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ANNUAL REPORT 2000 — 2001



ADMINISTRATIVE DECISIONS TRIBUNAL
New South Wales

Hon Bob Debus MP
Attorney General
Parliament House
SYDNEY NSW 2000

Dear Attorney

As required by s 26 of the *Administrative Decisions Tribunal Act 1997*, I am pleased to provide you with the third annual report of the Tribunal, covering the period 1 July 2000 to 30 June 2001.

Yours sincerely

Judge KEVIN O'CONNOR AM
President

23 October 2001

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Judge Kevin O'Connor AM

THE YEAR IN REVIEW

In the year under review the Administrative Decisions Tribunal's level of activity and patterns for handling applications remained similar to 1999-2000.

The Tribunal has 'administrative', 'civil' and 'discipline' jurisdictions. The General Division, responsible in the main for external merits review of prescribed decisions made by government departments and Ministers, remains the principal division in terms of volume of applications. The Community Services Division reviews administrative decisions made in the Community Services and Ageing and Disability Services portfolios of government. The Equal Opportunity Division and the Retail Leases Division hear civil claims arising under anti-discrimination and retail leases legislation. The Legal Services Division and the Veterinary Surgeons Disciplinary Panel of the General Division hear charges of professional misconduct or unsatisfactory professional conduct against registered practitioners.

In June 2000 a Parliamentary Committee commenced a review of the jurisdiction and operation of the Tribunal. This was required to occur after 18 months of operation by the legislation founding the Tribunal. The Committee called for submissions and held a public hearing in November 2000, followed by release of a discussion paper in March 2001. Its final report is likely to be released late in 2001. The evaluation of the Tribunal's performance contained in the discussion paper was positive.

The Committee saw value in the Tribunal strengthening its user consultation mechanisms, and this has occurred through increased use of

the statutory Rule Committee and Subcommittee structure. The Committee's discussion paper also commends the desirability of continued integration of other State tribunals into the Tribunal, and focussed in particular on the scatter of small professional discipline tribunals located in various portfolios. The Committee supported the need for priority to be given to developing coherent principles for conferring jurisdiction on the Tribunal in respect of external merits review of administrative decisions. It also supported the creation of a State administrative law advisory body with similar functions to the Commonwealth Administrative Review Council.

Many tribunals have been created by Parliament, mainly over the last half century, as responses to the need to provide the community with accessible, low cost mechanisms for resolving claims and grievances; or for dealing with issues where community representation or specialist non-legal skills are seen as being appropriate for resolution of the matter. There has been concern to avoid the courts and permit tribunals, wherever appropriate, to adopt less formal procedures. The result should be less pressure on disputants to engage legal representation. Costs rules are normally designed to limit the risk of a losing party paying the costs of the winning party - another disincentive to engaging legal representation.

The Tribunal conventionally operates in an environment where the applicant (e.g. a citizen applying for review of an administrative decision or the complainant in an equal opportunity matter) presents their

case without professional assistance, while the respondent (e.g. a government agency) is routinely represented by an experienced lawyer.

This imbalance places pressure on a presiding member or the panel to ensure that the applicant is not disadvantaged by lack of formal legal training and experience. Courts and tribunals across the country, in particular the Family Court, are developing guidelines in relation to dealing with litigants in person.

The Australian justice system now has numerous tribunals with civil and administrative jurisdictions, often as significant as those of the intermediate courts and sometimes as significant as the superior courts. All State Governments have been exploring the desirability of greater integration of tribunals into single super-Tribunal structures. This Tribunal is a small example of that trend.

The benchmark super-tribunal is the Victorian Civil and Administrative Tribunal. It is widely seen as having been a successful integration, combining high volume jurisdictions (residential tenancy and consumer claims jurisdictions) with smaller volume jurisdictions similar to several of those found in this Tribunal. It has strong full-time judicial and member leadership and is administered by the Attorney General's portfolio, a government arrangement which has contributed to good quality staffing and registry arrangements, a high quality technology infrastructure and purpose-specific accommodation. The Western Australian Government is committed to a similar initiative, while the Queensland Government is also examining the need for greater integration of its tribunals.

In March 2001 the Tribunal acquired its first full-time Deputy President, Nancy Hennessy. Apart from the General Division, all Division Heads are part-time appointments with one a serving Judge of the District Court (Equal Opportunity Division). During the year an arrangement was reached with the Chief Judge of the District Court to ensure the Judge was made available to the Tribunal on a regular basis.

The report refers to case-law developments of significance in the various jurisdictions, including the work of the Appeal Panel. The superior court decision that has probably had the greatest impact on the operation of the Tribunal was the High Court's decision invalidating certain procedures followed by the informants in legal profession discipline matters.

The Tribunal registry, staffed by officers with considerable court and tribunal experience, has run smoothly during the year. The Tribunal has had the benefit of the high quality infrastructure provided to courts and tribunals under its administration by the Attorney General's Department, with its senior officers being responsive to our particular needs.



Judge Kevin O'Connor AM

President

OUR OBJECTIVES

The Tribunal's objectives are set out in the objects clause of the legislation governing the Tribunal. These objectives guide the Tribunal in its practices and procedures.

Section 3 of the *Administrative Decisions Tribunal Act 1997* 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.

OUR DIVISIONS AND THE APPEAL PANEL

Distribution of Business

The Divisions of the Tribunal are:

- General Division which is engaged primarily in external merits review of administrative decisions;
- Community Services Division which is engaged in external merits review of certain administrative decisions of the Department of Community Services and the Department of Ageing and Disability and making declarations under the *Child Protection (Prohibited Employment) Act 1998*;
- Equal Opportunity Division which hears complaints referred to it by the

President, Anti-Discrimination Board, under the *Anti-Discrimination Act 1977*;

- Retail Leases Division which hears applications under the *Retail Leases Act 1994*;
- Legal Services Division which hears referred complaints against legal practitioners and licensed conveyancers.

The Revenue Division is due to commence operation on 1 July 2001. This Division will be engaged in external merits review of decisions of the Chief Commissioner of State Revenue.

The Tribunal has an Appeal Panel which deals with appeals from decisions of the Divisions.



From left to right: Tom Kelly, Judge Megan Latham, Nancy Hennessy, Judge Kevin O'Connor, Caroline Needham SC – Divisional Heads, 2000-2001

GENERAL DIVISION

Structure and functions

The General Division is the main division of the Tribunal. It is responsible for making decisions in relation to applications by citizens to review the merits of government administrative decisions over which the Tribunal has been given jurisdiction. The Division is also responsible for some original decisions, most importantly in respect of veterinary surgeons discipline. There are special categories of merits review applications dealt with in the Community Services Division, the Revenue Division (commencing 1 July 2001) and the Equal Opportunity Division.

In the case of review applications dealt with by the General Division, a judicial member sits alone to hear and decide applications. A panel of three, including a leading veterinary surgeon, sits in veterinary surgeons discipline matters.

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

Case load

The General Division received 336 applications for review and 14 applications for original decisions; compared to 365 applications for review and 9 applications for original decisions in the previous year. The distribution of the applications remained similar to the previous year with freedom of information reviews (FOI), breath test

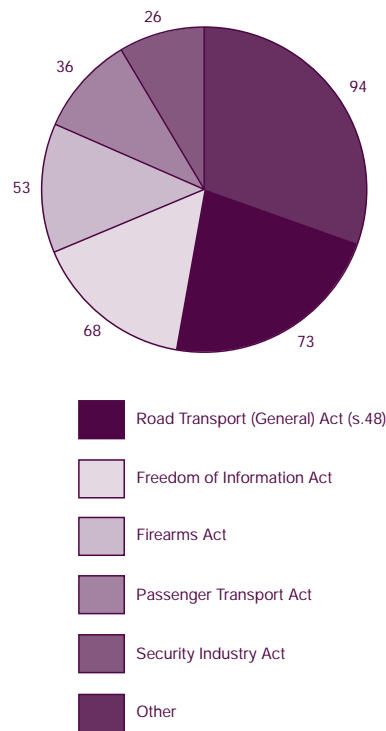
suspension reviews, firearms, security industry, and passenger transport licensing reviews being the dominant categories. 83 per cent of applications fell into these five categories.

Most of the breath test suspension appeals were disposed of summarily by immediate, oral (ex-tempore) decisions. Often applicant's submissions were heard by telephone, with the solicitor for the Commissioner present in the hearing room. This procedure is often used in directions hearings in the Division.

The more complex matters have tended to be freedom of information (FOI) review applications and commercial fishing licensing review applications.

Case conferences, known as Planning Meetings, are used actively in FOI matters.

Applications by Act



Case conferences

Case conferences, known as Planning Meetings, are used actively in FOI matters. Four members of the General Division belong to the FOI list. The listed member conducts the Planning Meeting. Issues such as the circumstances giving rise to the request, the scope of the request and whether there is any possibility of the applicant confining its scope or the government agency being more responsive, are discussed. The experience of members has been that the Planning Meeting is often the first occasion where there has been a face-to-face meeting between the applicant and agency officers. Following discussion, both sides often alter their stance in relation to the request. The Planning Meetings have also served the important purpose of reducing issues in dispute, and allowing a relatively informal opportunity to plan the steps needed to prepare the matter for hearing. An FOI user group meets regularly, comprising government representatives from the Crown Solicitor's office and from the FOI officers network, a staff member from the Ombudsman's office and community representation in the form of two lawyers from community legal services.

An FOI user group meets regularly, comprising government representatives from the Crown Solicitor's office and from the FOI officers network, a staff member from the Ombudsman's office and community representation in the form of two lawyers with community legal services.

Significant cases and themes***Freedom of Information***

The exemptions receiving the most attention during the year were the legal professional privilege exemption and the internal working documents exemption. An Appeal Panel decision that dealt with the application of the internal working documents exemption, and the factors relevant to the public interest test contained within the exemption, was *Director General, Department of Community Services v Latham* [2000] NSWADTAP 21.

The issue of the test to be applied when determining whether a record relating to personal affairs is misleading was examined in *Director General, Department of Community Services v S* [2000] NSWADTAP 21. Other important issues dealt with in this case were: the circumstances in which an amendment will be

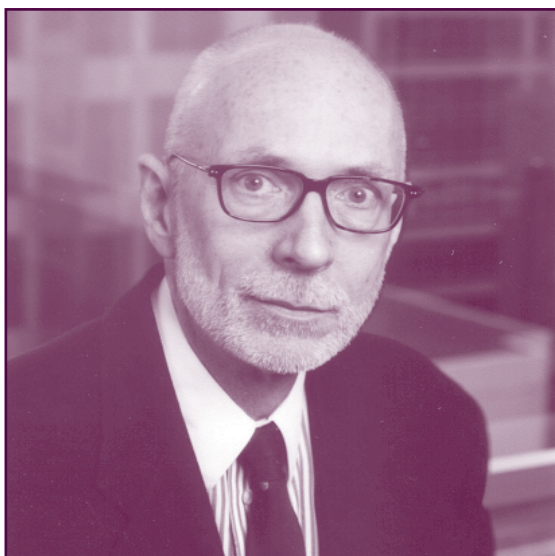
permitted in relation to the record of a professional opinion about an individual and whether an order for amendment can take the form of obliteration of the administrative record.

Numerous cases at the Divisional and Appeal Panel levels have dealt with legal professional privilege. The most recent decision is *Charteris v General Manager, Leichhardt Municipal Council* [2001] NSWADTAP 12. The circumstances in which the privilege might be lost by waiver were dealt with in *Walden & Toni v General Manager, Leichhardt Municipal Council* [2001] NSWADT 81.

Original Jurisdiction

While most of the workload of the General Division involves merits review of administrative decisions, two aspects of its original decisions jurisdiction were active during the year. There were several cases where defeated candidates in council elections applied for the successful candidate to be dismissed from public office due to an irregularity in the poll or other disqualifying factors. Illustrations of this jurisdiction are found in *Burston v Cosh & ors* [2000] NSWADT 163 where the application was dismissed, and *Insley v State Electoral Cmr & ors* [2000] NSWADT 90, where an order for dismissal from public office was made.

In the veterinary disciplinary jurisdiction, the Tribunal ordered the suspension from practice for 3 months of a registered veterinary surgeon for professional misconduct, and made other orders requiring further professional education and non-involvement in supervision of a practice. The orders were the subject of an appeal to the Appeal Panel. The appeal was dismissed. *Veterinary Surgeons Investigating Committee v Gelderman* [2000] NSWADT 117; on appeal, [2001] NSWADTAP 27.



Tom Kelly

COMMUNITY SERVICES DIVISION

Structure and functions

In merits review matters the Tribunal sits with three members: one legally qualified member and two members who are expert in areas including disability, child protection, ethnic and Aboriginal issues. In matters under the *Child Protection (Prohibited Employment) Act 1998* it is usual for one judicial member to sit alone, although there is provision for three members if required.

During the year the Division's jurisdiction was unaltered. It continued to hear and determine applications for review of decisions made by community welfare legislation including the *Disability Services Act 1993* the *Children (Care and Protection) Act 1989* and to make original decisions, under the *Child Protection (Prohibited Employment) Act 1998*.

The Division is the successor to the Community Services Appeals Tribunal (CSAT). The former President of CSAT and founding Divisional Head of the Community Services Division, Deputy President Nancy Hennessy, completed a successful period of four years as head of the jurisdiction on 31 May 2001. Her period as Divisional Head was marked by emphasis on empathetic procedures avoiding legalism, use of the Tribunal's inquiry powers and an active sharing of responsibilities for the conduct of hearings and the making of decisions between in multi member panels.

The new Divisional Head is Deputy President Tom Kelly, appointed for three years commencing 1 June 2001.

Case load

The majority of applications made to the Tribunal during the year concerned applications under the *Child Protection (Prohibited Employment) Act 1998* for declarations that a person is not a prohibited person. This Act prevents a "prohibited person" from applying for, undertaking or remaining in, child-related employment. A prohibited person is a person who has been convicted of a "serious sex offence". The Act gives the Community Services Division power to make an order declaring that the Act does not apply to a person in respect of a specified offence. The effect of such a declaration is that the person can apply for or remain in child related employment.

The majority of applications made to the Community Services Division during the year concerned applications under the Child Protection (Prohibited Employment) Act 1998 for declarations that a person is not a prohibited person.

Of the 44 applications for declarations made during the year, nine were withdrawn or dismissed. In 15 cases the Tribunal made a declaration that the applicant was not a prohibited person. No applications for declarations which went on to a full hearing were refused. The balance are still pending.

Significant changes in jurisdiction

The Children and Young Persons (Care and Protection) Act 1998 was passed in December 1998. Its provisions are being progressively commenced. The Act will ultimately replace the *Children (Care and Protection) Act 1987*. The new legislation changes the Tribunal's jurisdiction in relation to care and protection matters. New jurisdiction in relation to decisions about accommodation for children and young

people in detention or remand centres came into effect on 18 December 2000. To date, the Tribunal has not received any applications in relation to such decisions.

During the period July to September 2001, further provisions will be commenced which either replace or expand the Tribunal's existing jurisdiction. For example, from 1 July 2001 the Tribunal will be able to review decisions relating to the authorisation of carers, the removal of children from authorised carers and the accreditation of departments and organisations as service providers. Later in the year decisions relating to children's employment, licensing of children's

services and family day care services will be added.

From September 2001, the Tribunal will no longer be able to review decisions to refuse to terminate the Minister for Community Services guardianship of a ward. Such a decision is generally made when a natural parent requests that a child or children be restored to his or her care. This jurisdiction overlaps with the jurisdiction of the Children's Court to revoke a wardship order. There is no real justification for a parent having a choice about whether to pursue the matter in the Children's Court or the Tribunal and in some cases the Tribunal has refused to entertain an appeal when the Children's Court has made an order within the previous twelve months.

EQUAL OPPORTUNITY DIVISION

Structure and functions

The Equal Opportunity Division is the successor to the Equal Opportunity Tribunal and its primary role is to undertake inquiries into complaints under the *Anti-Discrimination Act 1977* referred by the President of the Anti-Discrimination Board.

The Divisional Head is Deputy President, Judge Latham. Judge Latham serves on a part-time basis, and combines the role with her duties as a Judge of the District Court. During the year an arrangement was made with the Chief Judge of the District Court to list Judge Latham at the Tribunal for eight sitting weeks per year.

Case load

During the year the Division disposed of 118 complaints. A complaint will often refer to a variety of circumstances and allege more than one form of unlawful discrimination. The most frequently cited grounds of complaint were sex (26), disability (29), race (37) homosexuality (15) and sexual harassment (12). In addition, there was an allegation of victimisation in 33 cases, an allegation that is often linked to the citing of primary ground of discrimination.

Mediation outcomes

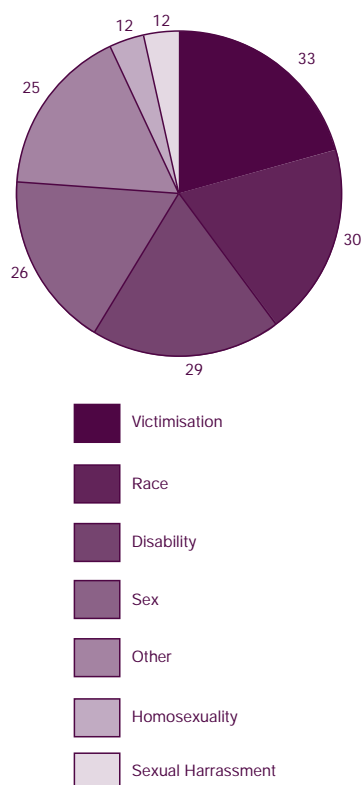
40 matters were referred for mediation by an Equal Opportunity Division member with special training in mediation techniques. Of those matters 27 were resolved and three were referred for hearing. Ten remained unresolved and are yet to be referred for hearing at year's end.

Use of case conferences

Following the introduction of case conferencing in accordance with Practice Note 2, the Division has had the opportunity to consolidate and review this aspect of its practice. The case conference system ensures that soon after filing, the complaint will be examined by a judicial member of the Division. That member will remain responsible for the progress of the case and will normally be expected to preside at any hearing. Under this approach the parties are given the opportunity at an early stage to have a frank, qualitative discussion of the case with an experienced member.

Members report that this system is proving effective in identifying which cases are capable of resolution versus those which should be brought forward for hearing and determination as soon as is practicable.

Applications by Ground



Whilst the impressions of the parties, their legal representatives and the Division's judicial members continue to be favourable, there is a need to ensure consistency within the Division and that the aims of case conferencing were being met. To this end, the judicial members of the Division have organised a series of discussions, facilitated by Zita Antonios (a non-judicial member of the Tribunal and former Federal Race Discrimination Commissioner), which will focus on the development of guidelines for case conferencing. It is anticipated that these guidelines will contribute towards best practice in case conferencing and further enhance the work of the Division.

Timeliness

The Tribunal remains concerned over the length of time some matters take to reach a hearing. This is a special concern in circumstances where the complaint has already spent a considerable time with the Anti-Discrimination Board before being referred to the Tribunal. These delays are invariably party-induced. The Tribunal is only able to set a hearing date once the parties are ready.

Insignificant complaints

The Anti-Discrimination Act 1977 contains two mechanisms for filtering insignificant complaints. The first is found in section 90 - the power of the President of the Board to decline to entertain a complaint if he or she is satisfied that it is frivolous, vexatious, misconceived or lacking in substance. However, the filter does not preclude the complainant from requiring under section 91 that the complaint be referred to the Tribunal for inquiry. The second filter is provided by

section 111 where - the Tribunal has power to dismiss a complaint at any stage if satisfied that it is frivolous, vexatious, misconceived or lacking in substance.

The Tribunal has recently reviewed respondents' use of the power to apply for dismissal of complaints under section 111. It emerged that there is a very high correlation between dismissal of complaints prior to hearing by the Tribunal and those which were referred under section 91. Of complaints referred under section 91 and finalised in the two years to June 2001, only 15 per cent proceeded to a full hearing. Of the 15 per cent, no complaints were upheld by the Tribunal. Of the remaining 85 per cent, approximately half were dismissed under section 111 and most of the remainder were withdrawn, with some the subject of terms of settlement. Recently, the Appeal Panel delivered a decision about the approach to be taken by the Division when considering respondent's applications for summary dismissal under section 111.

Review of legislation

The NSW Law Reform Commission released its Report No 92 on the *Anti-Discrimination Act 1977* in November 1999. The Report made recommendations about substantive anti-discrimination law issues and also included recommendations in relation to practices and procedures in the Equal Opportunity Division. The Tribunal made submissions to the Attorney General's Department in relation to implementation of the Report. The Tribunal understands the Government intends to respond to the recommendations in the near future.

Significant cases and themes

Disability and public service health assessment procedures

The important issue of disability and public service health assessment procedures was addressed in the Appeal Panel decision, *Commissioner, Corrective Services v Maxwell* [2001] NSWADTAP 21. The complainant had been refused employment as an instructor in the prison system because his eyesight required glasses albeit of a usual strength. The Equal Opportunity Division found the complainant's complaint of unlawful discrimination on the grounds of disability substantiated. The Appeal Panel was satisfied that the disability discrimination provisions of the *Anti-Discrimination Act 1977* did apply to the determination of health standards applicable to public service positions and to specific health assessments of individual applicants.

As a result of a decision of the Supreme Court in 1987, there was a widely-held view that the Act's disability discrimination jurisdiction did not apply to recruitment decisions in State public sector employment. The Appeal Panel noted that since the Supreme Court decision, both the public sector legislation and anti-discrimination legislation have changed; landmark Commonwealth disability discrimination legislation has been enacted; and the High Court has made a number of statements about the overarching nature of equal opportunity and anti-discrimination legislation. The Appeal Panel upheld the Division's decision that it was necessary for a State employer, such as the Commissioner, to make recruitment decisions that comply with both bodies of law.

The Appeal Panel also rejected the Commissioner's contention that the employer was free to determine conclusively what physical or other abilities constituted the 'inherent requirements' of a position and that the Tribunal was bound to adopt the same view.

Racial vilification and the proper complainant

A case which attracted considerable interest was the complaint brought by the Western Aboriginal Legal Service Ltd against the radio talk back presenter, Alan Jones, and his employer Radio Station 2UE, alleging that certain on-air comments made in 1995 constituted racial vilification.

The Western Aboriginal Legal Service took over as the named complainant after the original individual complainant (its executive officer) left employment with the Service. The Equal Opportunity Division found the complaint substantiated against both respondents, and ordered them to broadcast an apology in specified terms, with Mr Jones to send a letter of apology to the complainant in specified terms.

The Appeal Panel set aside the decision and held that where the complaint is one of vilification, a corporation cannot make an individual complaint: *Jones & anor -v- Western Aboriginal Legal Service Limited* (EOD) [2000] NSWADTAP 28. The Appeal Panel said that it appeared the only way in which a corporation can constitute a complainant in a racial vilification complaint is as a body making a representative complaint, which may in turn, only be made on behalf of named persons. The Division has been of the view that the legislative scheme did permit a corporation to lodge a representative complaint without

naming any specific persons on whose behalf it was lodged. The Appeal Panel stated, "The issue at the heart of this appeal cannot, in the panel's view, be described as a procedural defect. The constitution of the complaint and the correct complainant are vital to the exercise of the Tribunal's jurisdiction." An appeal to the Supreme Court has been lodged.

Conduct of Police affected by the Anti-Discrimination Legislation

If a police officer behaves in an unlawfully discriminatory way when effecting an arrest, can the conduct be the subject of a complaint under the *Anti-Discrimination Act 1977*? This question arose in a case relating to the

treatment of a young Aboriginal man held in police custody. The complaint, brought by the man's parents after his death, was that the physical actions of the arresting police constituted in the circumstances discriminatory conduct on the ground of race, and that verbal abuse occurred which amounted to racial vilification.

If a police officer behaves in an unlawfully discriminatory way when effecting an arrest, can the conduct be the subject of a complaint under the Anti-Discrimination Act 1977?

The Division found both categories of complaint substantiated, and made orders against the Commissioner of Police and individual police officers.

Following lodgment of the appeal, the Appeal Panel decided to refer a question of law to the Supreme Court. i.e. whether police conduct pertaining to arrest can be construed as the 'provision of a service' and therefore falls within the Act; and also whether the Commissioner, as their employer, could be held

liable for their actions as police officers. On the latter point the Supreme Court held that the employer is liable, but the relevant entity is the State of New South Wales not the Commissioner. On the primary question the Supreme Court decided that the arrest was not a 'service' to a person within the meaning of the Act, but once placed in custody, the police officers were providing a service to a person within the meaning of the Act: *Commissioner of Police, NSW Police Service v Estate Edward John & ors.* [2001] NSWSC 745. An appeal to the Court of Appeal has been lodged.

RETAIL LEASES DIVISION

Structure and functions

The Retail Leases Division is a successor to the retail leases jurisdiction of the Commercial Tribunal. The Division hears retail tenancy claims from either lessors or lessees arising under the Retail Leases Act 1994 . A single judicial member hears applications.

A second category of claim, an 'unconscionable conduct claim', is permitted by the legislation, through an amendment to the Act

in 1998. It is expected that that jurisdiction will commence towards the end of 2001, following the enactment of relevant federal legislation.

The Act provides for a separate procedure in relation to unconscionable conduct claims. They must be heard by a panel of three, including two non-judicial members with lessee or lessor backgrounds.

There has, as yet, been no appointment of a Divisional Head. The President, in conjunction with the Registrar, has undertaken these responsibilities.

Case load

The number of applications filed increased to 107 this year, compared to 52 last year. As in previous years, many of the applications were for interim orders arising from circumstances such as lessor lock-outs of the lessee for alleged non-payment of rent.

Often interim orders return possession to the lessee on the basis that they pay the disputed rent with the matter referred for mediation to the Retail Tenancy Unit (a statutory mediation service). Most of these disputes do not return to the Tribunal. This pattern is reflected in the number of final orders made during the year, five based on terms of settlement and 15 after hearing.

Early attempts at resolution

There is a strong emphasis on early resolution of tenancy disputes. As soon as the Tribunal receives an application, the Retail Tenancy Unit is notified. If the Unit has not been involved in the matter, wherever practical it is referred to the Unit. An officer of the Unit often attends hearings. During the year most of the preliminary and main hearings were conducted by one of three judicial members, each of whom is a highly experienced practising senior solicitor with expertise in commercial leasing. In most cases, the members actively seek to generate options for early resolution.

Significant cases and themes

In the cases where contested hearings occurred leading to written decisions, the

Division dealt with some common types of disputes in commercial retail lease relationships, such as:

- scope of exclusivity clauses;
- lock-outs of lessees by lessors for alleged non-payment of rent;
- rights of shopping centre managers to see lessee turnover figures;
- agreements to a new lease and its terms; and
- alleged oral variations to the strict terms of the lease.

Some less common disputes were also dealt with such as:

- the nature of the right of the lessor/shopping centre manager to remove a lessee in good standing in order to undertake demolition works.

LEGAL SERVICES DIVISION

Structure and functions

The Legal Services Division is the successor to the Legal Services Tribunal. The Division determines charges alleging professional misconduct or unsatisfactory professional conduct laid against legal practitioners and licensed conveyancers.

Hearings are conducted by three member panels, comprising two eminent legal practitioners and a non-judicial member drawn from the general community.

The Divisional Head is Deputy President Caroline Needham SC.

There is a strong emphasis on early resolution of tenancy disputes.

Case load

38 matters were filed during the year. Of these, 26 involved exclusively allegations of professional misconduct, while five contained both professional misconduct and unsatisfactory professional conduct allegations. In six cases the allegations were confined to unsatisfactory professional conduct.

Unsatisfactory professional conduct cases are heard in private.

Many of the matters pending in the Division have been affected by the ruling of the High Court in *Barwick v Law Society of New South Wales* [2000] HCA 2. As a result,

15 matters without jurisdiction were withdrawn as they were affected by the procedural defect in the way the investigation was conducted by the informant professional body. The procedural defects have been attended to by the professional bodies, and many of the matters have been recommenced in the Tribunal. There were 12 final orders made during the year.

Legislative reform

Following widespread concern in relation to using legal practitioners of insolvency laws as a way of avoiding debts, in particular tax liabilities, and over cases where legal practitioners had admitted not paying tax at all, the *Legal Profession Amendment (Complaints and Discipline) Act 2001* was

enacted on 14 June 2001. When commenced, the rules for composition of the Legal Services Division will change with 'serious matters' being heard by panels that may include two community members and be headed by a Judge.

Significant cases and themes

During the year the Tribunal ordered that eight solicitors be struck off for professional misconduct. The types of professional misconduct included: making false documents; misleading clients; failing to keep accounts; conviction for indictable offence (making amphetamines); and misappropriation of trust account funds. In one instance an order for

compensation in favour of a client was made. In two cases a solicitor was found guilty of professional misconduct but not struck off. In another case a public reprimand, fine and practise restrictions were imposed, in relation to significant, unexplained delays in the handling of personal injury claims, and failures to respond to Law Society communications. In the other a reprimand and a substantial fine were imposed in respect of admitted professional misconduct in failing to observe oral undertakings and to respond to communications from the Legal Services Commissioner.

APPEAL PANEL

One of the features of the Tribunal's structure is the availability of internal appeal. Almost all decisions made at the Divisional level,

Following widespread concern in relation to using legal practitioners of insolvency laws as a way of avoiding debts, in particular tax liabilities, and over cases where legal practitioners had admitted not paying tax at all, the Legal Profession Amendment (Complaints and Discipline) Act (NSW) was enacted on 14 June 2001.

including decisions which are procedural and not final, may be the subject of appeal. The appeal is as of right in relation to questions of law, and by leave as to the merits. Most of the appeals (reflecting the underlying distribution of business) have arisen in relation to decisions of the General Division and the Equal Opportunity Division.

Of the 45 appeals disposed of, 22 arose from the General Division and 15 from the Equal Opportunity Division. There is a relatively high ratio of appeals to final decisions in the case of the Equal Opportunity Division (14 lodged of 118 disposals). Nine of 15 Equal Opportunity appeals disposed of were successful in whole or in part. Six of 22 General Division appeals were successful in whole or in part.

The Appeal Panel's procedures are simple. Many of the appeals are brought by litigants in person. Requirements to produce technical submissions and documentation are avoided in these cases. The Appeal Panel seeks not to replicate the procedures of the appellate courts, in particular positively discouraging such practices as the preparation of Appeal Books.

Significant cases and themes

As noted, most of the appeals arise from the General Division and the Equal Opportunity Division. The Appeal Panel decisions of significance for the law as it is applied in the

particular Divisions have been mentioned already within the relevant Division's reports.

Often appellants are not conversant with the important question of law/question of fact distinction. They are aggrieved by the decision against which they are appealing often because the evidence in support of their case was not accepted. This is not enough for the Appeal Panel to agree to conduct a full hearing. It is first necessary to identify that

there is an arguable error of law that, if established, would justify interfering with the Division's decision. Frequently Appeal Panel decisions examine whether an arguable error of law has been identified. If it has not, the appeal is dismissed. A leading decision on this issue in the latest period is *Carter v Commissioner of Police, New South Wales Police Service* [2000] NSWADTAP 22.

The Appeal Panel has also expressed some concern over the

need for Tribunal Divisions to be careful in the formulation of their final orders. Normally, a full set of orders is made and incorporated in the final reasons for decision. Sometimes the orders may be of a kind that call on a party such as a government agency to adopt a course of action. The Appeal Panel has suggested that final orders should on occasion be qualified so that the party required to take action under the order is given an opportunity to make any submissions about the implementation of the order. An example of such a suggestion is found in *Director General, Department of Community Services v S* [2000] NSWADTAP 27.

The Appeal Panel's procedures are simple. Many of the appeals are brought by litigants in person. Requirements to produce technical submissions and documentation are avoided in these cases.

Another issue of general significance that has arisen relates to the making of findings of fact on material considered after the close of the hearing. Due to the flexible nature of the Tribunal's inquiry powers, and sometimes because of the limited contribution made by the parties at the hearing, the Tribunal will often undertake a good deal of its scrutiny and evaluation of the evidence and relevant material after the hearing. There is a danger that new relevant evidence may be identified without referring it back to the parties. This issue was discussed in *Chief Executive, SAS Trustee Corporation v Daykin* [2000] NSWADTAP 20.

SUPREME COURT

There is a right of appeal from the Appeal Panel on a question of law to the Supreme Court. The Appeal Panel may also refer a question of law to the Supreme Court. During the year under review, there were five Supreme Court decisions affecting the Tribunal.

The Court of Appeal in *Carson v Legal Services Commissioner* [2000] NSWCA 308 dealt with a number of aspects of the procedure to be followed by the Legal Services Commissioner in relation to complaints of professional misconduct laid before the Legal Services Division of the Tribunal. Proceedings instituted by the Commissioner in the Tribunal were declared void because of failure to accord natural justice. The decision also deals with the circumstances in which it may be appropriate to stay permanently disciplinary proceedings.

In *Cheung v Administrative Decisions Tribunal* [2000] NSWSC 1062, the Supreme Court found that the Tribunal did not have jurisdiction (contrary to its decision) to entertain an

application in relation to a disputed council election result after the time fixed by the relevant legislation. The Tribunal's general power to grant an extension of time was found not to be applicable.

In *Commissioner for Children and Young People v G and anor* [2001] NSWSC 534 the Court found the Tribunal had not afforded the Commissioner a reasonable opportunity to be heard when it dealt with an urgent stay application from a person who had applied to have a declaration made that he was not a prohibited person.

In *New South Wales Breeding and Racing v Administrative Decisions Tribunal* [2001] NSWSC 494 the Supreme Court declined to entertain an application for judicial review of a decision of the Equal Opportunity Division, having noted that the applicant had made a calculated decision to bypass the Appeal Panel of the Tribunal. The Court was of the view that the applicant should exhaust the alternative avenue afforded by the Tribunal's legislation, the Appeal Panel. The application for judicial review was refused, and the applicant was ordered to pay costs.

In *Daykin v SAS Trustee Corporation* [2001] NSWSC 58, a single Judge dealt with a preliminary point and applied the rule that where the presiding member in the Appeal Panel was a Judge, the appeal was to be dealt with by the Court of Appeal.

ADMINISTRATION

Membership

The Tribunal has two full-time members, the President, Judge Kevin O'Connor (whose time is divided between his responsibilities to the Tribunal and as part-time Chairperson of the Fair Trading Tribunal) and Deputy President Nancy Hennessy, who took up full-time appointment on 8 March 2001. Ms Hennessy joined the Tribunal on 1 January 1999 as part-time Divisional Head, Community Services Division. Since that time, she has been assigned to all Divisions except for the Legal Services Division. She has led Tribunal activity in areas such as member education and the preparation of the members' manual. Ms Hennessy has been the author of many of the leading decisions in relation to occupational licensing, freedom of information and review of community services decisions.

The Tribunal remains overwhelmingly reliant on its large team of part-time members - judicial (legally qualified) and non-judicial (specialist expert and community members).

During the year, three of the Tribunal's part-time members took up full-time judicial appointments. Mr Michael Finnane QC, a former President, Legal Services Tribunal as a District Court Judge; Mr Kenneth Raphael as a Federal Magistrate; and Ms Narelle Bell as a Senior Member, Federal Administrative Appeals Tribunal. We thank them for their contribution to the Tribunal.

The Tribunal consults its users through a variety of methods to obtain feedback about its procedures and services.

Case Management

Overview

The Tribunal's procedures and forms are designed to be accessible and to assist in resolving disputes efficiently and quickly.

The Tribunal consults its users through a variety of methods to obtain feedback about its procedures and services.

The Tribunal conducts User Group Forums on issues such as Freedom of Information and flexible service delivery for people with a disability. The establishment of Rule Subcommittees, discussed below, will provide further opportunity for the Tribunal to gain input from its users and stakeholders.

Two client surveys were conducted in the reporting period. The first survey was conducted in November 2000 and targeted people attending the Tribunal in Sydney. The second survey was conducted in June 2001 and was sent out with correspondence as well as given to people at the counter. Feedback obtained from these surveys is used to improve services.

A feedback form has been introduced and is available at the registry counter to encourage people to provide suggestions for improvements.

The Tribunal's website is www.lawlink.nsw.gov.au/adt. Information about the Tribunal, its forms, practice notes, legislation and decisions are all available on the website.

Rules

The Tribunal's current rules are the *Administrative Decisions Tribunal (Interim Rules) 1998* contained in the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998*.

The Rule Committee

The Tribunal is empowered to make rules with respect to its practices and procedures. The Tribunal's Rule Committee comprises the Tribunal's President, Judge Kevin O'Connor (Chair); the Tribunal's Deputy Presidents: Nancy Hennessy, Caroline Needham, Judge Megan Latham and Tom Kelly (appointed 1 June 2001); Justice Alwynne Rowlands (founding President, Victorian Administrative Appeals Tribunal, presently Family Court Judge), Professor Margaret Allars (administrative law expert) and Mark Robinson (barrister and judicial member of the Tribunal).

The Committee met twice in the reporting period and considered issues such as matters arising from the Parliamentary inquiry into the operation and jurisdiction of the Tribunal, the practice notes and the practices and procedures in professional discipline matters relating to veterinary surgeons.

The Rule Committee also established Divisional Subcommittees to make recommendations to the Rule Committee about practices and procedures. The Subcommittees will meet for the first time in July and August 2001. The membership of the Subcommittees includes, in addition to

members of the Tribunal, people who represent the community and other relevant special interests in the area of each Division's jurisdiction.

The Rule Committee also established Divisional Subcommittees to make recommendations to the Rule Committee about practices and procedures.

Practice Notes

The President has issued seven practice notes relating to case management procedures (including Practice Notes No. 4 to No. 7 during the current year):

- PN1 General Division: Freedom of Information Review Applications
- PN2 Equal Opportunity Division: Case Management Procedures
- PN3 Retail Leases Division: Retail Tenancy Claims
- PN4 Application to Change Hearing Dates
- PN5 Appeals: Procedures for Appeals to the Appeal Panel of the Tribunal
- PN 6 General Division: Referral of Complaint under the Veterinary Surgeons Act 1986 and
- PN7 All Divisions: Summons to Attend and Give Evidence; Summons to Attend and to Produce Documents or other things: Tribunal Practice.

Copies of the practice notes are available from the registry and on the website.

Regional services

The Tribunal is committed to providing access to parties who reside outside the Sydney metropolitan area.

The Tribunal regularly uses telephone conferencing facilities, in particular, for directions hearings and applications for stay orders. These facilities have also been used in hearings where witness evidence is not required.

The Tribunal sits in country locations whenever required. The Tribunal uses video conferencing where appropriate.

In other matters, where the parties' cases are based on submissions rather than witness evidence, the Tribunal determines the matters without the need for the parties to attend a formal hearing.

Parties are able to obtain access to information about the Tribunal, cases and legislation and forms from the Tribunal's website.

Alternative dispute resolution

The Tribunal uses a variety of alternative dispute resolution options. In the early stages of alternative dispute resolution, the judicial member may conduct a preliminary conference. In addition, in equal opportunity, freedom of information and privacy matters, case conferences or planning meetings are conducted to explore settlement possibilities and manage the progress of matters.

Mediation is used extensively in the Equal

Opportunity, Community Services and Retail Leases Divisions. In the Equal Opportunity and Community Services Divisions mediation is conducted by members of the Tribunal who have been trained in mediation techniques. In the Retail Leases Division mediation is mandatory prior to an

application being lodged with the Tribunal. Mediation is conducted by the Retail Tenancy Unit of the Department of State and Regional Development. Officers from the Retail Tenancy Unit can also provide mediation assistance

during proceedings where appropriate.

The *Administrative Decisions Tribunal Act 1997* also allows for the appointment of assessors and the use of early neutral evaluation. These provisions are not currently being used by the Tribunal.

The Registry

Accommodation

The registry is located at Level 15, 111 Elizabeth Street Sydney. Currently, there are three hearing rooms, interview and conference rooms, and mediation facilities.

Access for people with disabilities was included in the design.

During the next reporting year, accommodation will be expanded to incorporate an additional hearing room.

Staff

The registry has a position of Registrar, two Deputy Registrars and seven Tribunal

Parties are able to obtain access to information about the Tribunal, cases and legislation and forms from the Tribunal's website.

Mediation is used extensively in the Equal Opportunity, Community Services and Retail Leases Divisions.

officers. The Registrar position is filled by two staff who job share.

The registry provides the following services: enquiries, registrations, hearing support, case management and general administrative support to members.

During the reporting year, a review of the registry was undertaken, and the recommendations of that review will be implemented by December 2001. The recommendations include the creation of a position of Research Associate to the President of the Administrative Decisions Tribunal. The role of the Research Associate will be to provide legal and research support to assist the President and full time Deputy President in their deliberations, and in keeping members of the Tribunal abreast of current issues.

The President and full time Deputy President were fortunate to have the assistance of two law students over some of the year, to undertake legal research including the development of the Members Manual.

Staff development

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

This year, the registry's priority was training in disability awareness, as part of the registry's commitment to flexible service delivery. Staff have developed an action plan to improve access and services for people with a disability.

Additionally, staff have received in house training on new legislation and procedural changes.

Reference collection

The Tribunal maintains a basic reference library for the use of members. The quality of the collection was substantially improved during the year with the acquisition of full sets of the Commonwealth Law Reports, the NSW Reports and Weekly Notes.

For additional professional library services, the Tribunal relies on other libraries within the Attorney General's Department.

A collection of all the decisions of the Tribunal is kept in the registry. Decisions can also be accessed through the Tribunal's website.

Budget and financial information

The Tribunal is an independent statutory body which for budgetary purposes is a business centre within the Attorney General's Department.

The Tribunal has two sources of funds: government funding provided from within the budget allocated to the Attorney General's Department and funding allocated by the trustees of the Public Purpose Fund. The Public Purpose Fund funding is used primarily to meet the costs of operation of the Legal Services Division. The Public Purpose Fund comprises interest earned on solicitor's clients' funds held in compulsory trust account deposits under the Legal Profession Act 1987. Appendix C provides a picture of expenditure incurred by the Tribunal in the reporting period.

EDUCATION AND PROMOTION

Website

The main gateway to information about the Tribunal and its work is the Tribunal's website. The website's rate of use has grown significantly during 2000-2001 when there were over 379,715 pages of the site viewed by users, an average of 31,659 pages per month, compared to 15,750 in the previous year.

All reserved decisions of the Tribunal, unless subject to a confidentiality order, are electronically published in the CaseLaw NSW service managed by the Attorney General's Department and on the most comprehensive legal information site in Australia, the Australian Legal Information Institute (Austlii). The CaseLaw service has highly developed, user friendly search facilities. In the current year, 240 reserved decisions were electronically published. This method of publication enables members to keep in touch with the Tribunal's approach to key legal issues, and serves the needs of parties and practitioners for up-to-date precedents. The previous decisions of the Tribunal are routinely cited and considered in proceedings, thereby contributing to meeting the key goals of any judicial decision-making body, those of consistency, predicability and rationality.

Decisions of the Tribunal are frequently referred to in the media, especially freedom of information, equal opportunity and legal profession discipline cases.

All practice notes and standard forms are available on the website. The Tribunal has not at this stage provided for online direct communication by e-mail or electronic lodgment. These facilities are presently the subject of trials in other courts and tribunals

in the Attorney General's portfolio. The Tribunal will assess the success of online facilities in these areas.

Brochures

The Tribunal has material available in relation to its operations, and is currently devising new material dealing with particular topics, such as mediation and merits review applications.

Public presentations

The President, Divisional Heads and other members of the Tribunal are invited to give presentations about the work of the Tribunal, usually to professional audiences. This continued to occur during the year, and a list of significant speeches and presentations given by the President and the Deputy Presidents during the year is included in Appendix D. The papers may be obtained from the Tribunal.

Presentations on the role of the Tribunal and its jurisdiction are also given to public sector affiliated organisations such as the Freedom of Information Practitioners Network.

Member education

The quality of the Tribunal's procedures and decisions is influenced by many factors, one of which is the level of skill and understanding that members have in the work of the Tribunal. To this end, significant work has been undertaken over the last year to develop a Members Manual which will assist members in performing their role. It is expected that the Manual will be launched towards the end of 2001.

During October 2000, a Professional Development Seminar for members was held on Good Conduct of Proceedings. The objective of the Seminar was to deal with a number of specific practical issues that arise

for members in the conduct of proceedings in the Tribunal. The key note address was given by The Hon. Justice Mason, President, Court of Appeal. Other topics included:

- The Conduct of Tribunal Hearings from the Practitioner's Perspective;
- The Tribunal's Fact Finding process;
- Multi Member Panels; and
- Questioning Techniques.

A video of this seminar is currently being produced.

Good Decision Writing: package of videos and training material

A professionally produced set of videos of the 1999 seminar on Good Decision Writing, together with the relevant papers, are now available from the Tribunal. The package is made available to incoming members to assist them in decision writing. It has also been promoted to other tribunals and organisations such as government authorities with statutory decision-making responsibilities and university law schools with special courses relating to tribunals. Over 30 bodies have purchased the package including many of Australia's major tribunals. The Tribunal has received positive feedback about the quality of the seminar and the materials from experienced members of other tribunals. The videos are available at a reasonable cost to interested organisations.

A professionally produced set of videos of the 1999 seminar on Good Decision Writing, together with the relevant papers, are now available from the Tribunal.

Australian Institute of Judicial Administration (AIJA) and the Australian Institute of Administrative Law (AIAL)

Tribunal members and registry staff have actively participated in the work of the AIJA

and the AIAL. The AIJA has been giving special emphasis in recent years to issues relating to the operation of tribunals. The AIJA held its annual Conference on Tribunals in Sydney in June 2001, with the Tribunal providing administrative assistance. The President of the Victorian Civil and Administrative Tribunal, Supreme Court Justice, Murray Kellam, is presently the President of the AIJA. The AIAL, NSW branch holds regular seminars on administrative law issues, and the President of the Tribunal addressed a seminar on 9 March 2001 on issues relating to Tribunals. The President attended the national conference of the AIAL in June 1999 and July 2000.

Council of Australian Tribunals

There is great value in tribunal members and tribunal heads meet to discuss issues of common concern in the operation of tribunals. Key issues include: sharing knowledge in relation to operating procedures and systems; new developments in technology that support the hearing and registry functions; member education; member performance review and improvement systems; providing information and assistance to litigants in person; encouraging better processes on the part of government in relation to member selection and renewal; and remuneration and conditions issues. The Commonwealth Administrative Review Council is developing a proposal for the establishment of a national council for tribunals to operate under its auspices. Leading Australian tribunal heads, including the President of this Tribunal, have been consulted in relation to the proposal.

Appendix A: Legislation

Principal legislation

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

Primary statutes

Adoption Information Act 1990
 Adoption of Children Act 1965
 Agricultural Livestock (Disease Control Funding) Act 1998
 Anti-Discrimination Act 1977
 Apiaries Act 1985
 Architects Act 1921
 Births, Deaths and Marriages Registration Act 1995
 Boxing and Wrestling Control Act 1986
 Charitable Fundraising Act 1991
 Child Protection (Prohibited Employment) Act 1998
 Children and Young Persons (Care and Protection) Act 1998
 Community Justice Centres Act 1983
 Community Services (Complaints, Appeals and Monitoring) Act 1993
 Conveyancers Licensing Act 1995
 Co-operative Housing and Starr-Bowkett Societies Act 1998
 Dangerous Goods Act 1975
 Disability Services Act 1993
 Education Act 1990
 Electricity Supply Act 1995
 Employment Agents Act 1996
 Entertainment Industry Act 1989
 Environmental Planning and Assessment Act 1979
 Factories, Shops and Industries Act 1962
 Fair Trading Act 1987
 Fertilisers Act 1985
 Firearms Act 1996
 First Home Owner Grant Act 2000
 Fisheries Management Act 1994
 Food Act 1989
 Food Production (Safety) Act 1998
 Forestry Act 1916
 Freedom of Information Act 1989
 Gas Supply Act 1996
 Home Building Act 1989
 Horticultural Stock and Nurseries Act 1969
 Hunter Water Act 1991
 Impounding Act 1993
 Legal Profession Act 1987
 Local Government Act 1993
 Motor Dealers Act 1974
 Motor Vehicle Sports (Public Safety) Act 1985
 Mount Panorama Motor Racing Act 1989
 Native Title Act 1994
 Non-Indigenous Animals Act 1987
 Nursing Homes Act 1988

Occupational Health and Safety Act 1983
 Ombudsman Act 1974
 Passenger Transport Act 1990
 Pawnbrokers and Second-hand Dealers Act 1996
 Pesticides Act 1999
 Petroleum Product Subsidy Act 1997 s25
 Plant Diseases Act 1924
 Police Service Act 1990
 Privacy and Personal Information Protection Act 1998
 Private Hospitals and Day Procedure Centres Act 1998
 Public Health Act 1991
 Public Lotteries Act 1996
 Rail Safety Act 1993
 Registration of Interests in Goods Act 1986
 Retail Leases Act 1994
 Road and Rail Transport (Dangerous Goods) Act 1997
 Road Transport (General) Act 1999
 Road Transport (Vehicle Registration) Act 1997
 Security Industry Act 1997
 Stock (Artificial Breeding) Act 1985
 Surveyors Act 1929
 Sydney Water Act 1994
 Sydney Water Catchment Management Act 1998
 Taxation Administration Act 1996
 Theatres and Public Halls Act 1908
 Timber Marketing Act 1977
 Tow Truck Industry Act 1998
 Trade Measurement Act 1989
 Travel Agents Act 1986
 Veterinary Surgeons Act 1986
 Vocational Education and Training Accreditation Act 1990
 Veterinary Surgeons Act 1986
 Weapons Prohibition Act 1998
 Workplace Injury Management and Workers Compensation Act 1998
 Youth and Community Services Act 1973

Appendix B: List of Members

1 July 2000 to 30 June 2001

The following information is a list of members of the Tribunal's Divisions who held appointments during the reporting period. Some members had previous appointments to former Tribunals continued under the transitional provisions.

The names of members who are new appointees to the Tribunal during the reporting period are indicated with an asterisk (*).

The details of the appointments of the President and Deputy Presidents are shown.

President

Judge KEVIN PATRICK O'CONNOR, AM, appointed 10 August 1998 for a term of three years to 9 August 2001

Deputy President (Full-time)

NANCY LOUISE HENNESSY full-time Deputy President appointed 8 March 2001 to 7 March 2004. Assigned to General Division, Equal Opportunity Division and Retail Leases. Previously part-time Deputy President from 1 January 1999 to 7 March 2001 and Divisional Head, Community Services Division from 1 January 1999 to 31 May 2001

General Division**Divisional Head**

Judge KEVIN PATRICK O'CONNOR, AM, President, appointed 3 March 1999

Judicial Members

Appointed on 23 February 1999 for terms of three years except as indicated:

ANNE BRITTON (appointed on 30 July 1999 for a term of three years - also assigned to Community Services and Equal Opportunity Divisions)

ROBERT BARNETT DAVIDSON (also assigned to Retail Leases)

BRUCE GEORGE DONALD (also assigned to Retail Leases)

GABRIEL FLEMING (also assigned to Retail Leases)

SIGRID HIGGINS* (5 May 2001 to 14 May 2004)

GERALDINE MAPLE MYRA HOEBEN (also assigned to Retail Leases)

MERRYL ANNE LEES (7 March 2000 to 4 October 2002 - also assigned to Equal Opportunity Division)

STEPHEN HENRY MONTGOMERY* (15 May 2001 to 14 May 2004 - also assigned to Retail Leases)

MARK ANTHONY ROBINSON

PETER MARK SKINNER

MATTHEW BRUCE SMITH (23 February 1999 to 1 January 2001)

KIM WILSON (also assigned to Retail Leases Division)

Non-judicial Members

Appointed for period indicated:

ZITA ROSE ANTONIOS (7 March 2000 to 4 October 2002 - also assigned to Equal Opportunity Division)

MARY ELIZABETH BOLT (23 February 1999 to 31 May 2001 and 1 June 2001 to 31 May 2004 - also appointed to Community Services Division 1 June 2001)

KEVEN WILLIAM MAPPERSON (25 October 1999 to 22 February 2002)

MICHAEL JOHN MCDANIEL (7 March 2000 to 4 October 2002 - also assigned to Equal Opportunity Division)

ANTHONY PUN, OAM* (28 May 2001 to 19 April 2004)

PAUL JOHN ZAMMIT* (28 May 2001 to 19 April 2004 - also assigned to Retail Leases)

Non-judicial Members appointed to Tribunal pursuant to Schedule 2, Part 4, Division 3 of the Administrative Decisions Tribunal Act 1997 and the Public Health Act 1997

Appointed 20 April 2001 to 19 April 2004

ANNEMARIE HENNESSY*

RICHARD MATTHEWS*

Non-judicial Members appointed to Tribunal pursuant to the Veterinary Surgeons Act

Appointed on 21 June 1999 to 31 March 2002 except as indicated:

DAVID ROBERT HUTCHINS

JILL ELIZABETH MADDISON (1 July 1999 to 31 July 2000)

GARTH ALEXANDER MCGILVRAY

MARILYN ANNE MCKENZIE

GEOFFREY ARTHUR REED

RUTH ROSEMARY THOMPSON

FIONA JENNIFER CLARK (Community Member - 5 June 2000 to 31 March 2002)

ROSALIE MAYO-RAMSAY (Community Member - 5 June 2000 to 31 March 2002)

Non-judicial Members appointed to Tribunal pursuant to the Education Act

Appointed on 1 November 1999 to 22 February 2002:

KATHLEEN MCCREDIE, AM

JOSEPH RIORDAN, AO

Equal Opportunity Division**Divisional Head**

Judge MEGAN FAY LATHAM Deputy President, appointed on 30 November 1999 to 4 October 2002 (also assigned to Retail Leases and General Division)

Judicial Members

Appointed for period indicated:

REGINALD JAMES BARTLEY, AM (5 October 1999 to 4 October 2002 - also assigned to General Division)

NARELLE PATRICIA BELL (27 August 1997 to 15 July 2000 and 9 October 2000 to 30 June 2001)

MICHAEL CHARLES BIDDULPH (5 October 1999 to 4 October 2002)

DAVID LEE BITEL (6 October 1998 to 20 January 2001 and 21 January 2001 to 8 October 2003)

PENELOPE HELEN GOODE (6 October 1998 to 20 January 2001 and 21 January 2001 to 8 October 2003 - also assigned to General Division)

PHILLIPA JANE GORMLY* (28 May 2001 to 8 October 2003 - also assigned to Community Services Division)

GRAEME GORDON INNES, AM (5 October 1999 to 4 October 2002)
 GRAHAM REGINALD IRELAND (5 October 1999 to 4 October 2002)
 PETER EDWARD KING (6 October 1998 to 20 January 2001)
 CHRISSA TEREASA LOUKAS (16 July 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 PATRICIA JUNE O'SHANE AM (23 February 1999 to 22 February 2002)
 KENNETH RAPHAEL (5 October 1999 to 15 July 2000)
 NEIL ROBERT REES (27 August 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 SIMON JAMES RICE (5 October 1999 to 4 October 2002 - also assigned to General Division)

Non-judicial Members

Appointed for period indicated:
 MERILYN ALT (6 October 1998 to 20 January 2001 and 21 January 2001 to 8 October 2003)
 SUELLEN MITCHELL BULLOCK (5 October 1999 to 10 January 2001)
 STEVIE CLAYTON (5 October 1999 to 4 October 2002)
 RENIA DOUGLAS COX (16 July 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 KELLIE EDWARDS (5 October 1999 to 4 October 2002)
 LOLITA FARMER OAM (27 October 1999 to 4 October 2002)
 KAREN GREENHILL (16 July 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 SUSAN LEE HARBEN (5 October 1999 to 4 October 2002)
 RICHARD FREDERICK JONES (27 August 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 TINA LOUISE JOWETT (27 October 1999 to 4 October 2002)
 LAWRENCE KOK LOONG LAU (27 October 1999 to 4 October 2002)
 MILTON LUGER (6 October 1998 to 20 January 2001 and 21 January 2001 to 8 October 2002)
 OWEN MICHAEL MCDONALD OAM (6 October 1998 to 20 January 2001 and 21 January 2001 to 8 October 2003)
 LAURA CLARE MOONEY (27 August 1997 to 5 July 2000 and 22 August 2000 to 21 August 2003)
 LOUISE NEMETH DE BIKAL (27 August 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)
 ANTHONY NICHOLAS SILVA (5 October 1999 to 4 October 2002)
 JANE STRICKLAND (27 October 1999 to 4 October 2002)
 LUCY TAKSA (5 October 1999 to 4 October 2002)
 DOREEN TOLTZ (27 August 1997 to 15 July 2000 and 9 October 2000 to 8 October 2003)

Community Services Division

Divisional Head

THOMAS JOSEPH KELLY* Deputy President, appointed 1 June 2001 to 31 May 2004
 NANCY LOUISE HENNESSY Deputy President, Divisional Head, Community Service Division 25 June 1997 to 31 May 2001 (also assigned to General Division, Retail Leases and Equal Opportunity Division)

Members

Appointed for period indicated:
 DEBORAH JANE BRENNAN (1 January 1999 to 31 March 2001 - appointment expired)
 DAVID EDWIN DOBELL* (1 June 2001 to 31 May 2004)
 BEN AMI GELIN (1 January 1999 to 31 May 2004)
 JENNIFER GREEN (24 August 1999 to 23 August 2002)
 DENNY GROTH* (1 June 2001 to 31 May 2004)
 LYNN MARY HOULAHAN (24 August 1999 to 23 August 2002)
 ALAN JOHN KIRKLAND* (1 June 2001 to 31 May 2004)
 MEREDITH MARTIN (24 August 1999 to 23 August 2002)
 JAN MASON (1 January 1999 to 16 July 2001)
 LINDA MONAGHAN-NAGLE (1 January 1999 to 26 July 2000)
 JEANETTE MCDONALD MOSS (24 August 1999 to 23 August 2002)
 CLARITA NORMAN (1 January 1999 to 26 July 2000)
 LYLA JOY ROGAN (1 January 1999 to 26 July 2000)

Legal Services Division

Divisional Head

CAROLINE ANNE NEEDHAM, SC, Deputy President, appointed 1 October 1998 to 24 November 2002, (also assigned to General Division, Equal Opportunity Division and Retail Leases)

Barrister Members

Appointed on 29 November 1999 to 24 November 2002 except as indicated:
 THOMAS FREDERICK BATHURST QC (6 October 1998 to 26 October 2000)
 ANNABELLE CLAIRE BENNETT SC
 JENNIFER HERGEST HARLEY BLACKMAN (1 October 1998 to 30 November 2000)
 JOHN SEBASTIAN COOMBS QC
 MICHAEL JOHN FINNANE QC (1 October 1998 to 30 November 2000)
 GARRY FREDERICK FOSTER
 ROBERT BRUCE SCOTT MACFARLAN QC

JOHN ANTHONY MCCARTHY QC
LINTON MEARNES MORRIS QC
WILLIAM HENRIC NICHOLAS QC
SHARRON NORTON
DAVID PETER FORBES OFFICER QC
BRUCE CLIFFORD OSLINGTON QC
LIONEL PHILIP ROBBERDS QC
WENDY LOUISE ROBINSON QC
BARRY MICHAEL TOOMEY QC
JOHN NORMAN WEST QC

Solicitor Members

Appointed on 6 October 1998 to 26 October 2000
- appointments expired:

NEA ROSETTA GOODMAN
IAN FRANCIS MCDONELL
HELEN ANN REED

ROY FREDERICK TURNER, AM

Appointed on 6 October 1998 to 26 October 2000
and 4 June 2001 to 30 April 2004:

MICHAEL JAMES BARNES
JOHANNA PHEILS

Appointed on 29 November 1999 to 24 November
2002 except as indicated:

JOHN WILLIAM FRANCIS BRENNAN
JOSEPH JOHN CATANZARITI

ROGER JAMES CLISDELL
ROSEMARY COX

JOHN SYDNEY CURRIE

ANDREA DURBACH

ROBBERT JOHN FOX (also assigned to Retail
Leases and General Division)

CHRISTINE ANNE GAILEY

JULIA LOUISE GREENWOOD

SANDRA NERYL HALE

JENNIFER MARGARET MATTILA

GRAHAM BRIAN MOLLOY (also assigned to Retail
Leases)

GERARD CONRAD STAFF

CEDRIC BORHRSMANN VASS

ANTHONY TUMNER MARTIN (deceased 26
August 2000)

Licensee Members

Appointed on 6 October 1998 to 26 October 2000
- appointments expired

CHRISTINE EVA BARNES

MICHAEL JOHN REINHARD

Appointed on 1 May 2001 to 30 April 2004

PAULINE ELLEN CURRAEY*

JANICE LOUISE HEDISON*

Non-judicial Members

Appointed on 6 October 1998 to 26 October 2000
- appointments expired

MARK ANDREWS

PETER OWEN MILLER, AM

PAUL FRANCIS O'GRADY

GINA SARTORE

Appointed on 6 October 1998 to 26 October 2000
and 4 June 2001 to 30 April 2004

LESHIA OLGA BUBNIUK

RAY GIETZELT, AO

ELAINE HAYES

DEBORAH KLIKA

Appointed on 29 November 1999 to 24 November
2002

DAVID CHARLES BREHE

MICHAEL EUGENE COSTIGAN

BARRIE DRUMMOND DYSTER

KERSTI ELLIOTT

JENNIFER ANNE GEDDES

DAVIES HOAREAU

ALAN KENNEDY

DENIS MAHON

ANN MARIE MARA

ANNETTE O'NEILL* (also appointed to Retail
Leases and General Division)

Appointed on 1 May 2001 to 30 April 2004

ELISABETH WILMA KIRKBY*

CLEONIE ELLEN QUAYLE* (also assigned to Equal
Opportunity Division)

Retail Leases Division

The following members originally appointed to
other Divisions have been assigned by the
President to this Division:

RONALD BARNETT DAVIDSON

BRUCE GEORGE DONALD

GABRIEL FLEMING

ROBBERT JOHN FOX

NANCY LOUISE HENNESSY

GERALDINE MAPLE MYRA HOEBEN

STEPHEN HENRY MONTGOMERY*

Divisional Head

Division Head yet to be appointed

Judicial Member

MARGARET COLLEEN HOLE* (15 May 2001 to 14
May 2004)

Non-judicial Member

BETTY LORRAINE WEULE* (15 May 2001 to 14
May 2004 - also assigned to Equal Opportunity
Division)

Appendix C: Financial Information

FINANCIAL INFORMATION AS AT 30 JUNE 2001 ¹

	Actual \$	Budget \$	Variance ² \$	LSD ⁴	Total \$
Expenditure					
Employee Related Payments	642,010	761,999	119,989	1,564	643,574
Property Items	284,344	375,047	90,703	0	284,344
Total Other Operating	985,340	801,776	-\$183,564	76,918	1,062,258
TOTAL EXPENDITURE	1,911,695	1,938,822	27,127	78,482	1,990,177
REVENUE ³	658,019			78,481	736,500

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. Total expenditure for 2000/2001 was under the budget allocation by \$27,127.

3. Revenue

The Tribunal received \$736,500 in revenue. Of this \$689,481 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.

4. 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.

Additionally the costs of members fees and associated costs and transcription services provided to that Division are separately recouped. These are the amounts shown in the LSD column.

Appendix D: List of Speeches and Articles

President
Judge Kevin O'Connor

Papers presented as follows:

27 November 2000:

Recent Developments and Procedural Matters in the Administrative Decisions Tribunal
Australian Institute of Administrative Law,
New South Wales Chapter, Sydney

9 March 2001:

Current issues in the Tribunals and Courts
Australian Institute of Administrative Law,
New South Wales Chapter, Sydney
(presentation only - no papers available)

23 April 2001:

Administrative Law in Practice
Federal Court Indonesian Judicial Training
Program Judicial Commission of New South
Wales, Sydney

Published Articles:

The Federal Privacy Commissioner: Pursuing a systemic approach:
University of New South Wales Law Journal
(June 2001).

Deputy President
Judge Latham

Presentations as follows:

16 May 2001:

Practice and Procedure in Equal Opportunity (Law Week); and participated in seminar on State and Federal approaches, with Justice Branson commenting as to the new Federal jurisdiction.

Deputy President
Nancy Hennessy

Presentations as follows:

17 May 2001:

Freedom of Information Practitioners Network - FOI and the Tribunal

Appendix E: Statistics

GENERAL DIVISION 1/7/2000 - 30/6/2001

1. Case flow 2000-2001

Matters pending at 30 June 2000 126	New Applications filed 350	Disposals 358	Pending as at 30 June 01 118
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2. Applications by type 2000-2001

Applications for Original Decision 14	Applications for review 336
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3. Applications by Act 2000-2001

Subject by Act	
Apiaries Act	1
Boxing & Wrestling Act	2
Conveyancers Licencing Act	1
Education Act	1
Fair Trading Act	3
Firearms Act	53
First Home Owners Grant Act	5
Fisheries Management Act	34
Freedom of Information Act (amend)	6
Freedom of Information Act(access)	62
Home Building Act	13
Local Government Act (Original Decision)	1
Motor Dealers Act	2
Passenger Transport Act	36
Pawnbrokers & Second Hand Dealers Act	9
Privacy & Personal Information Protection Act	3
Public Health Act	5
Road Transport (General) Act (s.48)	73
Road Transport (General) Act (s.40) (original decision)	7
Security Industry Act	26
Tow Truck Act	4
Travel Agents Act	1
Vocational Education & Training Accreditation Act	1
Question of Jurisdiction	1

4. Outcomes in Merit Review matters

Application withdrawn Dismissed/No appearance Dismissed/Agreement reached Dismissed/ Declined 108	Decision under review affirmed 170	Decision under review set aside/Recommendation made/ Decision varied 70	No Jurisdiction 10
--	--	--	-----------------------

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

No. disposed of in < 6 months	280
No. disposed of in < 12 months	64
No. disposed of in > 12 months	14
No. disposed of in > 2 years	0

COMMUNITY SERVICES DIVISION 1/7/2000 - 30/6/2001

1. Case flow 2000-2001

Matter pending as at 30 June 2000 23*	New Applications filed 60	Disposals 37	Pending as at 30 June 01 46
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* Note: Number pending as at 30 June 2000 is different from previous annual report due to changes in method of counting and manual file reconciliation

2. Applications by type 2000-2001

Applications for original decision 44	Applications for review 16
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3. Applications by Subject 2000-2001

Subject	Number
Child care licence	2
Custody	9
Disability funding	2
Guardianship	2
Powers of Community Services Commission	0
No appellable decisions	0
No action on Community Service Commission recommendation	1
Declaration that Child Protection (Prohibited Employment) Act 1998 does not apply	44

4. Outcomes - Reviewable Decisions

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed/Declined 9	Decision under review affirmed 4	Decision under review set aside/Recommendation made/ Decision varied 0
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5. Outcomes- Original Decisions

Application withdrawn Dismissed/ No appearance Dismissed/ Agreement reached Dismissed/Declined 9	Declaration made 15	Declaration Refused 0
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6. Mediation

Settled at Mediation 0	Settled after Mediation 0	Proceeded to Hearing 0	Pending 0
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7. Timeliness - time from date of application to date of disposal

No. disposed of in < 6 months	29
No. disposed of in < 12 months	2
No. disposed of in > 12 months	4
No. disposed of in > 2 years	2

EQUAL OPPORTUNITY DIVISION 1/7/2000 - 30/6/2001

1. Case flow 2000-2001

Matters pending at 30 June 2000 127*	New Applications filed 111	Disposals 118	Pending as at 30 June 01 120
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* Pending as at 30 June 00 is different from that shown in previous annual report due to manual reconciliation of files

2. Applications by type 2000-2001

Applications for original decision 111	Applications for review 0
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3. Applications by Ground 2000-2001

Head of discrimination*	Number
Race	30
Racial vilification	7
Sexual harassment	12
Sex	26
Transgender	3
Transgender vilification	0
Marital status	2
Disability	29
Carer's responsibilities	0
Homosexuality	12
Homosexuality vilification	3
Compulsory retirement	0
HIV/Aids vilification	0
Age	8
Victimisation	33
Aiding and Abetting	2
Review of decision of President ADB	0

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

4. Outcomes

Withdrawn/ Discontinued/Dismissed without hearing 87	Summary dismissal under section 111 5	Dismissed after hearing 15	Orders made 11
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5. Mediation

No. of Mediations conducted 40	Settled at Mediation 21	Settled after Mediation 6	Proceeded to Hearing 3	Pending 10
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6. Timeliness - time from date of application to date of disposal

No. disposed of in < 6 months	42
No. disposed of in < 12 months	28
No. disposed of in > 12 months	24
No. disposed of in > 2 years	24

RETAIL LEASES DIVISION 1/7/2000 - 30/6/2001**1. Case flow 2000-2001**

Matters pending at 30 June 2000	Applications filed	Disposed	Pending as at 30 June 01
25	107	82	50

*All retail tenancy claims. Unconscionable conduct provisions not commenced.

2. Outcomes

Withdrawn/ Discontinued/ Dismissed without hearing	Dismissed after hearing	Settled - Orders made	Orders made
56	6	5	15

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

No. disposed of in < 6 months	67
No. disposed of in < 12 months	14
No. disposed of in > 12 months	1
No. disposed of in > 2 years	0

LEGAL SERVICES DIVISION 1/7/2000 - 30/6/2001**1. Case flow 2000-2001**

Matters pending at 30 June 2000	Applications filed	Disposed	Pending as at 30 June 01
42	38	34	46

2. Applications by type 2000-2001

Applications for original decision
38

3. Applications by subject 2000-2001

Type of Practitioner	Type of conduct*	Number
Solicitor	PM	23
Solicitor	PM & UPC	1
Barrister	PM	3
Barrister	UPC	6
Barrister	PM & UPC	4
S.48I & 48K Applications		1

*PM - professional misconduct, UPC - Unsatisfactory professional conduct

4. Outcomes

No-Jurisdiction/Withdrawn	15
Dismissed	1
Dismissed - S 155A of the LP Act	3
Proceedings permanently stayed	1
Penalty imposed by type	
Removed from Roll	9
Suspended from Practice	1
Reprimanded and Fined	2
S.48I & 48K Orders (convicted persons)	2

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

No. disposed of in < 6 months	5
No. disposed of in < 12 months	10
No. disposed of in > 12 months	11
No. disposed of in > 2 years	8

APPEALS 1/7/2000 - 30/6/2001

Appeals to Appeal Panel

1. Case Flow 2000 -2001

	Appeals Pending as 30 June 2000	New Appeals filed	Disposals	Pending as at 30 June 01
General Division	11	26	22	15
Community Services Division	2	1	3	0
Equal Opportunity Division *	13	14	15	12
Retail Leases Division	0	9	4	5
Legal Services Division	5	3	1	7
Total	31	53	45	39

*Note - There is an increase of 1 in the pending as at 30 June 00 from the previous annual report due to manual reconciliation of files

2. Outcome of Appeals

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued	Total
General Division	5	12	5	22
Community Services Division	3			3
Equal Opportunity Division *	9	6		15
Retail Leases Division		3	1	4
Legal Services Division	1			1
Total	18	21	6	45

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

No. disposed of in < 6 months	20
No. disposed of in < 12 months	16
No. disposed of in > 12 months	9
No. disposed of in > 2 years	0

Appeals to the Supreme Court

1. Case flow 2000 - 2001

	Appeals Pending as 30 June 2000	New Appeals filed	Disposals	Pending as at 30 June 01
General Division	1	2	1	2
Community Services Division	0	0	0	0
Equal Opportunity Division	1	2	0	3
Retail Leases Division	0	0	0	0
Legal Services Division	3	1	1	3
Total	5	5	2	8

2. Outcome of Appeals

	Upheld (in full or part)	Dismissed	Withdrawn/ Discontinued
General Division	1	0	0
Community Services Division	0	0	0
Equal Opportunity Division	0	0	0
Retail Leases Division	0	0	0
Legal Services Division	1	0	0
Total	2	0	0

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