether s 42 excludes grouping provisions - *Permanent Trustee Nominees (Canberra) Ltd v Chief Commissioner of Pay-roll Tax* (1987) 8 NSWLR 527 - s 42 does not exclude grouping provisions entirely from application to trustees - appeal dismissed - *Pay-roll Tax Act 1971*, s 42 - *Taxation Administration Act 1996*, ss 1061, 1066 *Paul Murphy Real Estate Pty Ltd v Chief Cmr of State Revenue (No 2)* [2010] NSWADTAP 42

Pay-roll tax - whether contractors were independent contractors within meaning of s 3A(1)(e)(v) - meaning of "render" - whether services "ordinarily rendered to the public generally" - contractor's services must be available to and used by others - absence of evidence presented - appeal dismissed - *Pay-roll Tax Act 1971*, s 3A(1)(e)(v) *Roden Security Services Pty Ltd v Chief Cmr of State Revenue* [2010] NSWADTAP 10

Land tax - low cost accommodation exemption - business of letting or licensing beds and lockers - Tribunal held business not entitled to exemption - Revenue ruling No LT 78, 2007 tax year - unduly restrictive interpretation of

"accommodation" - appeal allowed - *Land Tax Management Act 1956*, s 10Q *Perry Properties Pty Ltd v Chief Cmr of State Revenue* [2010] NSWADTAP 6

Land tax - principal place of residence exemption - ownership in severalty - whether several owners of part of lot fall within definition of "joint owner" - whether "residential" land must be undivided - owner in severalty does not fall within definition of "owner" - appeal dismissed - *Land Tax Management Act 1956*, s 3(1) *Ford v Chief Cmr of State Revenue* [2010] NSWADTAP 41

Land tax - land owned by trust - whether concessional rate applicable - whether trust a "fixed trust" as defined by s 3(2) - whether trust is an owner in equity "entitled to an estate of freehold in possession" - scrutiny of terms of trust deed - not a fixed trust - full rate applicable - appeal dismissed - *Land Tax Management Act 1956*, ss 3, 3A *Sahab Holdings Pty Ltd ATF Kanjian Family Trust v Chief Cmr of State Revenue* [2010] NSWADTAP 4

Practice and procedure - costs - power of Appeal Panel to award costs of underlying proceedings - "costs of or incidental to the proceedings giving rise to the application, as well as the costs of or incidental to the application" - costs power extends to include costs incidental to proceedings other than those which are 'before' Appeal Panel - Appeal Panel has power to award costs of underlying proceedings - whether Appeal Panel has power to award costs of pre-litigation administrative processes - no power with respect to administrative processes which do not constitute "proceedings" - *Administrative Decisions Tribunal Act 1997*, s 88(4)(b) *B & L Linings Pty Ltd v Chief Cmr of State Revenue (No 5)* [2010] NSWADTAP 21

Practice and procedure - strike out - first ground of appeal not properly brought - no decision made by Tribunal on point raised by appeal - first ground struck out *Paul Murphy Pty Ltd v Chief Cmr of State Revenue* [2009] NSWADTAP 71

From Community Services Division

Jurisdiction - whether reviewable decision identified by review applicant - "decision to continue to provide a service" - day-to-day operation of service does not of itself give rise to a reviewable decision - standing - "genuine concern" - interpretation - denial of standing if "unjustifiably interfering in a matter" - Appeal allowed as to jurisdiction - *Community Services (Complaints, Reviews and Monitoring) Act 1993* No 2, s 28(1)(c), s 29(1), s 29(4) - *Disability Services Act 1993*, s 20 - *Community Services (Complaints, Reviews and Monitoring) Regulation 2004*, cl 5(1)(b) *Minister for Disability Services v People with Disability Australia Inc.* [2010] NSWADTAP 44

Jurisdiction - Director-General's decision to remove child from authorised carer - Children's Court made final order placing child under parental responsibility of Minister - whether Children's Court approved care plan in which child removed - care order made by consent - no Court approval of care plan - Tribunal's jurisdiction established - appeal dismissed - *Children and Young Persons (Care and Protection) Act 1998 (Care Act)*, s 79 *Dept of Human Services v RA* [2010] NSWADTAP 23

EXTERNAL APPEALS

[See also [Guardianship and Protected Estates List](#)]

Guardianship Tribunal – Tribunal failed to advise applicant on how to obtain relevant information – decision turned on absence of relevant evidence – breach of procedural fairness – appeal allowed *OX v OW, OZ* [2010] NSWADTAP 12

Appeal from Trustee decision – decision to sell business – new material – appeal extended to merits – appeal allowed *FX v NSW Trustee and Guardian* [2009] NSWADTAP 61

(2) SUPREME COURT

(A) Court of Appeal

From General Division

Freedom of information – exempt document – legal advice to University – subject to legal professional privilege – document provided to third party with approval of Chancellor – whether waiver of privilege – jurisdiction – whether Tribunal had power to release exempt document – Tribunal's power limited to functions imposed "under an enactment" – Tribunal did not have power to release document protected by legal professional privilege – legal professional privilege arises by general law – appeal allowed in part – *Freedom of Information Act* 1989, s 55, Sch 1, cl 10 – *Administrative Decisions Tribunal Act* 1997, s 63(2) *McGuirk v University of NSW* [2009] NSWCA 321

Privacy – procedural fairness – legal test applied by Tribunal rejected by Appeal Panel – failure to afford appellant opportunity to address the Appeal Panel on the basis of the preferred test – whether Appeal Panel entitled to apply test itself – application to Tribunal within "reasonable time" – appeal allowed – *Privacy and Personal Information Protection Act*

1998, ss 53, 55 – *Administrative Decisions Tribunal Act* 1997, ss 113, 114 *AT v Cmr of Police, NSW* [2010] NSWCA 131

Names – allegation Registrar wrongly entered former name in Register – whether a "former name" must be one that was willingly adopted – whether a person can have more than one name at one time – whether shortened form of person's name a different name – requirement of cl 8(d) to record "any other former names of the person" extends to "other former names" that are not registered names – appeal dismissed – *Births, Deaths and Marriages Registration Act* 1995 – *Births, Deaths and Marriages Registration Regulation* 2006, cl 8(d) *Avery v Registrar of Births, Deaths and Marriages* [2010] NSWCA 72

Occupational regulation – veterinary practitioners – whether meaning of "veterinary services" a question of law – unsatisfactory professional conduct – duty to give estimate of cost – failure to give estimate of cost – *Briginshaw* principle not applicable because matter not of sufficient gravity – principle not applicable because primary facts not in dispute – appeal dismissed – *Veterinary Practice Act* 2003, s 91C *Polglaze v The Veterinary Practitioners Board of NSW* [2010] NSWCA 4

Security licensing – Tribunal "determining an application for review of any decision ... to revoke a licence" – Tribunal obliged to prevent disclosure of "criminal intelligence" – obligation to receive evidence and argument in absence of parties – whether obligation applies to hearing of application for 'stay' of administrative decision pending review – held obligation extends to 'stay' – Procedure – distinction between stay of orders and order temporarily reversing administrative decision – appeal from Supreme Court dismissed – *Administrative Decisions Tribunal Act* 1997 (NSW), s 60(2) – *Security Industry Act* 1997, s 29(3) *AVS Group of Companies Pty Ltd v Cmr of Police* [2010] NSWCA 81

From Equal Opportunity Division

Discrimination on ground of homosexuality – defences – religious bodies – proper construction of s 56 – whether words used in ordinary meaning – reading individual words in structure of provision – identification of "religion" – whether conduct conformed to relevant "doctrines" of religion – Tribunal misconstrued s 56 – appeal allowed – *Anti-Discrimination Act* 1977, s 56 *OV & OW v Members of the Board of the Wesley Mission Council* [2010] NSWCA 155

Racial discrimination – provision of services – police officers – duty to investigate allegations of crime – whether police officers perform "services" in fulfilment of duties – "police services" – whether immunity of police officers from actions in tort applies to complaints of discrimination – identification of persons to whom services provided – police perform services in at least some functions – services being those actually provided (or refused) to a complainant – *Anti-Discrimination Act* 1977, ss 7, 19 – *Police Act* 1990, s 6 – Practice and procedure – referral of question of law to Court of Appeal – no fact finding exercise undertaken by Tribunal before referral – no set of agreed facts – Tribunal should settle "special case" as well as questions of law for Court of Appeal *Cmr of Police v Mohamed* [2009] NSWCA 432

Leave to appeal application – decision by Supreme Court – Tribunal applied incorrect test and denied respondent procedural fairness – evidence established that respondent did not have full opportunity to be heard – leave to appeal granted in part on approach to discretion to grant leave to proceed – discretion must be exercised in accordance with purpose of statutory scheme – "fair and just" test – onus on applicant – appeal dismissed – *Administrative Decisions Tribunal Act* 1997, s 73(2) – *Anti-Discrimination Act* 1977, s 96 – *Jones v Ekermawi* [2009] NSWCA 388

Leave to appeal application – decision by Supreme Court to dismiss summons seeking judicial review of decision by Tribunal – applicant claimed Supreme Court decision reversed Court of Appeal decision – contention rejected – Supreme Court applied Court of Appeal decision – *Workplace Relations Act* 1996 (Cth), s 170HB bars proceedings brought under *Anti-Discrimination Act* 1977, s 8(2)(c) *Deva v University of Western Sydney* [2009] NSWCA 389

From Retail Leases Division

Construction of user clause – pre-contractual negotiations and post-contractual conduct – not admissible on construction – errors not material and Appeal Panel's construction correct – breach by tenant of essential term – termination by landlord – compliance with s 129 essential – notices of termination by landlord invalid – damages – reliance loss – onus on party in breach to prove that performance would not have enabled innocent party to recover expenditure – lessor's challenge to damages award unsuccessful – unconscionability finding not vitiated by error – appeal dismissed – *Conveyancing Act* 1919, s 129 *World Best Holdings Limited v Sarker* [2010] NSWCA 24

From Legal Services Division

Lawyers – complaints and discipline – conveyancing – failure to witness signature – incomplete s 66W certificate – contracts exchanged with s 66W certificate – Tribunal did not find any consistent failure to maintain standard of competence and diligence – Tribunal in error to hold solicitor guilty of professional misconduct – substituted finding of unsatisfactory professional conduct – lien for unpaid costs – client's passport held in connection with bail application – solicitor entitled to lien – limits of lien – appeal allowed – *Legal Profession Act* 2004, ss 496, 497(1)(a), 562(6) – *Conveyancing Act* 1919, 66W *Xu v Council of the Law Society of NSW* [2009] NSWCA 430

Lawyers – complaints and discipline – professional misconduct – whether criminal proceedings must be brought prior to disciplinary proceedings – not necessary – prohibition on marketing legal services in respect of personal injury – meaning of “advertisement” and “marketing” – whether regulations ultra vires – held regulations not ultra vires – appeal from Tribunal dismissed – *Legal Profession Act 2004* s 85 – *Legal Profession Regulation 2005* cl 24 *Hagipantelis v Legal Services Cmr of NSW* [2010] NSWCA 79

(B) SINGLE JUDGE

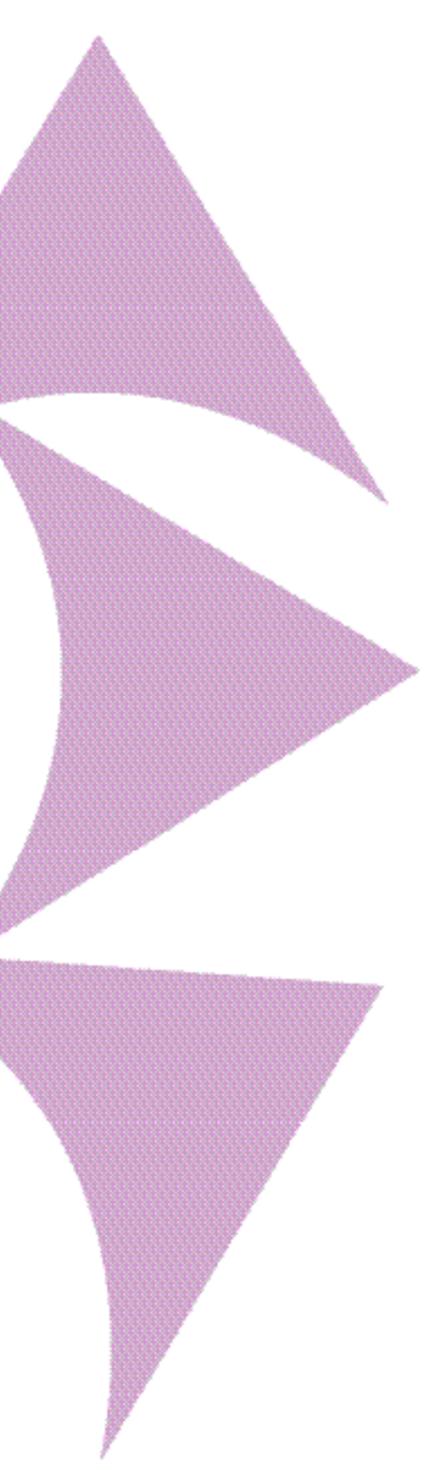
From General Division

Security licensing – Tribunal “determining an application for review of any decision ... to revoke a licence” – Tribunal obliged to prevent disclosure of “criminal intelligence” – application for stay of proceedings pending to review revocation – Appeal Panel in error – appeal allowed – adequacy of Commissioner’s reasons for revocation – statement of opinion and satisfaction sufficient statement of reasons – notice of revocation valid – *Security Industry Act 1997*, ss 29(3), 26(2) *Cmr of Police v AVS Group of Companies Pty Ltd* [2009] NSWSC 1408

Security licensing – Tribunal directed Commissioner to provide statement of reasons complying with s 49(3) of *Administrative Decisions Tribunal Act 1997* and not to disclose existence or content of “criminal intelligence” or other intelligence as required by s 15(6) of *Security Industry Act 1997* – Appeal Panel refused leave to appeal – no error by Appeal Panel – appeal dismissed *AVS Group of Companies Pty Ltd v Cmr of Police* [2009] NSWSC 1391

Security licensing – declaratory relief – challenge to the revocation of licences – confidential exhibit not disclosed to plaintiffs pursuant to s 29(3) of the *Security Industry Act 1997* – whether proposed special advocate procedure could be adopted under the *Administrative Decisions Tribunal Act 1997* – whether power to disclose confidential exhibit to proposed special advocate without consent of Commissioner of Police – consent required – whether Police Commissioner’s discretion under s 29(3) of the *Security Industry Act 1997* exercised validly – discretion not validly exercised – declarations made *AVS Group of Companies Pty Ltd v Cmr of Police* [2010] NSWSC 109

Security licensing – prerogative writs – orders in the nature of mandamus – discretion of Commissioner under s 29(3) – confidential evidence contemplated by s 15(6) – second exercise of discretion by Commissioner pursuant to order – alleged inadequacy of reasons for decision – whether discretion exhausted – interlocutory injunction – whether serious question to be tried – whether mandamus available to direct particular decision where discretion given – balance of convenience – irreparable harm with no competing prejudice – injunction granted preventing Tribunal hearing any application to revoke stay order until conclusion of hearing in present proceedings – *Security Industry Act 1997*, ss 15(6), 29(3) *AVS Group of Companies Pty Ltd v Cmr of Police* [2010] NSWSC 447



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