State Administrative Tribunal
Western Australia

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Dear Attorney

Annual Report - State Administrative Tribunal

Pursuant to section 150(1) of the *State Administrative Tribunal Act 2004,* I have pleasure in submitting to you the annual report of the Tribunal.

The report is for the year ended 30 June 2006.

Yours sincerely

The Hon Justice M L Barker
President

30 September 2006

Contents

The Tribunal at a glance

Premises

The State Administrative Tribunal is located at 12 St Georges Terrace and occupies approximately 4000 m2 of space over four floors.

The Tribunal operates throughout the State and utilises court houses, local government council chambers, private conference facilities, video and teleconferencing.

The Tribunal was established in Western Australia in 2005 as an independent body that makes and reviews a range of administrative decisions.

Jurisdiction

Individuals, businesses, public officials and vocational regulatory boards can bring before the Tribunal many different types of applications relating to civil, commercial and personal matters. These can range from reviews of multi-million dollar tax assessments and dog destruction orders to disciplinary proceedings, guardianship questions and planning and land compensation issues.

Jurisdiction is currently conferred through 140 enabling Acts and over 830 enabling provisions.

Legislation

The Bills for the establishment of the Tribunal and conferral of jurisdiction were developed during 2002 and 2003 and were tabled in the Legislative Assembly of the State Parliament on 24 June 2003. They were referred to the Legislation Committee of the Legislative Council on 16 September 2003. The Committee reported in October 2004, recommending a number of amendments to both Bills in the Legislative Council, which were accepted by the Government in the Legislative Council and in the Legislative Assembly.

Commencement

On 10 November 2004, the legislation passed the Parliament. Both Acts were then assented to by the Governor to take effect from 1 January 2005, with the provisions dealing with the *Guardianship and Administration Act 1990* taking effect from 24 January 2005.

The Tribunal is established under the following legislation:

State Administrative Tribunal Act 2004.

State Administrative Tribunal Regulations 2004.

State Administrative Tribunal Rules 2004.

Organisation

A Supreme Court Judge is President of the Tribunal. The President is assisted by two Deputy Presidents, who are District Court Judges, and a number of full-time and sessional members who are experienced in relevant fields and an Executive Officer and staff. The Tribunal falls under the portfolio of the State Attorney General.

Vision

The Tribunal's vision is to be one of Australia's leading tribunals that adopts best practice and innovative technology in making fair and timely decisions for the benefit of the people of the state.

Section 9 objectives

The objectives of the Tribunal set out in section 9 of the *State Administrative Tribunal Act 2004* are:

- To achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
- To act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and
- To make appropriate use of the knowledge and experience of tribunal members.

Core values

- Respect for the law
- Fairness
- Independence
- Respect for persons
- Diligence and efficiency
- Integrity
- Accountability and transparency
- Proportionality

Approach

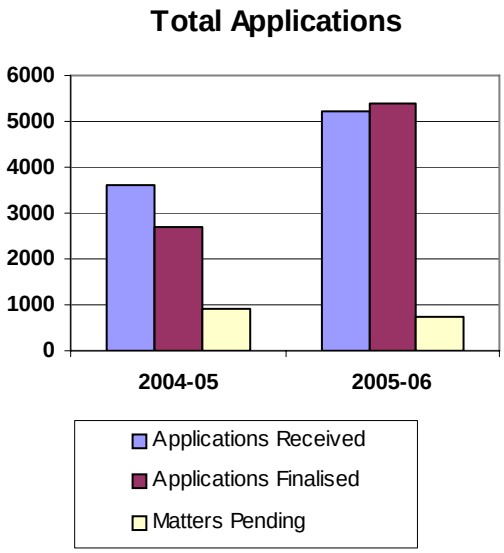
The Tribunal:

- aims to make the correct and preferable decision based on the merits of each application;
- is not a court and strict rules of evidence do not apply;
- encourages the resolution of disputes through mediation;
- allows parties to be represented by a lawyer or a person with relevant experience, or by themselves;
- holds hearings in public in most cases; and
- provides reasons for all decisions and publishes written reasons for decisions on its website.

Performance

Given its broad jurisdiction, Tribunal matters are divided into four streams enabling procedures to be adapted to suit the type of matter and the needs of different people who use the Tribunal.

In the reporting period 5232 new applications were lodged with the Tribunal and 5406 (including a number of "legacy" matters) were finalised.



Human Rights Stream

This stream makes decisions affecting some of the most vulnerable people in our community in relation to guardianship, administration and discrimination, and reviews decisions of the Mental Health Review Board and accounts for 2540 or 48% of all applications. Since the commencement of operations, the average time from lodgement to completion of an application is 65 days**.**

Development & Resources Stream

This stream reviews decisions made by government agencies regarding planning, development and resources, and also hears matters relating to land valuation and compensation. This stream accounts for 368 or 7% of all applications. The average time from lodgement to completion of an application is 158 days**.**

Vocational Regulation Stream

This stream hears complaints concerning occupational misconduct and reviews decisions concerning occupational registration. This stream accounts for 288 (6%) of applications. The average time from lodgement to completion of an application is 116 days**.**

Commercial & Civil Stream

This stream deals with strata title and retirement village disputes, commercial tenancy and credit, and reviews State revenue decisions and other commercial and personal matters. This stream accounts for 2036 or 39% of all applications. The average time from lodgement to completion of an application is 36 days.

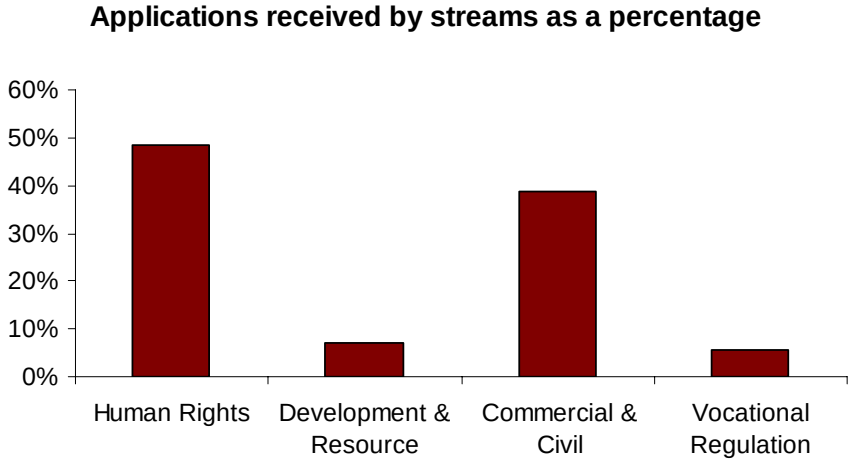


Table 1—Year at a Glance

YEAR AT A GLANCE		
Item	**2005-06**	2004-05#1
Matters carried over	**934**	897
Applications lodged	**5,232**	2,723
Total matters 2005 – 06#2	**6,166**	3,620
Matters finalised	**5,406**	2,686
Acts		
Snapshot of main applications received per Act:		
Commercial Tenancy (Retail Shops) Agreement Act	**1,516**	822
Consumer Credit (WA) Act	**79**	17
Local Government (Miscellaneous Provisions) Act	**147**	89
Strata Titles Act	**139**	73
Taxation Administration Act	**41**	30
Planning and Development Act	**60**	n/a
Town Planning and Development Act	**276**	199
Equal Opportunity Act	**90**	27
Guardianship and Administration Act	**2,441**	1,166
Builder's Registration Act	**95**	42
Legal Practice Act	**50**	16
Security and related Activities (Control) Act	**76**	45
Our People		
SAT employee#3	**63**	59
Judicial members	**3**	3
Full-time members	**13**	13
Sessional members	**128**	117

Note:

#1 Tribunal commenced operations on 1 January 2005.Therefore figures for 2004-05 are for the 6 month period only.

#2 Including matters outstanding at the end of the previous financial year.

#3 This includes part time staff members, counted as one staff member

President's Report – The Last 12 Months in Review

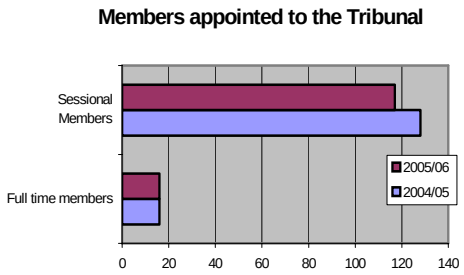
As President of the State Administrative Tribunal, I am required by section 150(1) of the *State Administrative Tribunal Act 2004* to submit to the Attorney General, on or before 30 September each year, an annual report on the activities of the Tribunal for the year ending 30 June.

This is my second report under section 150. It covers the period 1 July 2005 to 30 June 2006. Because my first report (see www.sat.justice.wa.gov.au follow the links to reports & publications) dealt with the first six months of the Tribunal's operations after its commencement on 1 January 2005, this is the first report to do with a full 12 month period of operation.

In my first report, I dealt with a number of matters concerning the establishment of the Tribunal that I need not repeat here. In this report I will focus on the consolidation phase of the Tribunal, highlight the Tribunal's developing practices, and note some statistics relating to the Tribunal's performance.

In the reporting period the full-time member complement of the Tribunal has remained unchanged at 16 full-time members – 3 judicial members, 4 senior members and 9 ordinary members. However, towards the end of the period the appointment of a tenth ordinary full-time member was imminent.

The number of sessional members of the Tribunal slightly increased during the year. A number of additional sessional members were appointed, while a fewer number resigned their appointments by reason of conflicts of professional interest with Tribunal interest.



Most of the new sessional members were appointed to assist in the Tribunal's vocational regulation stream.

Appendix 1 contains a complete list of judicial, full-time and sessional members of the Tribunal.

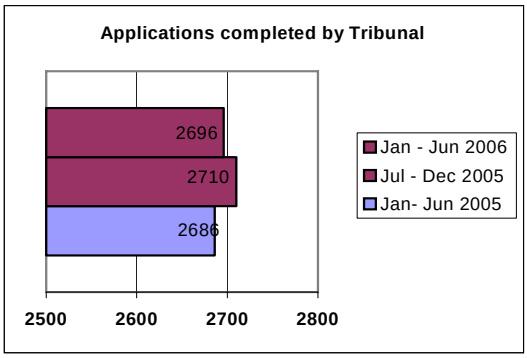
The Mental Health Review Board has remained co-located at the Tribunal's premises and a senior member of the Tribunal, Mr Murray Allen, has remained the President of the Board.

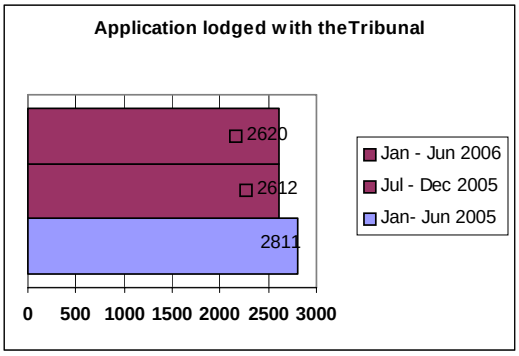
During the reporting period additional jurisdiction was conferred on the Tribunal. As at 30 June 2005, the Tribunal exercised jurisdiction under some 137 enabling Acts of Parliament. As at 30 June 2006, it exercised jurisdiction under some 140 enabling Acts. In the reporting period additional jurisdiction was conferred, consolidated or modified under the following enabling Acts:

- ***Children and Community Services Act 2004***
- ***Working with Children Act 2004***
- ***Architects Act 2004***
- ***Construction Contracts Act 2004***
- ***Planning and Development Act 2005***
- ***Water Services Act Regulations section 27***
- **Workers Compensation and Injury Management Regulations 1982**

During the reporting period, the Tribunal received some 5232 applications and determined some 5406 applications. The reason why more matters were finalised than

applications received is explained by the fact that the Tribunal also finalised a number of "legacy" matters that had been transferred to it from former adjudicators and remained undetermined as at 30 June 2005.





Overall, the Tribunal has performed very well in terms of meeting its primary objectives set out in section 9 of the *State Administrative Tribunal Act 2004* - to determine matters fairly and according to the substantial merits of the case, as speedily and with as little formality in technicality as is practicable, and minimising the costs to the parties.

The Tribunal remains extremely mindful of its section 9 objectives, and during the reporting period has constantly assessed and re-assessed the appropriateness of its practices and procedures to the achievement of its objectives.

The flow of new applications to the Tribunal has been constant over the whole of the 18 month period since the Tribunal was established. In the first 6 months of its establishment, 2811 new applications were lodged. Approximately double that, 5232 new applications, were lodged in the 12 month reporting period.

Since the Tribunal commenced, 898 legacy matters have been transferred to the Tribunal by former adjudicators. As at 30 June 2006, 38 legacy matters remained to be determined. Some of these cannot be resolved until related external court proceedings or environmental reviews are finalised. All others are listed for finalisation.

As was the case during the first six months of the Tribunal's operation, the largest number of individual applications in the reporting period was made under the *Guardianship and Administration Act 1990*, with 2441 applications. The next highest number of applications was made under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* with 1516 applications.

In my first report I described the developing practices and procedures the Tribunal had adopted. During the reporting period these practices and procedures have been further tested and refined in order to meet the Tribunal's section 9 objectives. The detail is described later in the discussion of the work of each of the Tribunal's four streams.

Mediation has been used with considerable success during the reporting period. Experience shows that many applications can be resolved without the need for a final, adversarial hearing, through mediation and other facilitative decision-making techniques.

All full-time members of the Tribunal, and a number of sessional members, are trained mediators. Save in the areas of decision-making under the *Guardianship and Administration Act 1990* (where most applications go to a final hearing within 6-8 weeks of lodgement) and a range of applications under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (which are dealt with entirely on the documents), mediation is used throughout the other streams within the Tribunal as deemed appropriate.

The Tribunal's experience with mediation and other facilitative decision-making techniques indicates that parties appreciate the opportunity to attempt to resolve a matter more informally and without resort to a final, adversarial hearing procedure. Mediated outcomes have the great advantage of producing effective, lasting results. They also often have the advantage of producing a final decision more quickly and at less cost to the parties than other means of decision-making.

The typical approach taken to the determination of an application lodged with the Tribunal is to:

- receive and register the application on the day it is lodged by a party;
- enter the application for a first directions hearing;
- send notices of the directions hearing to all parties within 3 days of lodgement of the application;
- hold the first directions hearing before a member of the Tribunal within 21 days of lodgement of the application;
- enable parties to participate in the directions hearing, either by attending at the Tribunal personally, or by telephone or video conference if they reside outside the metropolitan area or cannot attend for other good reasons;
- encourage the parties to participate in mediation without the need for a final hearing;
- otherwise program the application for hearing so that all necessary documents stating the party's case are prepared and filed before the hearing; and
- consider whether, if the matter is not resolved at mediation, a final hearing is required or the application can be determined on the documents or by a combination of both.

Applications under the *Guardianship and Administration Act 1990* are determined at a final hearing usually held 6-8 weeks after the application is lodged.

A range of applications under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* are decided entirely on the documents without any form of hearing.

The adoption of these various procedures has helped significantly to realise the Tribunal's section 9 objectives to decide matters as speedily as possible. For example:

- under the *Guardianship and Administration Act 1990*, 80% of all applications made were decided within 10 weeks;
- under the *Equal Opportunity Act 1984*, 80% of all matters were decided within 28 weeks;
- under the *Mental Health Act 1996*, 80% of all appeals were decided within 24 weeks;
- under the *Town Planning and Development Act 1928/Planning and Development Act 2005*, 80% of all matters were decided within 30 weeks;
- as to all other matters arising in the Development and Resources stream, 80% of all matters were decided within 33 weeks;
- under the *Strata Titles Act 1985*, 80% of all matters were decided within 28 weeks;

- as to all other matters arising in the Commercial and Civil stream, 80% of all matters were decided within 24 weeks inclusive of Commercial Tenancy matters and 28 weeks exclusive of Commercial Tenancy; and
- as to matters arising in the Vocational Regulation stream, 80% of all matters were decided within 27 weeks.

During the next 12 months these performance outcomes will be used as the performance benchmarks in each of the Tribunal's areas of decision-making.

The taking of concurrent expert evidence is a particular matter of practice and procedure in the Tribunal worthy of mention in this review. The Tribunal has pioneered in Western Australia the requirement that expert witnesses give their evidence concurrently at the hearing. The Tribunal's standard orders require expert witnesses to confer before a final hearing, to prepare a report setting out the matters on which they agree and disagree, and to sit alongside each other and give their evidence in the witness box at the same time at the final hearing.

At the hearing, the Tribunal poses questions for the expert witnesses, after which the representatives of the parties are invited to follow up with any further questions.

This expert evidence process has the distinct advantage not only of reducing the amount of time taken over expert evidence at a hearing, but also to sharpen the focus of the experts on the matters of importance to the Tribunal. The final result is that the Tribunal is in a much better position fully to appreciate the significance of the expert evidence.

Both expert witnesses and lawyers, and other agents representing parties have responded very positively to this new process. During the next 12 months the Tribunal will conduct seminars for potential expert witnesses and their advisors, to refine the process.

The Tribunal has continued to find that the vast majority of parties in the Tribunal are self-represented or not legally represented.

However, there are some areas of decision-making, such as those involving state revenue, serious vocational regulatory issues and major planning and development proposals, where parties are regularly legally represented, the Tribunal continues to design, assess and re-assess all its practices and procedures on the basis that most parties in the Tribunal will be self-represented.

The Tribunal's website at www.sat.justice.wa.gov.au continues to be the Tribunal's flagship. All relevant information concerning the Tribunal's operation, jurisdiction, the making of applications, practices and procedure, and decision-making are to be found on the website.

In particular, the SAT Wizard continues to be extremely well used by applicants. The Tribunal estimates that 80% of all applications lodged with the Tribunal have been generated by use of the SAT Wizard on the website. The SAT Wizard contains all the enabling Acts and relevant provisions under which proceedings can be commenced and enables an applicant to prepare the application online before printing it out and lodging it with the Tribunal.

I should add that the community's ability to access the Tribunal's services will be enhanced significantly when the Tribunal has the capacity to act fully as an e-Tribunal and receive applications and other documents online.

During the reporting period, the Tribunal has attempted to make decisions as quickly as possible and to reduce the delay between a final hearing and the giving of a decision. To that end, the Tribunal members have endeavoured, wherever possible, to give their decisions, and reasons for their decisions, orally at the conclusion of a hearing or soon after.

In appropriate cases, the Tribunal also makes a decision on the documents and thereby avoids the need for parties to attend a final hearing.

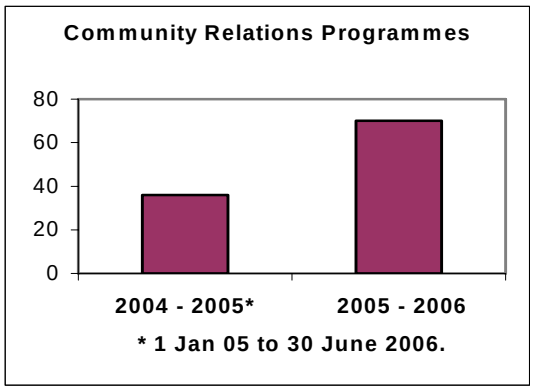
In more complex cases, however, the Tribunal usually reserves its decision after a hearing and later publishes the written decision later.

All written reasons for a final decision (and some decisions on important preliminary issues) are published on the Tribunal's decisions database on the website. A good number of these have also been published in commercial law reports.

Additionally, all final orders made by the Tribunal are also published on the decisions database on the website (save where privacy considerations apply).

In these ways, the Western Australian community is easily able to access all significant Tribunal decisions and all relevant orders.

The Tribunal has maintained a strong community relations programme during the reporting period, as set out in Appendix 2. The Tribunal remains committed to disseminating and gathering community information and feedback.



The Tribunal values feedback from all persons, decision-makers, and industry, vocational and community bodies who deal with the Tribunal, with a view to continuing to improve its performance. To this end, the Tribunal plans shortly to conduct a survey of persons who were parties to proceedings in the Tribunal during the reporting period.

Generally speaking, the provisions of the *State Administrative Tribunal Act 2004* and enabling Acts under which the Tribunal operates, work well. However, there is scope to refine the decision-making systems provided by those Acts. During the reporting period, following an invitation from the Attorney General to do so, I put forward a number of recommendations for reform. These are mentioned later in the stream reports. They include the important recommendation that the functions of the Mental Health Review Board be conferred on the Tribunal.

The Tribunal is actively involved in the operations of the Council of Australasian Tribunals (COAT). The Western Australia Chapter of the COAT has also been established. As convenor of the WA Chapter of COAT I am also a member of the National Executive and contribute to, and gain assistance from meetings of Heads of Tribunals in Australia and New Zealand. The development of COAT is a good indicator of the growth and developing professionalism of Tribunals throughout Australia.

In the Tribunal's first annual report I stated that my vision for the Tribunal was that it should become one of Australia's leading tribunals that adopts best practice and innovative technology in making fair and timely decisions for the benefit of the people of the state of Western Australia. This has become the Tribunal's shared vision. I am pleased to say the performance of the Tribunal is beginning to make that vision a reality.

The Tribunal's consistent performance to date has only been possible because of the dedicated and enthusiastic work of its members and staff. During the reporting period, all members, full-time and sessional, have continued to show tremendous dedication to the work they undertake on behalf of the people of the State.

Similarly, the commitment of the staff of the Tribunal to delivering prompt, cheerful and efficient services to the many different persons who use the Tribunal has been exemplary.

I thank and congratulate all members and all staff and look forward to working with them over the course of the next 12 months.

In particular, I note the considerable efforts of my Deputy Presidents, Judge John Chaney and Judge Judy Eckert, and the Tribunal's Executive Officer, Mr Alex Watt, which not only have helped to set the Tribunal's course during the first 18 months of the Tribunal's operation, but also have provided a great example to members and staff of what is required to realise our shared vision for the Tribunal.

The sections of this report that follow provide more detail on the work of the Tribunal during the reporting period, as well as on a number of specific matters I am required to report on under section 150 of the *State Administrative Tribunal Act 2004*.

Commercial and Civil Stream

The work of the commercial and civil stream

Most of the work of the Commercial and Civil (CC) stream is taken up by the original jurisdiction previously exercised by the Commercial Tribunal, the Strata Titles Referee and the Retirement Villages Disputes Tribunal.

The CC stream exercises a review jurisdiction under some 50 enabling Acts with the more significant volume of work arising in respect of reviews under the *Local Government (Miscellaneous Provisions) Act 1960* (to do with building control), the *Builders' Registration Act 1939* and the *Firearms Act 1973*.

During the reporting period, the CC stream received 2036 new applications and finalised 2110 applications, excluding legacy matters transferred from previous adjudicators. Table 1 sets out details of the applications received and the applications finalised during the reporting period.

These finalised applications do not include legacy matters. During the reporting period, 57 legacy matters were completed so that the total number of applications finalised by the CC stream during the reporting period (excluding Commercial Tenancy section 13 applications) was 664.

Each of the members of the CC stream provides case management of the matters allocated to the member through the process of directions hearings and assesses the suitability of each matter for mediation or compulsory conference, with a view to achieving an overall settlement or a reduction of the issues for determination.

In the reporting period, it is estimated that approximately 80% of all strata and local government applications were referred to mediation and that approximately 70% of those matters were settled resulting in orders disposing the proceedings. Such orders are recorded as final decisions. It is estimated therefore, that approximately 500 applications were the subject of a final decision.

In addition during the reporting year, the CC stream made a number of both oral and written decisions which were not final decisions. Table 2 sets out details of these non-final decisions made by the CC stream during the reporting year.

Table 1 – CC new applications received and finalised 2005/2006

Subject of application	Number of applications received	Applications received as approximate % of all CC applications received	Number of applications finalised	Applications finalised as approximate % of all CC applications finalised
Caravan Parks And Camping Grounds Act 1995	2	<1%	0	---
Commercial Tenancy (Retail Shops) Agreements Act 1985 – s 13*	1467	70%	1503	71%
Commercial Tenancy (Retail Shops) Agreements Act 1985 – Other*	49	<3%	42	<2%
Community Services Act 1972	1	<1%	1	<1%
Construction Contracts Act 2004	3	<1%	3	<1%
Consumer Credit (Western Australia) Agreements Act 1996	79	<4%	84	<4%
Country Towns Sewerage Act 1948	1	<1%	0	<1%
Dangerous Goods (Transport) Act 1998	3	<1%	3	<1%
Dog Act 1976	9	<1%	5	<1%
Firearms Act 1973	20	<1%	28	1%
First Home Owner Grant Act 2000	4	<1%	5	<1%
Health Act 1911	14	<1%	10	<1%
Local Government (Miscellaneous Provisions) Act 1960	147	7%	150	7%
Retirement Villages Act 1992	5	<1%	5	<1%
Road Traffic Act 1974	38	<2%	38	<2%
Soil and Land Conservation Act 1945	12	<1%	4	<1%
Strata Titles Act 1985	139	<7%	135	6%
Swan River Trust Act 1988	2	<1%	2	<1%
Taxation Administration Act 2004	41	<2%	45	<2%
Taxi Act 1994	0	---	5	<1%
Transport Co-ordination Act 1966	0	---	0	---
Total	2036	100%	2110	100%

As to Commercial Tenancy applications: section 13 applications are administrative in nature and do not represent a significant workload notwithstanding their volume - the "Other" applications are contested proceedings.

Table 2—CC Related decisions

Subject of decision	Number of decisions	Approximate % of non-final decisions
Costs	23	26%
Interim (Injunction) Orders	21	>24%
Stay applications	13	<15%
Grant of leave to review	11	>12%
Preliminary issues	5	>6%
Joinder of parties	3	>3%
Invitation to decision-maker to re-consider	12	>14%
Total	88	100%

Table 2 illustrates that of the non final decisions made by the CC stream, the highest proportion related to applications for costs. This is a consequence of the CC stream being engaged in the exercise of jurisdiction in areas in which costs were customarily awarded by former adjudicators prior to the establishment of Tribunal.

The CC stream has taken a stringent view with regard to the award of costs so that consistent with the intent of the State Administrative Tribunal Act 2004, section 87(1) the starting point is that each party bear its own costs in proceedings before the Tribunal. Costs were awarded in only six applications or <1% of contested matters.

Table 3 sets out a comparison between the performance of the CC stream and former adjudicators in principal areas.

Table 3 – CC Applications resolved by hearing compared with former decision-makers

Decision-maker	2004	2005/06 SAT
Building Disputes Tribunal Review*	District Court 0	42
Commercial Tenancy and Consumer Credit**	Commercial Tribunal 1,607	1,629
Retirement Village Disputes Tribunal	Retirement Village Disputes Tribunal 8	5
Strata Titles Referee	131	135

* Two applications lodged in 2004 were not resolved and were transferred to SAT

** The statistics available include all applications in the Commercial Tribunal. For comparison therefore, the Table 1 figures for all Commercial Tenancy and Consumer Credit applications have been aggregated.

The statistics reflect that applications resolved have remained fairly consistent in all areas, save in relation to the review of decisions of the Building Disputes Tribunal, in which there has been a marked increase in the number of applications for review.

As to the increase in building disputes reviews, prior to the establishment of Tribunal, appeal lay to the District Court. It appears that factors contributing to the significant increase in reviews in the Tribunal are (1) the low cost compared to proceedings in the District Court, and (2) the prospect of a hearing de novo, in which the parties have the opportunity to present the case in a better way than they may have done in the initial hearing before the Building Disputes Tribunal.

Legacy matters

On 1 January 2005, the CC stream received 379 legacy matters from former adjudicators which ceased to exist or had been replaced by Tribunal. These included 162 matters transferred from the Commercial Tribunal and 62 matters transferred from the Strata Title Referee. During the final 6 months of the Tribunal's operation to 30 June 2005, 303 of these matters were finalised. A further 57 matters were finalised in the reporting year so that of the 379 legacy matters received by the CC stream all but 19 have been finalised. Table 4 below sets out details of status of these matters.

Table 4 - CC legacy matters current at end of 2005/2006

Number of Applications	Subject of Application	Status
1	Revocation of Firearm Licence	Adjourned directions pending outcome of a criminal proceeding in Supreme Court.
1	Review of Building Disputes Tribunal Decisions	Transferred from District Court October 2005. Listed for final hearing.
12	Commercial Tenancy	All 12 applications are related. The Commercial Tribunal determined liability. The proceedings remained dormant until 2006 while the parties attempted settlement. Application has now been made for assessment of damages in each case. The decision in each matter is reserved.
1	Commercial Tenancy	Mediation hearing listed.
1	Commercial Tenancy	Decision reserved.
1	Consumer Credit Act	Adjourned for directions pending conclusion of related proceedings in New South Wales.
1	Strata Titles	Decision reserved.
1	Strata Titles	Listed for final hearing.

The members of the commercial and civil stream

The work of the stream is overseen by the President and Deputy Presidents, together with Senior Member Clive Raymond. Mr Raymond formerly practised both as a solicitor and as a barrister at the Independent Bar, in a wide range of commercial areas and, in particular, in alternative dispute resolution.

The other full time members who work principally in the stream are Tim Carey, Bertus De Villiers and Maurice Spillane.

(L – R) Member Tim Carey, Maurice Spillane, Senior Member Clive Raymond and Member Bertus de Villiers

Tim Carey was formally a solicitor with a wide range of experience, both in private practice and in the employ of the Australian government as a solicitor where he practised in areas including administrative law and general litigation.

Bertus De Villiers is admitted as a legal practitioner and with special interests in constitutional and administrative law, environmental law and human rights, native title and commercial law.

Maurice Spillane was formally a solicitor and has experience in a wide range of areas including planning and local government law.

In the reporting year, a decision was made to appoint a further full time member to the CC stream. That appointment will take effect shortly and will provide the stream with increased capacity for the determination of matters within the stream and will also allow members to sit more frequently in proceedings falling under the other streams of the Tribunal.

The CC stream also uses sessional members whenever it is appropriate to do so. Areas in which sessional members are most frequently used are section 13 applications under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*, and as panel members in respect of rental reviews under that Act and under the *Builders' Registration Act 1939* in respect of reviews of the Building Disputes Tribunal.

The current building boom and media reports of the increased applications being made to the Building Disputes Tribunal, suggest that the number of reviews of decisions being made by the Building Disputes Tribunal is likely to increase. There is a limited pool of sessional members with appropriate experience to sit on these reviews and in Vocational hearings reviewing the decisions of the Builders' Registration Board.

Within that pool, the ability to nominate members is further restricted because some sessional members are often either members of the Building Disputes Tribunal, or of the Builders' Registration Board. Therefore precluding them from reviewing a decision of a body of which they are a member. The appointments of additional appropriate sessional members in relevant areas will assist the Tribunal.

Directions hearings and case management

During the first ten months of the Tribunal's operation, every matter in the CC stream was set down for directions hearing before the senior member,

except for state revenue matters which were listed before the President. When matters were ready for hearing they were allocated to members for that purpose.

With effect from November 2005, all members of the CC stream have participated in a process of rotating through the directions lists. The directions hearings are convened within three weeks of filing of the application. Once a matter has been dealt with by a member, the responsibility for the conduct of that matter remains with the member and ultimately that member will hear the matter unless there is some reason making it appropriate for the matter to be heard by or with another member(s), or a judicial member. This system of case management has the advantage that the presiding member builds up a knowledge of the matter prior to the hearing and promotes the adoption of a responsible approach to the matter by the parties.

Experience has shown that different periods of time need to be allocated to directions hearings in different types of matters:

- Directions hearings for applications under the *Credit Act* are listed one application every six minutes while in most areas 15 minutes is allowed per matter.
- In strata matters, an initial directions hearing is allocated 30 minutes to ensure that there is ample time to develop a good understanding of the dispute. More time is also needed because disputes between neighbours are often emotionally charged and parties need an opportunity to have their say.
- Because of the highly technical nature of the *Strata Titles Act 1985*, which requires that any application be brought under a specific section, technical errors can be identified, and if at all possible, cured by an amendment to the application. On the other hand, if a deficiency is identified which cannot be cured, or if it is established that the application is premature because there is a need to first put a resolution before the strata company, the time spent will often lead to an understanding on the part of the applicant which results in the application being withdrawn. Sometimes this occurs simply because the parties have an opportunity to communicate directly with each other.

If it necessary for the matter to be referred to a final hearing, the most appropriate steps are devised to ensure that the matter is properly prepared for a final hearing. An assessment will be made also as to the most appropriate process by which to finally resolve the matter. In some cases an oral hearing will be required, with or without the prior exchange of witness statements; in other cases it may be possible to determine the matter on the documents.

In every case, the directions hearing is used to determine whether it is appropriate for the matter to be referred to a mediation or compulsory conference.

Mediation and compulsory conference

As indicated earlier, mediation is used extensively and successfully in the CC stream to resolve applications, and to identify and narrow contested issues.

Mediation is an entirely consensual process, and either party is free to withdraw from it whenever he or she wishes. The role of the mediator is to facilitate the parties reaching their own solution to the dispute. Where the real dispute between the parties is wider than the issue before the Tribunal, mediation can nevertheless be used to achieve an overall settlement.

A compulsory conference may be used for the same purpose; where the parties are do not wish to mediate, but where, in

the assessment of the presiding member, the case and common sense demands that the parties should attempt settlement or try to reduce the matters in issue.

Both mediation and compulsory conferences are confidential processes and no evidence can be given in the substantive hearing of anything said or done in the course thereof. A convenor of a compulsory conference or a mediator will not take any further part in the substantive proceedings. The Tribunal may make orders necessary to give effect to a settlement provided that the orders sought are within the power of the Tribunal. Some 160 applications before the CC stream were resolved during the reporting year without the need for a final hearing, as a result of either the directions hearings, referrals to mediation or compulsory conference.

All mediations or compulsory conferences are conducted by Tribunal members who are trained in mediation.

The experience of the CC stream shows that mediation is of significant benefit to parties, particularly in relation to strata titles disputes. Previously, the former Strata Titles Referee determined such disputes on the documents. The parties had no opportunity to meet and to discuss the matter in a neutral environment and with the benefit of assistance from a neutral third party. The members of the CC stream have been particularly pleased to participate in the achievement of resolutions which have improved relations between people who ultimately are neighbours, and who need to be able to get on with each other now and in the future.

Final hearings

The form of final hearings in the CC stream is moulded to suit the type of application and the particular circumstances of each case. The processes followed are reviewed regularly to maximise their effectiveness.

Prior to the establishment of the Tribunal, the former Strata Titles Referee determined strata title disputes on the documents. All registered proprietors, mortgagees who had given notice in writing their interest and any occupier who might be affected (notified persons) were entitled, as they still are, to make submissions. However, copies of the submissions from notified persons were not served on the parties. The CC stream was concerned that this process gave rise to natural justice concerns.

Accordingly, the Tribunal devised a directions process to ensure that all parties had an opportunity to inspect submissions filed, as well as file supplementary or replying responses. Even so, there are many cases in which the Tribunal considers it is not appropriate to attempt to determine the matter on the documents because of disputes of fact. There are also often circumstances in which the material provided is deficient.

To address these issues, the CC stream has increasingly held hearings in strata titles disputes. This affords parties a much improved opportunity to present their own cases and to answer that of the opposing party or parties.

In matters where there is no significant principle involved, the members of the CC stream endeavour to hand down an oral decision, if not immediately after the hearing, then after as short an adjournment as possible, usually within two weeks of the hearing. This provides the parties with the benefit of knowing the result far sooner than would otherwise be the case if a written decision were required. If the parties require written reasons for the decision, they are entitled to request they be provided and often this will be done by furnishing the parties with a transcript of the hearing at which the oral reasons for decision were delivered. Written reasons are always provided if the decision is reserved, either in the form of

a transcript or as formal reasons for decision.

However, if the case is suitable for a decision on the documents, the matter will be determined in that way without any need for a hearing. The presiding member will determine whether it is appropriate to deliver oral reasons for the decision, or not.

A site inspection is often arranged either prior to or as part of the final hearing. This usually greatly assists the presiding member's understanding of the issues.

The formality of the final hearing will also vary according to the nature of the case. In some of the simpler cases the atmosphere of the hearing is almost consultative rather than adversarial. At the other end of the spectrum, in more complex cases, the parties may be represented by senior legal practitioners, with cross-examination of witnesses and detailed oral and written submissions. However, even then the proceedings are conducted with as little formality as the circumstances will allow.

Across all areas of the CC stream's jurisdiction, including when appropriate, strata title disputes, use is made of Statements of Issues, Facts and Contentions to define issues between the parties and to avoid the formality of pleadings under the court system. Provision is made for the documents relied on by the parties to be filed at the same time as their respective Statement of Issues, Facts and Contentions. If it is appropriate to do so, directions are issued requiring the parties to exchange witness statements prior to the hearing. In this way, the preparation for the hearing is kept as simple as possible in all matters with the result that an early hearing date can usually be provided. The form of the hearing in each case will be subject to similar considerations to those set out above in relation to strata title disputes.

The procedures in relation to the review of decisions of the Building Disputes Tribunal are necessarily different to accommodate the need for the applicant to first obtain the leave of the Tribunal to review the decision in question. In some cases, it is appropriate for the application for leave and the application for review to be heard simultaneously, to avoid duplication of arguments and to allow a final decision to be made more expeditiously.

In other cases, where the alleged error is not patently obvious, or where the application for leave is coupled with an application to stay the decision of the Building Disputes Tribunal, the application for leave will be heard separately and at the first opportunity.

During the reporting year, the Supreme Court upheld the decision of ***Tangent Nominees and Edwards & Anor*** [2005] WASAT 119, which was referred to in the CC stream section of the annual report for January to June 2005. This decision confirms that if the Tribunal grants leave in respect of only one of a number of proposed grounds of review, the review will thereafter be limited to a hearing de novo in respect of that particular ground and that the entire dispute cannot be reopened.

This maintains the effectiveness of the leave requirement and ensures that only meritorious issues can be re-ventilated before the Tribunal.

This approach limiting the extent of the rehearing, together with the leave requirement itself, ensures that the standing of the decisions of the Building Disputes Tribunal is maintained and that it is able to function, as intended by its enabling legislation, to provide an efficient means of resolving building disputes within its jurisdiction.

If leave to review is granted, the review is limited to the issues the subject of that grant. In most cases, this means that the final hearing takes the form of an oral argument, with reliance being placed on a transcript of the evidence before the Building Disputes Tribunal

and the exhibits in those proceedings. However, if appropriate, consistent with section 27 of the *State Administrative Tribunal Act 2004*, consideration may be given to new material in the course of a de novo hearing.

The nature of the review process applicable to the decisions of the Building Disputes Tribunal does mean that the efficiency with which the matters can be made ready for a final hearing is affected by the timeliness with which reasons for decision can be provided by the Building Disputes Tribunal.

While this resulted in delays during the reporting period, arrangements were put in place late in the year to ensure that notification of the commencement of proceedings in the Tribunal was not left to the parties.

This will enable the Building Disputes Tribunal to prioritise the provision of reasons for decision in matters which are subject to proceedings before the Tribunal.

Time taken to finalise applications

Table 5 indicates the number of weeks taken to finalise applications in the principal areas of the work of the CC stream during the reporting year.

Table 5 – Number of weeks taken to finalise CC applications 2005/2006

% of applications	Strata Titles	Subdivision Local Govt (Misc) Provisions	Consumer Credit	Building Disputes Tribunal	Commercial Tenancy *	Road Traffic	Firearms
10%	3 weeks	1 weeks	2 weeks	4 weeks	4 weeks	3 weeks	<8 weeks
20%	5 weeks	2 weeks	3 weeks	6 weeks	5 weeks	6 weeks	10 weeks
30%	9 weeks	3 weeks	<4 weeks	10 weeks	6 weeks	7 weeks	13 weeks
40%	13 weeks	5 weeks	<4 weeks	14 weeks	12 weeks	8 weeks	18 weeks
50%	16 weeks	9 weeks	<4 weeks	18 weeks	15 weeks	10 weeks	19 weeks
60%	20 weeks	12 weeks	5 weeks	21 weeks	19 weeks	11 weeks	20 weeks
70%	24 weeks	19 weeks	9 weeks	26 weeks	24 weeks	12 weeks	21 weeks
80%	29 weeks	26 weeks	12 weeks	29 weeks	29 weeks	13 weeks	22 weeks
90%	40 weeks	37 weeks	20 weeks	33 weeks	32 weeks	16 weeks	36 weeks
100%	60 weeks	66 weeks	43 weeks	44 weeks	50 weeks	36 weeks	50 weeks

Commercial Tenancy applications do not include section 13 applications. 100% of section 13 applications are completed within 2 weeks.

Table 6—Performance benchmarks

Percentage of applications	Number of weeks within which percentage of applications is to be finalised
30%	10 weeks
50%	16 weeks
80%	28 weeks

Table 6 sets out the performance benchmarks which have been adopted for the finalisation of applications in the CC stream for the 2006/2007 reporting year.

Community Relations

As was reported in the CC section of the January to June 2005 Annual Report, shortly after the Tribunal was established, a seminar was held to introduce the members and proposed procedures to interested user groups. The CC stream, throughout the reporting year took advantage on a number of occasions to develop contacts with user groups:

- During July 2005, the Executive Officer of the Tribunal and Senior Member Clive Raymond met with Mr Milton Cockburn, the Executive Director of the Shopping Centre Council of Australia to discuss proposed amendments to the Commercial Tenancy legislation aimed at providing powers to deal with alleged unconscionable conduct.
- Senior Member Raymond also spoke at and attended a number of seminars arranged by interested persons. These included speaking on strata titles at a Real Estate Institute of Western Australia seminar and at the annual conference of the Strata Title Institute of Western Australia.
- Mr Raymond also addressed a Law Society conference in relation to rent determinations under the Commercial Tenancy legislation.
- Mr Raymond spoke on mediation at a colloquium arranged by the Institute of Arbitrators and Mediators of Australia.
- In May 2006, the President discussed the work of the CC stream, as well as the other streams of the Tribunal, in a number of locations in the north-west of the State.

Decisions of note

The following reflects some of the more significant decisions made by the CC stream during the reporting year.

- ***Bilek and VATA Investments Pty Ltd*** [2005] WASAT 153 – was the first decision under the commercial tenancy legislation in which an application was made for legal costs. The Tribunal emphasised the intent reflected in section 87 of the *State Administrative Tribunal Act 2004* that the starting point must be that each party should bear its own costs. While acknowledging there was something to be said for the approach that decisions on costs in commercial disputes should be made to promote certainty and responsibility in parties towards their contractual obligations, the Tribunal also cautioned that great care should be taken to ensure that an award of costs did not deny public access to the Tribunal at a low cost. It was concluded that the dispute related to a commercial lease at the lower end of the commercial spectrum and that the award of costs in proceedings involving less affluent sectors of the public might effectively deny access to the justice system. The application for costs was refused;
- ***Hughes & Anor and GE Mortgage Solutions*** [2005] WASAT 187 – the applicant sought a postponement of enforcement proceedings under section 88 of the Consumer Credit Code (WA). The Tribunal found that it did not have jurisdiction because the prerequisites to the exercise of power under section 88 of the Code had not been established. In particular, no negotiations had occurred within the period of default notice issued under division 2 of the Code;
- ***Moss and The Owners of Bijou Marina Village – Strata Plan 36747 & Ors*** [2005] WASAT 180 – the Tribunal determined that the use of a number of lots within the strata scheme for short stay accommodation was in contravention of the applicable town planning scheme and was in turn, therefore, a breach of a particular by-law. Orders were made requiring

the owners of the lots to refrain from entering into lease agreements for the temporary accommodation of tourists, visitors and travellers. (The decision is currently the subject of prerogative writ proceedings in the Supreme Court);

- ***Paap & Ors and The Director General – Department of Planning and Infrastructure & Anor*** [2005] WASAT 237 – Deputy President Chaney reviewed a decision of the Director General imposing conditions on the applicant's taxi plates setting a maximum amount that could be charged for leasing a taxi plate to a driver. It was determined the conditions were based on a cogent rationale, did not unduly prejudice any of the applicants and represented a reasonable measure to achieve government objectives in relation to the regulation of the taxi industry;

- ***Marine & Civil Bauer Joint Venture and Leighton Kumagai Joint Venture*** [2005] WASAT 269 – the Tribunal considered and applied the fundamental principle that justice must not only be done but also be seen to be done, in refusing an application that the hearing be held in private. The Tribunal rejected the respondent's argument that because conditions precedent to making a payment claim under the legislation had allegedly not been met, a prerequisite to the exercise of jurisdiction by the adjudicator that there be a payment claim did not exist, as required by the *Construction Contracts Act 2004*. The Tribunal considered that as a matter of ordinary language, the claim had been made under a construction contract and was therefore capable of adjudication. The decision of the adjudicator was set aside and the matter was referred back to the adjudicator for determination on its merits, including whether the payment claim had been validly made, as required by the legislation;

- ***Sisto and The Owners of Glenway Gardens Apartments*** [2005] WASAT 282 – the Tribunal rejected the applicant's argument that a unanimous resolution, or a resolution without dissent, was required before the strata company was entitled to undertake certain building works. The Tribunal found that most of the work constituted repairs and maintenance which was properly authorised by a simple majority vote approving the budget for the strata company. Work falling outside the category of repairs and maintenance was held within the power of the strata company to control and manage common property and that expenditure for that purpose could therefore be approved in accordance with the budgetary process. Proper control and management of the common property was held to include the taking of reasonable steps, possibly including the erection of new structures, to ensure that it is maintained and presented in a way that accords with the reasonable expectations of the proprietors as a whole;

- ***The Owners of Mill Point Strata Plan 11391 and Fownes & Anor*** [2006] WASAT 30 – the decision addresses the principles to be applied in relation to the transmission of noise between strata lots. The Tribunal held that the standard Schedule 2 by-law 10 had been breached in that the respondent had failed to ensure that the floor coverings were sufficient to prevent the transmission of noise likely to disturb the peaceful enjoyment of the occupier of another lot;

- ***Salthouse and APG Homes Pty Ltd*** [2006] WASAT 43 – in this matter, the Tribunal found that the Building Disputes Tribunal had erred in construing section 12A of the

Builders' Registration Act 1939 so as to exclude an adjoining owner from making a claim that building work had not been carried out in a proper and workman like manner;

- ***Nelson & Anor and The Owners of Mt Eliza Apartments – Strata Plan 24594*** [2006] WASAT 106 – the Tribunal dismissed the proceedings as being in part misconceived, in part frivolous and in part vexatious pursuant to section 47(2) of the *State Administrative Tribunal Act 2004*. The applicants had amended a single claim for compensation in an amount of some $68 000 into 56 separate claims each for under the statutory compensation limit imposed by section 84 of the *Strata Titles Act 1985*. The Tribunal concluded that on a proper construction of section 84, it was open to a party to include several claims in a single application, provided each claim constituted a separate "dispute" which the Tribunal held encompassed all the elements which must be established to entitle a party to the relief claimed. Nevertheless, the Tribunal concluded that there was no evidence to support a number of claims, that in relation to many claims expenditure had been properly authorised, and that where expenditure had exceeded the amount authorised the majority of owners had ratified the expenditure. In any event no damage was demonstrated where alleged unauthorised expenditure had been incurred on improvements to common property in which the applicant's were tenants in common with other proprietors in proportion to their respective unit entitlements. The Tribunal concluded that any unauthorised expenditure by the council of the strata company did not give the individual lot owners a right of claim against the strata company;
- ***The Owners of the Views, Strata Plan 6669 and Larralee Pty Ltd*** [2006] WASAT 126 – the Tribunal analysed the relationship between its powers under section 103G of the *Strata Titles Act 1985* to order the restoration of alterations made to a lot without the requisite approval of the strata company and the grounds on which owners are entitled to object to proposed alterations under section 7(5) of the *Strata Titles Act 1985*. On the basis of expert evidence, that the possible affects of the alterations were limited and not affecting the structural soundness of the building, the Tribunal declined to make an order requiring restoration of the works;

- ***Grant and The Owners of Rosneath Farm – Strata Plan 35452*** [2006] WASAT 162 – in this matter the Tribunal considered in considerable detail the extent to which a survey strata company could legitimately pass by-laws controlling a range of activities impacting upon the architecture of the lots, the theme of the development and control of common property.
- The Supreme Court upheld the decision of ***Tangent Nominees and Edwards & Anor*** [2005] WASAT 119 in ***Tangent Nominees Pty Ltd v Edwards*** [2006] WASC 45, which was referred to in the CC stream section of the annual report for January to June 2005. This decision confirms that if the Tribunal grants leave in respect of only one of a number of proposed grounds of review, the review will thereafter be limited to a hearing de novo in respect

of that particular ground and that the entire dispute cannot be reopened.

- ***Minister for Transport v Edgar Enterprises Pty Ltd*** [2006] WASC 27 – in this Supreme Court appeal, the Court (Miller J) dismissed an appeal against a decision of the Tribunal and found that a forecourt levy in a retail shops lease was not a sinking fund or a variable outgoings fund under the *Retail Shops Act*. The decision of the Tribunal appealed from may be found on the Tribunal's website, decision database under the citation ***Edgar Enterprises Pty Ltd and Minister for Transport*** [2005] WASAT 260.

Areas for reform

The experience of the CC stream during the reporting year has resulted in some areas being identified in relation to which a case can be made out for legislative reform.

The President has raised in correspondence with the A/Executive Director, Court Services Division, of the Department of the Attorney General and has discussed with the Chief Justice, the need for Tribunal to be provided with power to entertain equitable claims and defences in disputes brought before it under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. The advantage of the Tribunal having this jurisdiction is to ensure that it acts as a "one-stop" decision-making service.

In addition, other concerns relating to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* have been raised. Prior to the amendments effected to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* by the *State Administrative Tribunal (Conferral of Jurisdiction) Act 2004* (Conferral of Jurisdiction Act), section 16 – 24 contained a scheme whereby a question arising under a lease was referred initially to the Registrar of the Commercial Tribunal for mediation. If the Registrar concluded that a "solution acceptable to all the parties" could not be obtained in the mediation, or on other stated grounds, the Registrar could refer the matter to the Commercial Tribunal for determination. In the process of conferring jurisdiction on the Tribunal, the Conferral of Jurisdiction Act repealed section 17 – 25.

Unfortunately, section 16 remains and still contains the formula of words which applied to the Registrar, that the Tribunal is required to determine whether the question arising is one under lease and if it is, to hear the question with a view to achieving a "solution acceptable to the parties" to the lease. Subsection 16(3) provides that "nothing in this section prevents a matter or question from being dealt with through a compulsory conference or mediation process under the State Administrative Tribunal Act 2004". As the *Commercial Tenancy (Retail Shops) Agreements Act 1985* stands, it is therefore open to a party to argue that any determination by the Tribunal must be in terms which are "acceptable to both parties". There are authorities dealing with the interpretation of rent review clauses which would suggest that it is open to interpret section 16 as meaning that it would be necessary to make the determination, having regard to subjective criteria relating to each party. Whatever the correct position, the present wording is not appropriate and amendment is recommended.

The President has made specific recommendations with regard to the amendment of section 16 and with reference to the powers bestowed on the Tribunal under section 26 of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* to include the power to make an order in the nature of a declaration. There presently exists an anomaly in that the Tribunal is required to determine a question arising under a lease, yet there is no express power to answer a question in the form of a

declaration, where that is the most appropriate form of relief.

During the reporting year a comprehensive review was undertaken of the Strata Titles Act 1985 in order that the President could provide the Attorney General with comments on a previous report to the Attorney prepared by the Strata Titles Referee.

In addition to the matters raised by the Strata Titles Referee, the CC stream identified three issues which it considered to be uncontroversial and which were appropriate for immediate implementation without wider community consultation. The first issue related to a lack of jurisdiction to deal with disputes concerning strata managers. It is recommended that section 83 of the *Strata Titles Act 1985* be amended to include amongst the persons against whom an order may be made, a strata manager. A further amendment is recommended to empower the Tribunal to make an order against any person in possession or control of the records of a strata company.

The second issue identified relates to the requirement under section 77B of the *Strata Titles Act 1985* that an applicant for an order resolving a dispute must file a certificate either that there are no relevant provisions in the by-laws of the strata company that relate to the resolution of the matter in dispute, or, that there are such provisions and the applicant has, so far as is possible, complied with them. The *Strata Titles Act 1985* did not empower the Strata Titles Referee to conduct a mediation of the dispute. It was therefore important that, if the by-laws contained dispute resolution provisions, they were followed, prior to making application to the Referee. The Tribunal's experience is that very few strata companies adopt by-laws containing dispute resolution provisions. In one of the few cases in which the by-laws did contain such a provision, it was so badly drawn that it was of doubtful effect and resulted in an argument as to its enforceability. By contrast the Tribunal has the power to mediate, and makes an early assessment at the directions hearing in all cases, to ascertain whether it would be appropriate to attempt mediation of the dispute. There is now no advantage in having the certificate. It is accordingly recommended that section 77B of the *Strata Titles Act 1985* be repealed.

The third issue relates to the obligation to serve orders of the Tribunal. The orders are required to be served on the strata company amongst other persons. Because of amendments made to section 79 of the *Strata Titles Act 1985*, the Tribunal has a discretion to determine whether or not notice should be given to a strata company once an application has been lodged. In some cases, the nature of the dispute is personal to the parties and the strata company has no real interest in it. It is therefore recommended that section 104 be amended by deleting the reference to a strata company, which in any event, will have to have the order served upon it if it is involved in the proceedings. Further amendments to section 104 are recommended to delete the requirement that reasons for decision be served with the order. Under the *State Administrative Tribunal Act 2004* the Tribunal is obliged to give reasons for a final decision only. However, a party is entitled to request written reasons for an interim decision within 28 days after the day on which the decision is given. This is a preferable regime because it

facilitates the grant of interim orders on a very urgent basis.

In addition, the CC stream identified two areas of the *Strata Titles Act 1985* which were considered to warrant urgent attention but required input from wider community consultation. The first of these relates to the omission within the *Strata Titles Act 1985* to deal in any way with the manner in which a strata company may remove, add to or alter common property as part of the control and management of the common property, as opposed to works involving the renewal or replacement of common property as part of the strata company's obligations to maintain. This is a cause for concern because many strata titles properties are deteriorating and lack modern facilities and amenities, and are in need of upgrading. It is accordingly recommended that the *Strata Titles Act 1985* be amended by inserting a new section 17A empowering the strata company to remove, add to or alter any part of the common property if those works are of an incidental nature and are authorised by the strata company in general meeting as part of the budget of the company, or are authorised by resolution without dissent, or unanimous resolution in the case of a two part scheme. It is further recommended that section 85 of the Act be amended to empower the Tribunal to resolve a dispute which might arise as a result of an unreasonable refusal to approve a proposal to carry out such works.

The second matter raised concerns the inability of the Tribunal to make an order for costs. Subsection 81(7) of the *Strata Titles Act 1985* provides that the Tribunal cannot make an order for payment of costs except to compensate persons for time unnecessarily spent in connection with an application as a result of an amendment, or where a party has unreasonably opposed an application under section 103H for a variation of unit entitlements. Members of strata councils are volunteers. When a persistent litigant pursues a strata company, it is common for the strata company to engage solicitors because individual council members do not have the time nor the skill to deal properly with the matter. The strata company can therefore become exposed to significant legal costs without any prospect of recovery notwithstanding that the claim may be vexatious, frivolous or an abuse of process.

The Tribunal's ability to award costs is sufficiently constrained under section 87 of the *State Administrative Tribunal Act 2004* and it is recommended that the power to award costs in respect of strata title disputes should be subject to the same regime. In the ordinary course, one would expect that costs would not be ordered in a strata matter but that the bringing of vexatious or frivolous proceedings, or causing wasted costs, or the unreasonable conduct of proceedings might result in an adverse costs order. The power to award costs in such circumstances would discourage irresponsible behaviour in the conduct of strata disputes.

The President has written to the Attorney General concerning the above matters and also providing a comprehensive commentary on the earlier report of the former Strata Titles Referee proposing reform.

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Development and Resources Stream

The work of the development and resources stream

The development and resources (DR) stream determines applications concerning development, subdivision, local government notices, fisheries, water, rating, land valuation, land tax, local government approval, soil and land conservation, compensation for compulsory acquisition of land and related matters under 35 enabling Acts.

Most of the work of the stream involves the review of decisions of original decision-makers. The principal area of original jurisdiction allocated to the stream involves the determination of compensation for the compulsory acquisition of land.

During the reporting period, the DR stream received 368 applications and finalised 379 applications. Table 1 sets out details of the applications received and the applications finalised during the reporting year. Table 1 also shows that the bulk of the stream's work during the reporting period involved the review of decisions of State and local government authorities concerning town planning applications and local government notices. These applications constituted approximately 93% of all DR applications received during the reporting period.

Table 1—DR applications received and applications finalised 2005/2006

Subject of application	Number of applications received	Applications received as approximate % of all DR applications	Number of applications finalised	Applications finalised as approximate % of all DR applications
Development	220	60%	199	53%
Subdivision	94	26%	108	29%
Local government notices	25	7%	26	7%
Compensation for compulsory acquisition of land	5	1%	5	1%
Local government approvals	5	1%	5	1%
Rating	4	<1%	8	2%
Fisheries	4	<1%	12	3%
Land valuation	3	<1%	4	1%
Review by President of determination of non-legally qualified member	3	<1%	4	1%
Water	2	<1%	1	<1%
Land tax	1	<1%	2	<1%
Disqualification of local government councillor	1	<1%	1	<1%
Review of rejection of application by Executive Officer	1	<1%	1	<1%
Review of order of Minister for Planning that local government pay another local government's costs	0	---	1	<1%
Ministerial referral of representations for report and recommendations	0	---	2	<1%
Total	**368**	**100%**	**379**	**100%**

Table 2 sets out details of the applications resolved by final hearing during the reporting period. During the reporting period, the DR stream resolved 140 applications by final hearing.

Table 2 – DR applications resolved by final hearing 2005/2006

Subject of application	Number of applications	Approximate percentage of final decisions
Development	80	57%
Subdivision	27	19%
Fisheries	8	6%
Local government notices	6	4%
Rating	5	4%
Land valuation	4	3%
Review by President of determination of non-legally qualified member	4	3%
Land tax	2	1%
Ministerial referral of representations for report and recommendations	2	1%
Local government approvals	1	<1%
Water	1	<1%
Total	**140**	**100%**

In addition, during the reporting period, the DR stream published 18 written decisions which were not final decisions. **Table 3** sets out details of non-final decisions published by the DR stream during the reporting period.

Table 3—DR non-final written decisions 2005/2006

Subject of decision	Number of decisions	Approximate % of non-final decisions	Approximate % of all published decisions
Preliminary issue – town planning	5	28%	3%
Costs	4	22%	3%
Joinder/leave to make submissions/intervention	3	17%	2%
Extension of time to commence proceedings	3	17%	2%
Preliminary issue – soil and land conservation	1	6%	<1%
Leave to amend plans	1	6%	<1%
Exclusion of documents	1	6%	<1%
Total	**18**	**100%**	**11%**

Active case management, mediation and compulsory conference by members are critical components of dispute resolution in the DR stream. In the reporting period, approximately 60% of all applications in the stream and approximately 65% of all town

planning and local government notice applications were resolved through case management, mediation or compulsory conference without the need for a final hearing.

In the reporting period, only approximately 38% of all applications in the stream and only approximately 33% of all town planning and local government notice applications required a final hearing. In contrast, during the last 12 months of the Town Planning Appeal Tribunal (TPAT), approximately 57% of equivalent proceedings required a final hearing.

Table 4 sets out a comparison between the performance of the DR stream and TPAT in this respect. It also shows that there has been an increase of approximately 4% in the total number of town planning and local government notice applications for review in 2005/2006 over equivalent appeals in 2004, including an 83% increase in the number of local government notice applications.

Table 4 – DR town planning and local government notice applications resolved by final hearing 2005/2006 compared with the Town Planning and Appeals Tribunal (TPAT) appeals resolved by final hearing 2004.

	DR stream 2005/2006			TPAT 2004		
Subject of application	**Number of applications resolved by final hearing**	**Number of applications received**	**Number of applications resolved by final hearing as approximate % of number received**	**Number of appeals resolved by final hearing**	**Number of appeals received**	**Number of appeals resolved by final hearing as approximate % of number received**
Development	78	220	35%	145	212	68%
Subdivision	27	94	29%	32	99	32%
Local government notices	6	25*	24%	8	12	67%
Total	**111**	**339***	**33%**	**185**	**323**	**57%**

* This includes three local government notice applications under the *Local Government Act 1995* which did not fall within TPAT's jurisdiction.

Three important benefits flow from the stream's emphasis upon and success in case management, mediation and compulsory conference:

- First, the significant reduction in the proportion and number of planning and local government notice proceedings which require a final hearing, compared with the former adjudicator, means that considerably fewer parties must incur the time and expense of preparation for and participation in a final hearing.

- Second, a planning result which is the product of discussion and agreement between a proponent and a responsible authority generally reflects a superior community planning outcome than an imposed, win/loss Tribunal determination.

- Third, even if proceedings are not resolved through case management, mediation or compulsory conference, at the very least contested issues are identified and narrowed, so that the final hearing is quicker and cheaper.

Legacy matters

On 1 January 2005, the DR stream received 167 legacy matters from former adjudicators which ceased to exist or had been replaced by Tribunal. These included 124 appeals from TPAT, 42 objections from the Fisheries Objections Tribunal and a land tax appeal. In addition, one application was received in June 2005; the DR stream received an appeal to the Minister for Environment from a decision of the Swan River Trust.

By the end of the reporting year, all but 12 of the 168 legacy matters received by the DR stream had been finalised. Eight of the outstanding matters concern subdivision applications, two concern development applications and two concern local government notices. Table 5 sets out details of the status of these matters.

Table 5 – DR legacy matters current at end of 2005/2006

Number of applications	Subject of application	Status
3	Subdivision	Consent orders being finalised
2	Local government notice	Awaiting local scheme amendment with consent of all parties
1	Development	Final hearing completed; decision reserved
1	Development	Consent orders being finalised; listed for final hearing
1	Subdivision	To be listed for final hearing
1	Subdivision	Listed for decision as to whether proceedings should be dismissed
1	Subdivision	Awaiting local scheme amendment with consent of all parties
1	Subdivision	Final hearing completed; decision reserved
1	Subdivision	Can not be finally determined as environmental assessment pending before Minister for Environment

The Members of the Development and Resources Stream

The work of the DR stream is overseen by the President, Justice Barker and the Deputy President Judge Chaney, together with Senior Member David Parry. Mr Parry was formerly a barrister specialising in planning, environmental and local government administrative and judicial review.

The other full-time members who work principally in the stream are Marie Connor, a town planner and formerly a member of TPAT, Jim Jordan, a town planner who also holds a law degree and was formerly a senior member of TPAT, and Peter McNab, formerly a barrister and university lecturer specialising in administrative law.

(L – R) Senior Member David Parry, Members Jim Jordan, Marie Connor & Peter McNab

Members of the DR stream are also listed to determine and mediate applications in the human rights and vocational regulation streams and, on occasion, in the civil and commercial stream.

A number of specialist sessional members have been appointed to Tribunal and principally allocated to the DR stream, including four town planners and three architects. The sessional members have made a valuable and necessary contribution, enabling the stream to achieve the results described in this report.

During the reporting period, sessional members conducted and determined 24 of the 107 final hearings in town planning applications. This represented approximately 22% of final hearings in town planning applications and approximately 17% of all final hearings conducted in the DR stream. In addition, sessional members sat as part of a panel with one or two full-time members in another 10 town planning final hearings. In total, during the reporting year, sessional members were involved in approximately 32% of final hearings in relation to town planning applications (approximately 24% of all final hearings in the DR stream).

Directions hearings

All applications in the DR stream are listed for an initial directions hearing before a member within three weeks of filing and are case-managed by the member.

Planning applications involving developments with a value of less than $250 000 or $500 000 in the case of a single house, subdivisions to create three lots or less, and local government notices directed to persons who are self-represented, are listed for an initial directions hearing before members Connor, Jordan or McNab for a one hour appointment. Such directions hearings often becomes a defacto mediation or early neutral evaluation, which facilitates resolution without the need for a final hearing.

Revenue and fisheries applications are listed for an initial directions hearing before the President.

All other DR applications are allocated to a weekly directions list conducted by Deputy President Judge Chaney and Senior Member Parry.

Mediation and compulsory conference

As indicated earlier, mediation and compulsory conference are used extensively and successfully in the DR stream to resolve applications and to identify and narrow contested issues.

Mediation is a process which allows parties to create their own solution to a dispute in a confidential setting, rather than have a decision imposed upon them. Mediation can result in a solution to a wider dispute which goes beyond the four corners of an application to the Tribunal. Compulsory conference is a similar process, although the member conducting the conference usually takes a slightly more interventionist approach. If, following mediation or compulsory conference, the parties request the member to make consent orders reflecting an agreement, the member must be satisfied that he or she has power to make the orders and that it is appropriate to do so.

As noted earlier, in the reporting period, approximately 60% of all applications in the DR stream and approximately 65% of all town planning and local government notice applications were resolved through case management, mediation or compulsory conference without the need for a final hearing. Experience during the reporting period indicates that word of the success of Tribunal mediation has spread and that parties often jointly request mediation at the outset.

All mediations and compulsory conferences in the DR stream are conducted by members of the stream or occasionally by a relevantly experienced member of another stream. Each full-time member of the DR stream is a trained mediator.

A member who conducts mediation cannot be involved in the determination of the same proceedings, if the mediation does not result in settlement, unless the parties consent. A member who conducts a compulsory conference cannot be involved in the determination of the proceedings, if the conference does not result in settlement, under any circumstances. However, experience indicates that the fact that a mediator or person conducting a compulsory conference is a Tribunal member with significant, relevant experience, adds a useful dimension to the process, and undoubtedly results in a higher rate of success.

During the reporting period, the stream introduced a practice of inviting local government councillors, who have a particular interest in the development or other application in issue, to attend the mediation. Councillors have played a constructive role in the process of mediation and in the communication of the outcome to the rest of the elected council.

Another interesting use of mediation in the DR stream during the reporting year has been in relation to soil and land conservation notices issued to four landowners at the top of a Wheatbelt catchment, which require the recipients to block up deep drains installed, according to landowners, in order to arrest the effect of salinity. Deputy President Judge Chaney and Senior Member Parry conducted a mediation on site over two days attended by the landowners who had received the notices, the Department of Agriculture, the local Shire and approximately

12 down-stream landowners, some of whom consider that they are adversely affected by the drains. Although the mediation did not result in resolution of the proceedings or the wider salinity issue, it demonstrated Tribunal's ability to seek resolution of significant issues which would not otherwise be addressed.

Final hearings

Most final hearings conducted in the DR stream during the reporting period were oral hearings. However, a number of applications were determined entirely on the documents without the need for a hearing.

Planning applications involving developments with a value of less than $250 000 or $500 000 in the case of a single house or subdivisions to create three lots or less must be determined by a single member, other than a judicial or senior member, unless the President is of the opinion that the application is likely to raise complex or significant planning issues: see *Planning and Development Act 2005* sections 238(3) and (4).

It is suggested that this limitation should be removed, so that any single member can determine these applications, and that a panel comprising two or three members can be listed if the application is likely to raise complex or significant planning issues. This change would improve the efficiency of the stream, in particular by allowing Senior Member Parry to determine such applications where appropriate.

Land tax applications must be determined by, or by a panel including, a judicial or senior member.

Other DR applications are listed before a single member or a panel of two or three members, depending on the issues in question and the complexity or significance of the case. Panels generally comprise two members presided over by Deputy President Judge Chaney, Senior Member Parry or another member designated by the President.

During the reporting period, the DR stream commenced the trial of a practice of listing simple planning applications for on-site mediation on the understanding that, if the parties consent and if the member conducting the mediation considers it appropriate, the member will determine any outstanding issue not agreed through mediation on the basis of the information provided at the mediation. The member can give his or her decision on the spot and/or provide written reasons later.

Draft Conditions

In the DR stream section of the annual report for January to June 2005, it was reported that the stream had trialled a practice, in applications concerning the refusal or deemed refusal of an application which the Tribunal could approve subject to conditions, of generally requiring the original decision-maker to file and provide to the applicant in advance of the hearing, a set of draft, without prejudice conditions of approval subject to which the Tribunal could approve the application if, after hearing the evidence and submissions of the parties, it considers that approval subject to conditions is appropriate. This practice was introduced to ensure that applications are determined as quickly and cheaply as possible in a one stop hearing.

Experience over the reporting period indicates that this practice operates successfully and avoids the time and expense of parties having to attend further hearings in relation to conditions where the Tribunal determines to grant conditional approval.

As the practice operates by way of a standard order made when proceedings are listed for final hearing, it is open to an original decision-maker to contend that, in the particular circumstances of a case, the practice should not be

followed. However, during the reporting period, no such application was made.

Experience over the reporting period indicates that parties, witnesses and the Tribunal are able to successfully deal in a single hearing with both the issue of whether approval should be granted at all and the issue of the conditions subject to which the application should be approved, if approval is appropriate.

Furthermore, the identification of draft conditions in advance of the hearing has the effect of shortening hearing time, as the parties are left to address determinative, rather than peripheral issues.

While, as with all practice and procedure, the one-stop hearing practice will be kept under review, it is now an established and anticipated part of the practice of the DR stream.

Expert evidence

Other than in minor planning and local government notice applications, expert witnesses in each field are generally required to confer with one another, in the absence of the parties or their representatives, in advance of the hearing, and to prepare and file a joint statement of matters agreed between them, matters not agreed, and the reasons for any disagreement.

Other than in minor planning and local government notice applications, expert witnesses in each field generally give evidence concurrently at the hearing. This involves the witnesses sitting together in the witness box, being asked questions by the member or members, generally on the basis of the joint statement, being given an opportunity to ask each other any questions, and being asked questions by the parties or their representatives.

During the reporting year, it has often been the case that three or four witnesses have given concurrent evidence together in DR hearings.

Experience over the reporting year indicates that the practice of expert conferral and concurrent evidence significantly reduces the length of hearings and greatly assists members to make the correct and preferable decision.

Time taken to finalise applications

Table 6 indicates the number of weeks taken to finalise applications in the principal areas of the work of the DR stream during the reporting year.

Table 6—Number of weeks taken to finalise DR applications 2005/2006

% of applications	Development	Subdivision	Local Govt notices	Compensation for compulsory acquisition	Local Govt approvals	Rating	Fisheries
10%	6 weeks	7 weeks	2 weeks				24 weeks
20%	9 weeks	12 weeks	9 weeks		7 weeks	20 weeks	25 weeks
30%	12 weeks	15 weeks	12 weeks	6 weeks	18 weeks		26 weeks
40%	15 weeks	19 weeks	16 weeks			24 weeks	
50%	20 weeks	23 weeks	18 weeks	25 weeks	27 weeks	26 weeks	
60%	24 weeks	25 weeks	24 weeks				27 weeks
70%	27 weeks	27 weeks	34 weeks			34 weeks	
80%	30 weeks	31 weeks	49 weeks	28 weeks	44 weeks		28 weeks
90%	38 weeks	38 weeks	58 weeks			37 weeks	38 weeks
100%	64 weeks	68 weeks	63 weeks	45 weeks	46 weeks	45 weeks	52 weeks

Table 7 sets out the performance benchmarks which have been adopted for the finalisation of applications in the DR stream for the 2006/2007 reporting year.

Table 7—Performance benchmarks of number of weeks taken to finalise DR applications 2006/2007

Percentage of applications	Number of weeks within which percentage of applications is to be finalised
30%	12 weeks
50%	20 weeks
80%	30 weeks*

* Other than local government notice applications. The finalisation of local government notice applications is often dependent on the lodgement and determination of a development application for retrospective approval. The performance benchmark for the finalisation of 80% of local government notice applications is 45 weeks.

Community relations

As was reported in the DR section of the January to June 2005 annual report, shortly after the Tribunal was established, a Development and Resources Consultation Forum was held. In October 2005, further sessions of the Forum were conducted by Deputy President Judge Chaney and the members of the DR stream in relation to developments in the practice and procedure of the stream. As was the case with the first meeting of the Forum, the sessions in October 2005 were well attended and received.

Further meetings of the Development and Resources Consultation Forum are scheduled to take place shortly in relation to expert conferral and concurrent evidence.

During the reporting period, the Tribunal commenced a series of regional community forums. In May 2006, the President discussed the work of the DR stream, as well as the other streams, in the north-west in Kununurra, Broome and Karratha. These forums were attended by councillors and council officers, as well as other interested persons.

Hon Justice Michael Barker in Karratha.

In June 2006, Deputy President Judge Chaney, Senior Member Parry and Member Marie Connor addressed a community forum in Albany, timed to coincide with a hearing in the DR stream.

Albany forum

Senior Member Parry has also spoken in relation to the work and practice and procedure of the DR stream at seminars organised by Legalwise Seminars in relation to planning law and practice, the Rotary organisation and the Community Legal Centres of Western Australia.

Decisions of note

A number of important DR decisions were published during the reporting year. Fourteen DR decisions were reported in the State Reports of Western Australia ((SR(WA))) during the year, of which 8 were published during the reporting year and 6 during the previous year. In volume 41, which is the most recent volume of the State Reports, 9 of the 28 reported cases were decisions of the DR stream; a further 6 reported cases were decisions of the other three streams of Tribunal.

Important decisions of the stream published during the reporting year include the following –

- ***O'Connor and Town of Victoria Park*** [2005] WASAT 161 – The President set out and discussed the principal considerations which guide the exercise of the Tribunal's discretion to extend the time period within which an application for review must be commenced;

- ***Lakes Action Group Association (Inc) and Shire of Northam & BGC Australia Pty Ltd*** [2005] WASAT 185S – The Tribunal considered the nature of proceedings for report and recommendations to the Minister for Planning under section 18(2a) of the *Town Planning*

and Development Act 1928 (see now *Planning and Development Act 2005* section 211(2)) and the principles to be applied in relation to an application for costs in such proceedings;

- ***Uniting Church Homes (Inc) and City of Stirling; Churches of Christ Homes & Community Services (Inc) and City of Stirling*** [2005] WASAT 191 – The Tribunal considered whether land which comprised independent living units, in facilities owned and operated by non-profit organisations, in respect of which residents had to be a minimum of 55 years of age – although they were on average significantly older – and were generally required to make entry payments determined by market value and on-going payments, was used exclusively for the charitable purpose of relief of the aged and was, therefore, exempt from rates;

- ***WA Plantation Resources Pty Ltd and City of Bunbury & Western Australian Planning Commission*** [2005] WASAT 194 – The Tribunal considered the breadth of its power in review proceedings under section 29(1) of the *State Administrative Tribunal Act 2004* to exercise functions and discretions corresponding to those exercisable by the original decision-maker in making the reviewable decision;

- ***Steve's Nedlands Park Nominees Pty Ltd and City of Nedlands*** (2006) 41 SR (WA) 16; [2006] WASAT 16 and ***Krasenstein and Western Australian Planning Commission*** (2005) 40 SR (WA) 55; [2005] WASAT 201 and – The Tribunal considered the principles which apply in relation to an application for leave to intervene in proceedings under section 37(3) of the *State Administrative Tribunal Act*;

- ***Springmist Pty Ltd and Shire of Augusta-Margaret River*** (2005) 41 SR (WA) 207; [2005] WASAT 143S – The Tribunal considered and explained the costs provisions in sections 87 and 88 of the *State Administrative Tribunal Act 2004*;

- ***Fehlauer and Western Australian Planning Commission*** [2005] WASAT 222 – The Tribunal considered the principles of discretion and consistency in administrative decision making in the context of an application to subdivide rural land;

- ***Western Australian Meat Marketing Co-operative Ltd and Valuer General*** [2005] WASAT 227 – The Tribunal considered the principles applicable to the determination of gross rental value of a highly specialised property and consistency of administrative decision making in the context of valuation of land;

- ***Elphick and Department of Fisheries*** [2005] WASAT 301 – The Tribunal discussed the principles in relation to the interpretation of a fisheries management plan and considered whether the executive director has a discretion to issue a permit if an applicant fails to satisfy entry criteria;

- ***The Owners of Strata Plan 18449 and City of Joondalup*** [2005] WASAT 304 – The Tribunal determined, contrary to the approach which had been taken or assumed in earlier cases, that it has jurisdiction to determine the use class of a proposed use, even though the original decision-maker has itself categorised the use;

- ***Canning Mews Pty Ltd and City of South Perth*** (2005) 41 SR (WA) 79; [2005] WASAT 272 – The Tribunal considered the principles applicable

to the development of a transitional site adjacent to a density boundary, whether there is discretion under the *Residential Design Codes of Western Australia 2002* to vary maximum plot ratio, and the significance of resident objectors' evidence in relation to amenity;

- ***Hodge & Collard Pty Ltd and City of South Perth*** (2005) 41 SR (WA) 141; [2005] WASAT 295 – The President considered whether the expression, alternative outdoor living area, in the *Residential Design Codes of Western Australia 2002* includes communal open space for multiple dwellings;

- ***Inglewood Church of Christ and City of Stirling*** (2005) 41 SR (WA) 99; [2005] WASAT 305 – The Tribunal considered whether a place of public worship includes welfare services, the significance of an existing shortfall in car parking provision, and the principles in relation to the calculation of car parking generation for a place of public worship;

- ***Forrest and Town of Cottesloe*** [2005] WASAT 304 – The Tribunal considered what is meant by the expression, the special needs of the elderly, in a planning context, and whether a stand alone development comprising two large dwellings satisfies that expression;

- ***Tooth and City of Subiaco*** (2005) 41 SR (WA) 198; [2005] WASAT 317 – The Tribunal addressed an argument that applicable policies were irrelevant and futile, given the deterioration of the streetscape, and considered the proper role of a consent authority in relation to a strategic planning regime;

- ***Stock and Shire of Victoria Plains*** [2005] WASAT 347 – The Tribunal considered whether a policy could require development approval in circumstances where a local scheme does not;

- ***Smith and City of Stirling*** [2005] WASAT 347 – The Tribunal considered whether a challenge to a special rate imposed for underground power involves a question of general interest;

- ***Willicombe and City of Gosnells*** (2006) 41 SR (WA) 283; [2006] WASAT 13 – The Tribunal considered whether cumulative variations to the acceptable development provisions of the *Residential Design Codes of Western Australia 2002* can constitute an overdevelopment which warrants refusal;

- ***JB Investments Pty Ltd and Valuer General*** [2006] WASAT 55 – The Tribunal considered the principles which apply to the determination of gross rental value of a park home estate, including the aggregation approach to valuation;

- ***Filton and Town of Vincent*** [2006] WASAT 70 – The Tribunal determined that minor and contrived projections of areas of units over garage areas of other units do not transform grouped dwellings into multiple dwellings under the *Residential Design Codes of Western Australia 2002*, and that, read in the context of the Codes as a whole, the words, any part of a dwelling is vertically above part of any other, in the definition of multiple dwellings means any substantial part of a dwelling is vertically above a substantial part of any other;

- ***Sunbay Developments Pty Ltd and Shire of Kalamunda*** [2006] WASAT 74 – The President considered whether, in the determination of the impact of a development on the likely future amenity of a locality, it is open to focus on the impact on discrete land holdings, and whether a condition which requires a covenant on title of adjoining property restricting built form is contrary to orderly and proper planning;

- ***Burns and Commissioner of Soil and Land Conservation*** [2006] WASAT 83 – The Tribunal considered whether it was precluded from making a decision to discharge a soil and land conservation notice in circumstances where the notice was issued in response to a proposal to clear land which had been referred to the Environmental Protection Authority for environmental assessment;

- ***Allsure Pty Ltd and Western Australian Planning Commission*** [2006] WASAT 145 – The Tribunal determined that although an application sought review of a condition of subdivision approval, the condition was in substance a refusal of the application, and that the Tribunal, therefore, had jurisdiction to determine whether to grant subdivision approval; the Tribunal considered whether preparation and submission of plans required by a condition of development approval constituted the carrying out of development, and whether it would be contrary to orderly and proper planning to create an allotment which is not likely to be capable of development, as development approval is unlikely to be obtained.

- In ***Shire of Augusta-Margaret River v Gray & Anor*** [2005] WASCA 227, the Court of Appeal determined by majority (Pullin JA and Le Miere AJA; McLure JA dissenting) that the Town Planning Appeal Tribunal (TPAT) erred in law in refusing the Shire's applications for joinder and, alternatively, to make submissions in a pending subdivision appeal: see ***Gray v Western Australian Planning Commission*** [2004] WATPAT 42.

  Section 62 of the *Town Planning and Development Act 1928* (WA) (TPD Act) provided that TPAT (and, after its establishment, SAT) "may receive or hear submissions in respect of an application from a person who is not a party to the application if the Tribunal is of the opinion that the person has a sufficient interest in the matter". Section 242 of the *Planning and Development Act 2005* (WA) (PD Act) is now in the same terms. The President of TPAT did not consider that the Shire had a "sufficient interest". He reasoned that the Shire had already made its submission to the Commission and that "to permit the Shire to play a role is to subvert the process in which the primacy of the role played by the [Commission] is not denied".

  The Court of Appeal held that, if TPAT's decision to refuse joinder were quashed, the Shire's (pending) application before SAT would be subject to the law before SAT was established; see [40] per McLure JA

(with whom Pullin JA agreed at [84] and Le Miere AJA agreed at [164]).

A majority held that as the Shire was not a party to the subdivision appeal, it was not "a person aggrieved by a direction, determination, or order of the Tribunal in proceedings to which the person was a party" within the meaning of section 67(1) of the TPD Act (emphasis added). Their Honours determined, therefore, that an unsuccessful applicant for joinder before TPAT could not appeal to the Supreme Court, but rather could only seek prerogative relief. It remains to be seen whether the Court of Appeal will construe section 105 of the SAT Act in the same way as section 67 of the TPD Act.

A majority held that the President of TPAT misdirected himself in a number of respects in his determination of the joinder application. In particular, he incorrectly limited joinder to "exceptional or extraordinary circumstances" and was distracted from the proper application of the discretion by considerations that the role of the Shire was "subservient" to the role of the Commission and that it would be wrong to "reverse the positions"; see [132] - [136] per Pullin JA (with whom Le Miere AJA agreed at [162]).

Pullin JA held that the correct approach to the application of the discretion to allow joinder under the former legislation was that set out in the decision of the Full Court of the South Australian Supreme Court in ***Pitt v Environment Resources and Development Court*** (1995) 66 SASR 274. The Environment Resources and Development Court had broad discretion to "join a person as a party to any proceedings … ". Duggan J (with whom Nyland J agreed) rejected the trial judge's view that "special and unusual" circumstances had to be shown or that there had to be a "special" case before joinder would be ordered. Doyle CJ also rejected a limitation to "exceptional cases".

A majority held that the President of TPAT erred in the exercise of the discretion under section 62 of the TPD Act; see [138] - [144] per Pullin JA (with whom Le Miere AJA agreed at [163]). However, it is unclear precisely what legal error their Honours considered had been committed.

At [138] - [139] Pullin JA provided guidance as to the meaning of the term "sufficient interest". Having noted that the phrases "special interest" and "sufficient interest" are sometimes interchanged as a shorthand expression, for example in ***Australian Conservation Foundation Inc v The Commonwealth of Australia*** (1980) 146 CLR 493 at 528, his Honour held at [139] as follows:

> "In my opinion, the expression 'sufficient interest' in section 62 means that the Tribunal must be satisfied that the applicant had an interest which would give standing for judicial review and which would pass the test for standing approved by the *High Court in Australian Conservation Foundation Inc v Commonwealth* (supra). That must be shown before the Tribunal's discretion is enlivened under section 62. That is not to say that if the jurisdiction is enlivened that the Tribunal is then obliged to exercise the discretion in favour of the applicant. Factors such as those referred to in Pitt's case would then be taken into account in deciding whether to permit a person, not a party, to make submissions."

By majority (McLure JA and Le Miere AJA; Pullin JA dissenting), the Court of Appeal dismissed the Shire's appeal as incompetent. By

majority (Pullin JA and Le Miere AJA; McLure JA dissenting), the Court ordered that the order nisi for writ of certiorari be made absolute and that the decision of TPAT to dismiss the applications made by the Shire to be joined as a party and, alternatively, for leave to make submissions to the Tribunal under section 62 of the TPD Act be quashed. The Shire's applications were remitted to SAT for determination in accordance with the decision of the Court.

SAT subsequently joined the Shire as a party: see ***Gray and Western Australian Planning Commission & Anor*** [2006] WASAT 26. The proceedings were then resolved through mediation conducted by a member of SAT.

Areas for reform

The work of the DR stream during the reporting year has highlighted four areas for reform:

- First, as noted earlier, it is suggested that the limitation in section 238(3) of the *Planning and Development Act*, which precludes a judicial or senior member from determining certain types of planning applications, should be removed. This suggestion would enable more efficient listing of applications in the stream, while still ensuring that the applications referred to in section 238(3) could only be decided by a single member, unless the President considers that a particular application is likely to raise complex or significant planning issues warranting a panel or two or three members.
- Second, it is suggested that section 244(3) of the *Planning and Development Act*, which provides that the President may conduct a review of a direction, determination or order upon a matter involving a question of law that was made by the Tribunal when constituted without a legally qualified member, should be amended to also allow a Deputy President to conduct a review. A Deputy President, who is a Judge of the District Court, is also well qualified to determine these forms of review.
- Third, it is suggested that section 216 of the *Planning and Development Act 2005*, which permits a responsible authority to apply to the Supreme Court for an injunction to restrain a contravention of the Act, an interim development order, a planning scheme or a condition of approval, should be amended to confer concurrent jurisdiction on SAT constituted by or including a judicial member.

  The reason for this suggestion is that the Tribunal has been established, in part, as a specialist planning tribunal which already has jurisdiction under section 255 of the *Planning and Development Act* to review directions given by local governments under section 214 where development is undertaken in contravention of a planning scheme, an interim development order, a planning control area requirement or a condition of approval. The Tribunal undertakes a very similar inquiry under section 255 to the inquiry which would be undertaken in determining an application for civil enforcement under section 216. The only real difference is that section 255 applications are commenced by the recipient of a direction, whereas section 216 applications are commenced by the issuer of a direction.

  It is also to be noted that other Australian jurisdictions confer exclusive or concurrent civil enforcement jurisdiction on the equivalent court or tribunal to the DR stream of Tribunal: see *Planning and Environment Act 1987* (Vic) section 114 (Victorian Civil and Administrative Tribunal); *Land and Environment Court Act 1979* (NSW)

sections 20(1), 20(2) and 71 (NSW Land and Environment Court); and *Land Use Planning and Approvals Act 1993* (Tas) sections 64(1) and (3) (Tasmanian Resource Management and Planning Appeal Tribunal).

- Fourth, the DR stream has been constrained in its ability to achieve the objective stated in section 9(a) of the *State Administrative Tribunal Act 2004*, to act as speedily as is practicable, by the referral of proposals, which are the subject of review proceedings, by original decision-makers to the Environmental Protection Authority (EPA) for environmental assessment under the *Environmental Protection Act 1986* or the requirement of the EPA that Tribunal itself refer proposals the subject of review applications to the EPA for environmental assessment.

  Although, where a proposal has been referred for environmental assessment, the DR stream is able to undertake mediations or compulsory conferences and to determine preliminary issues, Tribunal is precluded by section 41 of the *Environmental Protection Act 1986* from making a decision which could have the effect of causing or allowing the proposal to be implemented and it seems, therefore, from making a final decision in relation to the review, until an authority is served on it by the Minister for Environment under section 45(7). As the Tribunal determined in ***Burns and Commissioner of Soil and Land Conservation*** [2006] WASAT 83 at [27], the word, could, in section 41 of the *Environmental Protection Act 1986* refers to a potential event or situation. Section 41 does not only apply to a decision which will remove the last impediment to the lawful implementation of a proposal.

  Section 27(3) of the *State Administrative Tribunal Act 2004* states that the purpose of the review is to produce the correct and preferable decision at the time of the decision upon the review. Even if the parties were in agreement, it would not be possible for the Tribunal to list proceedings for final hearing, but limited to determining whether the application should be refused. If the correct and preferable decision is that the review should succeed, the Tribunal is bound to so determine. However, section 41 of the *Environmental Protection Act 1986* precludes the Tribunal from making a decision that could have the effect of allowing a referred proposal to be implemented.

  The environmental assessment process in relation to referred proposals, while no doubt complex, appears to take a considerable period of time. The result is that a number of applications have had to be repeatedly adjourned from directions hearing to directions hearing, awaiting the result of environmental assessment by the EPA and then any appeal to the Minister for Environment.

  The DR stream was forced to adopt a practice in relation to such applications of requesting an officer of the EPA or of the environmental appeals convenor to attend at the next directions hearing or advise in writing of the progress of the assessment. Deputy President Chaney and Senior Member Parry also met with the former appeals convenor, Mr Darren Walsh, and Mr Jean-Pierre Clement, appeals assessor, to discuss this issue.

  A possible solution to the problem is the New South Wales position, which was referred to in passing in ***Burns and Commissioner of Soil and Land Conservation*** at [42], under which the Land and Environment Court is authorised to determine an appeal against the decision of a council or consent authority whether

or not any concurrence or approval required before the council or consent authority could determine the application has been granted.

A variation on this theme would be to amend section 41 of the *Environmental* Protection *Act 1986* to permit the Tribunal to finally determine proceedings involving a referred proposal, but to preclude the implementation of the proposal until the Minister is satisfied that there is no reason why a proposal in respect of which a statement has been published under section 45(5)(b) should not be implemented.

It is to be noted that section 37(1) of the *State* Administrative *Tribunal Act 2004* confers a right on the Attorney General, on behalf of the State, to intervene in proceedings of the Tribunal at any time and that section 37(3) confers a discretion on the Tribunal to permit any person to intervene in proceedings. Section 37 could be amended to permit the Minister for Environment to intervene in proceedings which concern a proposal which has been referred to the EPA for environmental assessment under the *Environmental Protection Act 1986*. This would enable all environmental planning issues to be determined in a single proceeding.

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Human Rights Stream

The work of the Human Rights stream

Most of the work of the Human Rights stream is in the Tribunal's original jurisdiction and comprises the work done by the former Guardianship and Administration Board and Equal Opportunity Tribunal.

Senior Member Jill Toohey

In its review jurisdiction, the Human Rights stream reviews decisions made by a single member under the *Guardianship and Administration Act 1990*, and decisions of the Mental Health Review Board under the *Mental Health Act 1996*.

It also has jurisdiction to review some decisions under the *Gender Reassignment Act 2000*, the *Adoption Act 1994* and the *Children and Community Services Act 2006* although, so far, no applications have been received under these three Acts.

During the reporting year, the Human Rights stream received 2540 applications and finalised 2661 applications. Table 1 sets out details of the applications received and the applications finalised during the reporting period.

Table 1—HR applications lodged and applications finalised 2005-2006

Act	Applications received	As % of all HR applications received	Applications finalised *	As % of all HR applications finalised
Guardianship & Admin Act	2441	96%	2584	97%
Equal Opportunity Act	90	3.5%	59	2.3%
Mental Health Act	9	0.4%	18	0.7%
Totals	**2540**	**100%**	**2661**	**100%**

* Includes applications lodged before 1 July 2005 (Legacy matters)

Applications under the *Guardianship and Administration Act 1990* comprise the largest single jurisdiction dealt with by the Tribunal. Applications include those for the appointment of a guardian or administrator, review of orders, declarations that an enduring power of attorney is in force or intervention in an enduring power of attorney, and for directions as to how a guardian or administrator should perform their duties.

Table 2—*Guardianship and Administration Act* applications lodged and finalised 2005-2006

Type of application	Number of applications received	Number of applications finalised
s 40 - appointment of guardian	579	627
s 40 - appointment of administrator	893	934
s 17A - review by Full Tribunal	16	14
s 84 - periodic review by Tribunal	507	517
s 85 - mandatory review	8	7
ss 86, 87 - application by party for review	309	342
s 112(4) - application to inspect documents	48	53
s 104A - recognise EPA made in another jurisdiction	12	12
s 106 – declaration of incapacity; EPA in force	37	38
s 109 – intervention in EPA	16	13
s 74 – administrator seeking directions	12	6
Other	4	21
TOTAL	**2441**	**2584**

Applications for review of decisions of the Mental Health Review Board have increased markedly since the Tribunal was established. In 2005 – 2006, 18 applications were finalised. Only a small number of review applications were previously made to the former appeal forum, the Supreme Court. The Tribunal expects that its relative accessibility and a reduction in the cost of review proceedings in the Tribunal will mean a general increase in the number of these applications over time.

President of the Mental Health Review Board, Murray Allen

Almost all persons appearing before the Tribunal in guardianship and administration matters and in Mental Health Review Board reviews are self-represented. In equal opportunity matters, parties are often represented by the Commissioner, union solicitors or other solicitors, including CCI Legal, but many represent themselves. The Tribunal aims to assist parties as far as possible to present their cases and to make the pre-hearing procedures and the hearing itself as accessible as possible.

Legacy matters

On 1 January 2005, 49 matters were transferred from the former Equal Opportunity Tribunal. Two of those are effectively suspended awaiting the outcome of proceedings in other jurisdictions. One matter which was in the process of being finalised at 30 June 2006 and will be finalised shortly after the reporting period. All others have been finalised.

The functions of the Guardianship and Administration Board were assumed by the Tribunal on 24 January 2005. On that date, 258 matters were transferred to the Tribunal from the Board. By 30 June 2005, 247 had been finalised. During the reporting period all of the remaining matters are finalised other than one matter, which involves unusual procedural and substantive issues. Table 3 below sets out details of the status of these matters.

Table 3—HR legacy matters current at end of 2005-2006.

Number of applications	Subject of Application	Status
1	Review of administration order (s 17A of the *Guardianship and Administration Act 1990)*	Adjourned to August 2006 for further directions; applicant obtaining medical reports in support of application for review.
1	Equal opportunity complaint – sexual harassment	Adjourned for directions pending proceedings in another jurisdiction
1	Equal opportunity complaint – sexual discrimination	Adjourned for directions pending related matters being dealt with by the Equal Opportunity Commission
1	Equal opportunity complaint – family responsibility or status	Awaiting finalisation at 30 June 2006. Expected finalisation July 2006.

Members of the Human Rights stream

The work of the stream is overseen by the President and Deputy President Judge Eckert, together with Senior Member Jill Toohey. Other full-time Members who principally work in the stream are Felicity Child, Donna Dean and Jack Mansveld.

Member Donna Dean, Senior Member Jill Toohey, Members Felicity Child and Jack Mansveld

Together they have many years experience variously in the Commonwealth Refugee Review Tribunal, Administrative Appeals Tribunal, Social Security Appeals Tribunal, Guardianship Administration Board, Office of the Public Advocate and a range of community organisations.

Thirty sessional members, many of whom were formerly members of the Guardianship Administration Board and the Equal Opportunity Tribunal, bring a broad range of experience to the work of the stream. Most of the sessional members sit in guardianship and administration proceedings.

Directions hearings and case management

Directions hearings are held each Friday by Judge Eckert and Senior Member Toohey to deal with equal opportunity matters and mental health reviews.

Applications under the *Equal Opportunity Act 1984* are listed immediately for a directions hearing on receipt. The first directions hearing is normally held 2 to 3 weeks after the application is lodged. At the first directions hearing, parties are generally ordered to attend mediation or a compulsory conference with a view to settling the matter or identifying the issues in dispute. Matters that are not settled through mediation are programmed through to hearing at subsequent directions hearings. On average, two to four directions hearings are held in matters that proceed to a final hearing, depending on the complexity of the matter.

Applications under the *Mental Health Act 1996* are listed immediately for a directions hearing on receipt. At the directions hearing the matter is listed for final hearing and orders made for the production of relevant medical records and attendance of medical witnesses and any other matters to do with the conduct of the hearing.

Applications under the *Guardianship and Administration Act 1990* are listed for hearing within several days of receipt. Most matters are listed for hearing before a single member on a date six to seven weeks after the application is lodged although this may be shorter if circumstances require. If a matter is urgent and circumstances exceptional, a hearing can be held on the same day, or the day after, receipt of application. In appropriate cases, an application may be heard by a three member Tribunal.

Directions hearings are held occasionally in *Guardianship and Administration Act 1990* proceedings where, for example, there are a number of parties involved, or aspects of how the hearing will be conducted need to be settled. Generally, however, these applications proceed direct to a final hearing by way of listing for hearing on, or shortly after, receipt of the application.

The *Guardianship and Administration Act 1990* enables the Tribunal to refer matters to the Office of the Public Advocate for investigation and report to the Tribunal. The Public Advocate Liaison Officer, who is located at the Tribunal's premises, conducts an initial assessment of

matters referred to her prior to a formal referral by the Tribunal. This has proved to be a valuable means of case management. Generally the Public Advocate provides a written report of her investigation but, where time is limited, for instance, where an application is urgent, an oral report may be provided. Reports are an extremely useful way to gather information that might not be readily obtained at a hearing. For the most part referrals to the Public Advocate for investigation occurred were the matters were complex or where there was conflict between the parties.

Mediation and compulsory conferences

Mediations are conducted by a member from any of the Tribunal's streams and have proved very successful in resolving disputes. Although parties have usually been required by the Commissioner for Equal Opportunity to attend a conciliation conference with the aim of settling the dispute, even apparently intractable disputes are frequently resolved by means of early mediation by the Tribunal. Approximately 50% of matters are settled at, or shortly after, mediation. Most other matters settle at some point prior to the final hearing date without the need for a final hearing.

Compulsory conferences are also used in equal opportunity matters with the aim of resolving the dispute and identifying the issues in dispute. Conferences prove particularly useful in matters where one or both parties are self-represented and are unfamiliar with legal processes.

Mediation is only occasionally used as a separate process in guardianship and administration proceedings. However, the final hearing is usually a mix of fact-finding, mediation and facilitative decision-making techniques. The Guardianship and Administration Act requires that the Tribunal be satisfied that any orders are in the best interests of the person whom the order concerns. As a result, parties are not free to reach agreement in these matters without the concurrence of the Tribunal. Nonetheless, mediation has proven useful in some cases where families are in conflict, and the Tribunal will continue to use mediation in these proceedings where it is appropriate.

Final hearings

Most matters in the Human Rights stream are decided at hearings involving the parties, but a small number are determined on the papers. For instance, an application for recognition of an Enduring Power of Attorney made in another jurisdiction depends on substantial compliance with the form of EPA used in Western Australia and is generally determined on the papers. Some applications for exemption from the provisions of the *Equal Opportunity Act 1984* have been determined on the papers where they are uncontroversial and supported by the Commissioner for Equal Opportunity, and where no other party has expressed interest or opposition to the application.

In *Guardianship and Administration Act 1990* proceedings the Tribunal must comprise one or three members; the Act precludes two members from sitting. Whereas the former Board was constituted by three members in approximately 24% of hearings, the Tribunal sits as a single member unless the complexity of the matter warrants three members. This has enabled greater flexibility and more efficient use of members. However, as noted below, there would be even greater flexibility if the Tribunal could sit as two members on occasion.

Guardianship and administration applications are generally determined at a single hearing at the end of which decisions are delivered orally.

Most applications concern the appointment of a guardian or administrator for a person who may be

no longer capable of making decisions for themselves. Where an appointment is made, the Tribunal must decide who is suitable to act as guardian or administrator. Where there is no one suitable and willing, the Public Advocate may be appointed guardian. Where no family member or other person was suitable and willing, the Public Trustee was appointed as administrator.

The *Equal Opportunity Act 1984* does not prescribe the number of members who may sit on a hearing. As noted above, around 90% of these matters are resolved without a final hearing. Where the matter does proceed to hearing it is usual for three members to sit. Hearings range from one day to several days. Decisions may be delivered orally at the end of the hearing but it is more common for written reasons to be delivered.

Eighty-four matters were referred to the Tribunal by the Commissioner for Equal Opportunity during the year. Of the nine complaints of discrimination that were decided by a hearing of the Tribunal, three were upheld and six dismissed. Six applications for exemption from compliance with the Act were decided during the year. One exemption was refused; two were dismissed as unnecessary. Three exemptions were granted.

In *Mental Health Act 1996* matters, applications for review are listed for directions as soon as they are received and for a hearing as soon as possible after that, usually within about 3 weeks. The Tribunal is currently reviewing this process to see whether it can be further streamlined.

In these matters the Tribunal must comprise a legally qualified member, a psychiatrist or other medical practitioner if a psychiatrist is not available, and a person who is neither. The availability of psychiatrists continues to be an issue. These applications are usually dealt with at a single hearing at the end of which a decision and reasons are delivered orally.

Time taken to finalise applications

Applications under the *Guardianship and Administration Act 1990* are generally listed for hearing as soon as they are received. The aim is to finalise 75% of applications within 8 weeks of lodgement. For the period July 2005 to June 2006 73% of applications were finalised within 8 weeks of lodgement.

Table 4—Guardianship and Administration Act applications – percentage finalised within time standard

Percentage of applications finalised within 8 weeks	**73%***
Percentage of applications finalised within 9 weeks	76%
Percentage of applications finalised within 10 weeks	80%

*Target: 75% of applications finalised within 8 weeks

Table 5—Number of weeks taken to finalise HR applications 2005-2006

Percentage of applications	Mental Health	Equal Opportunity	Guardianship and Administration
10%	3 weeks	8 weeks	4 weeks
20%	7 weeks	8 weeks	5 weeks
30%	9 weeks	12 weeks	6 weeks
40%	10 weeks	15 weeks	7 weeks
50%	10 weeks	19 weeks	7 weeks
60%	13 weeks	22 weeks	8 weeks
70%	22 weeks	25 weeks	8 weeks
80%	24 weeks	28 weeks	10 weeks
90%	27 weeks	35 weeks	15 weeks
100%	35 weeks	69 weeks	64 weeks

Community relations

The Tribunal and the Public Advocate have been working closely throughout the year to streamline procedures for the referral of matters for investigation, and the President and the Public Advocate have established a working party to consider amendments to the *Guardianship and Administration Act 1990*.

The Tribunal also maintains regular contact with the Public Trustee whose office examines accounts submitted by private administrators appointed by the Tribunal and who also acts as administrator in cases of last resort.

In matters relevant to the Human Rights stream, the Tribunal has given presentations to a wide range of organisations including the State Ombudsman, Disability Services Commission, community organisations, social workers and community legal centres.

Members of the stream also participated in the AIJA 3rd International Conference on Therapeutic Jurisprudence, the Dying with Dignity in Neurodegenerative Disorders forum organised by the Neurosciences Unit of the North Metropolitan Area Health Service, and the Annual Congress of the Royal Australian and New Zealand College of Psychiatrists.

Following concerns expressed by private administrators about difficulties in having banks and other financial institutions recognise and understand administration orders and enduring powers of attorney, the Tribunal held a forum in May for all banks and financial institutions. The Banking Ombudsman was unable to attend but wrote expressing his strong support for the forum. Despite inviting every bank, building society and credit union in the State, the response was disappointing. The forum was well-received and all who attended found the exchange of information very useful.

Decisions of note

Most decisions in matters under the Guardianship and Administration Act are delivered orally with reasons at the end of the hearing. It is usually only where a decision is reserved or a party requests

written reasons that a formal set of written reasons is provided. Consequently there are relatively few of these decisions on the Tribunal's website.

Decisions of note made by the stream during the year include:

Equal Opportunity Act 1984

- ***Biundo and Cocks Macnish & Anor*** [2005] WASAT 300 – The applicant was employed as a legal secretary by a firm of solicitors. Six weeks before the birth of her first baby, she left work. She claimed she told the respondent she was going on 12 months maternity leave and asked whether she needed to put anything in writing; the respondent said that was not necessary. When the applicant attempted to return to work after 12 months, the respondents claimed she had resigned. The Tribunal found that the applicant had always intended to take maternity leave and believed, when she left to have her baby, that she was going on maternity leave. It found that the respondents acted to her detriment in telling her she need not put anything in writing, and in not clarifying her intentions. The Tribunal found that the respondents had constructively dismissed the applicant and their conduct was unlawful discrimination on the grounds of sex and pregnancy.

- ***Re Jupiter Holdings Pty Ltd*** [2005] WASAT 202 –The applicant owned and operated a caravan park in north-west WA. It sought an exemption from the age discrimination provisions of the Act so that it could restrict its clientele to people over the age of 18 and offer quiet facilities to the large number of older people who stayed at the caravan park especially during the tourist season. The Commissioner for Equal Opportunity objected to the exemption because it would allow the applicant to discriminate against people seeking accommodation at the caravan park based on their age, or the age of their children. The Tribunal decided that an exemption can only be granted where it would further the objects of the Act, being equality of opportunity and the elimination of all forms of discrimination, or where it would be in the public interest. The application was dismissed.

- ***Winter and Commissioner of Western Australian Police Service*** [2006] WASAT 87 – The applicant had complained to the Commissioner for Equal Opportunity that his employer had discriminated against him unlawfully on the ground of impairment. The Equal Opportunity Act requires a complaint to be lodged within 12 months of occurring. The Commissioner has discretion, on good cause being shown, to extend that period. In this case the Commissioner refused to accept that part of the complaint which concerned events more than 12 months before the complaint to her. She investigated events within the 12 month limit but dismissed that part of the complaint as lacking in substance. At the applicant's request she referred that part of the complaint to the Tribunal. The question for the Tribunal was whether it has jurisdiction to inquire into a complaint as it was lodged with the Commissioner or as it was referred to it by the Commissioner; further, whether the Tribunal has jurisdiction to inquire into a complaint that was not made to the Commissioner but was raised later, before the Tribunal. The Tribunal found that the Commissioner's refusal to extend the time for making a complaint to her is not reviewable by the Tribunal. It decided its jurisdiction is limited to the complaint referred to it by the

Commissioner and cannot include matters not in the complaint to her.

Mental Health Act 1996

- ***LM and Mental Health Review Board*** [2006] WASAT 123 – LM had been an involuntary patient under the *Mental Health Act 1996*. The Mental Health Review Board had decided he should remain an involuntary patient. LM asked the Tribunal to review the Board's decision. However, by the time the Tribunal received his application, the order had expired. The Tribunal had to decide whether it could review a decision of the Board once the involuntary patient status had expired. The President referred the question of law to Judge Eckert for her determination.

  Judge Eckert decided that, where an applicant has been an involuntary patient continuously within the meaning of the Act, and is still an involuntary patient at the time of the Tribunal's review, the Tribunal has jurisdiction to review the Board's decision. The effect of the decision is that, where a person continues to be an involuntary patient, but the nature of the order to which they are subject at the time of the Tribunal's decision has changed (for example, from a detention order to a Community Treatment Order), then the Tribunal may review the new order so long as the person has continuously been an involuntary patient under the Act and has exhausted their statutory rights of review under the *Mental Health Act 1996*.

Guardianship and Administration Act 1990

- ***LMM***
  A son, who was the plenary administrator for his mother who had Alzheimer's disease, sought authority to make a gift of $100 000 to himself from her estate. The estate was valued at over $300 000. The mother was in a nursing home and it was said that all her needs were being met. Another son supported the gift to his brother. The Tribunal did not authorise the gift. It considered it would be inconsistent with the overall intention of the Act which is to protect and preserve the estate of a represented person and to apply it to her needs during her lifetime, rather than distribute it ahead of time to potential beneficiaries under her will. A lesser amount of $30 000 was authorised as the applicant son's brother had previously received a gift of this amount and the Tribunal accepted that the mother had treated her sons equally in the past.

- ***AB***
  This case concerned an elderly man who had been diagnosed with cognitive impairments and a mental illness, and was incapable of making decisions about his living situation and his medical and psychiatric care. He had been an involuntary patient in a psychiatric facility under the *Mental Health Act 1996* but had been discharged before the Tribunal hearing. The Tribunal decided that a guardian was needed to make decisions about accommodation after his discharge from hospital and to provide lawful consent to medical treatment including psychiatric treatment. Once he had been discharged as an involuntary patient, the provisions of the *Mental Health Act 1996* did not operate to provide lawful authority to make these decisions. The Public Advocate was appointed limited guardian for these purposes.

Areas for reform

In March 2006 the Commissioner for Equal Opportunity announced a review of the *Equal Opportunity Act 1984*. The review will consider whether areas not currently covered by the Act should be

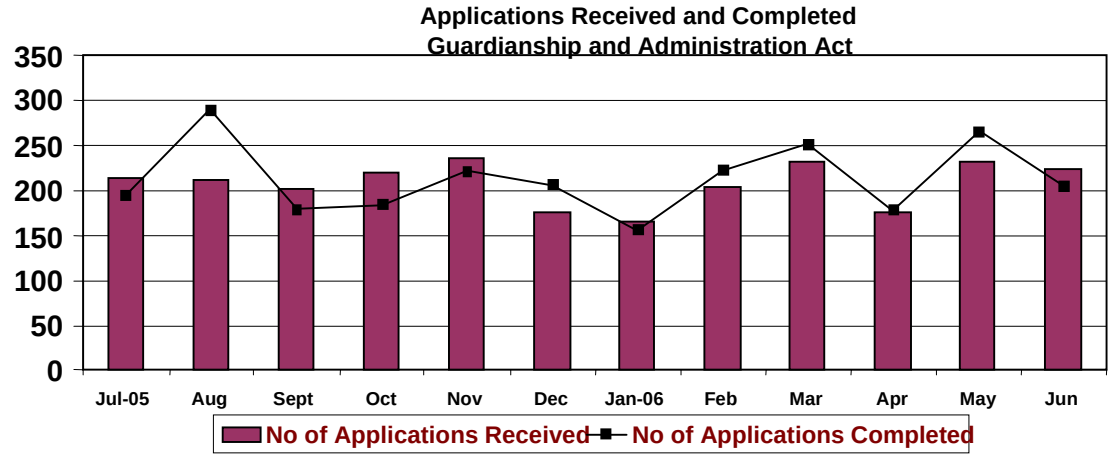
added, and whether remedies provided under the Act are appropriate. The Tribunal does not express views on matters of government policy but will look forward to the outcome of the review with interest.

In dealing with matters referred by the Commissioner for Equal Opportunity it has come to the Tribunal's attention that aspects of the referral process, in particular the identification of the matters being referred, the grounds of discrimination complained of and the contents of the Commissioner's report, might benefit from review, in particular so that applicants have a clearer understanding of what is before the Tribunal. The ***Winter*** decision referred to above raised these issues.

The President of the Tribunal and the Public Advocate have established a working party to review the *Guardianship and Administration Act 1990*. The Public Advocate is interested in reforms of the Act some of which go to matters of government policy and on which the Tribunal would not comment. However, there are a number of procedural provisions in the Act which would benefit from amendment. These include the flexibility to constitute the Tribunal by one, two or three members, clarification of the review provisions, and streamlining of notice provisions.

On 21 June 2006, the Attorney General introduced the *Acts Amendment (Advance Health Care Planning) Bill 2006* into Parliament. The Bill reforms the law relating to medical treatment for the dying and provides for enduring powers of guardianship and advance health directives, and for treatment decisions by persons responsible for patients.

The Tribunal will have jurisdiction to make decisions in relation to each of these. The Attorney General expects the legislation will come into effect towards the end of 2006. Although difficult to estimate, it is likely that it will generate more work for the Human Rights stream.



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Vocational Regulation Stream

The work of the vocational regulation stream

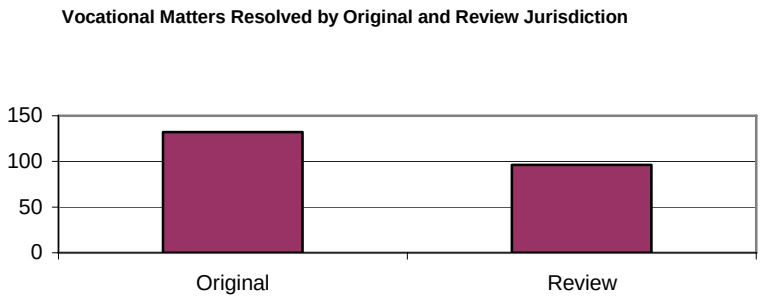
Much of the work the vocational regulation stream is in the Tribunal's original jurisdiction and comprises work done by the various former adjudicators including vocational registration boards and other public officials responsible for disciplinary matters (vocational regulatory bodies).

However, a reasonable volume of the work, which was previously dealt with by a court, is in the Tribunal's review jurisdiction.

During the reporting period the vocational regulation stream received 288 applications and finalised 228 applications. Of the finalised applications 132 were in the original jurisdiction and 96 in the review jurisdiction.

Graph 1 sets out details of the applications finalised during the reporting year.

Graph1—Vocational Regulation applications completed 2005/2006



Most, if not all, vocational regulatory bodies commencing proceedings in the Tribunal are legally represented. In many cases, but by no means all, the responding party is also legally represented.

Legacy matters

On 1 January 2005, 898 matters (legacy matters) were transferred from former adjudicators under section 167 of the State Administrative Tribunal Act 2004, on the basis that a hearing, consideration or determination of the matter had been sought or initiated but not commenced before the former adjudicator.

Of these 72 were vocational matters. As at 30 June 2006 11 VR legacy matters remained to be determined. Of those, 9 are effectively suspended awaiting the outcome of proceedings in other jurisdictions. All other legacy matters have been listed for final hearing.

During the course of the reporting year, some other legacy matters were also transferred to the Tribunal, apparently under section 167(5) on the basis that the matter had not been determined within a period of 6 months after 1 January 2005.

Table 1—Vocational Legacy matters transferred to the Tribunal from 1 January 2005 to 30 June 2006.

Former adjudicator	No. of matters transferred	No. of matters resolved	No. of matters unresolved
Builders Registration Board	1	0	1
Chiropractors Registration Board	0	0	0
Electrical Licensing Board	4	4	0
Finance Brokers Supervisory Board	5	0	5
Legal Practitioners Disciplinary Tribunal	39	34	5
Medical Board of WA	18	18	0
Motor Vehicles Dealers Licensing Board	1	1	0
Pharmaceutical Council of WA	1	1	0
Physiotherapists Registration Board	1	1	0
Psychologists Board of WA	0	0	0
Security Control - Commissioner of Police	2	2	0
TOTAL	**72**	**61**	**11**

Members of the Vocational Regulation stream

The work of the stream is overseen by the President and the two Deputy Presidents, who are assisted by all full-time members and appropriately qualified and experienced sessional members.

Vocational Regulation proceedings must, in accordance with section 11 of the State Administrative Tribunal Act 2004, be constituted of a legally qualified member, a second member who has extensive or special experience in the same vocation as the person affected by the proceedings, and a third member who is not engaged in the vocations but is familiar with the interest of persons dealing with persons engaged in that vocation (and in the case of proceedings under the Medical Act 1894, a second person with extensive or special experience in the practice of medicine). Accordingly, the President constitutes each Tribunal in a vocational regulation matter with members appropriate to the particular proceedings.

Typically, the President or one of the two Deputy Presidents will sit as the presiding legally qualified member with the appropriately qualified other members.

In matters pertaining to the building and painting industries, Senior Member Clive Raymond usually sits as the presiding member with the appropriate sessional members.

In matters arising under the *Security and Related Activities (Control) Act 1996* the presiding member typically is one of the full-time non judicial members who is legally qualified together with the appropriate sessional members.

In all, 47 sessional members having extensive or special experience in vocations relevant to the Tribunal's jurisdiction have been appointed.

Directions hearings and case management

Applications in this stream are followed by a first directions hearing within 2-3 weeks of the application being lodged. At the first directions hearing the suitability of the matter for mediation or compulsory conference, with a view to resolving the matter or identifying the issues in dispute, is canvassed with the parties. At the directions hearings,

standard orders are also usually made requiring the identification of the parties' positions, the filing of documents relevant to the matter, and the programming of the matter through to a final hearing or subsequent directions hearing. If a matter requires additional case management it will be dealt with in a number of directions hearings or in compulsory conference before the final hearing.

Directions hearings are held each Tuesday by the President Justice Barker to deal with most vocational regulation matters. Judge Chaney and Judge Eckert also deal with vocational regulation matters in directions hearings. Building and painting matters go directly before Senior Member Raymond for a first directions hearing. Security agent matters go directly before a member in the Commercial and Civil stream for a first directions hearing.

Mediation and compulsory conferences

At the first directions hearing the Tribunal will canvass the appropriateness of mediation (and sometimes compulsory conference) with the parties.

The purpose of mediation is, where possible, to resolve the matter finally without the need for a final hearing, or at least to narrow the issues between the parties.

Mediations are conducted by a member from any of the Tribunal's streams, and also by sessional members who are trained mediators, and have proved very successful in resolving disputes.

Compulsory conferences tend to be used where one or both of the parties are reluctant to engage in mediation and the Tribunal considers that a conference is required to assist in the proper management of the case.

Where a matter is finally resolved at a mediation or compulsory conference, a final order will be made.

All final orders in VR matters are a matter of public record and are placed on the Tribunal's decisions database on the Tribunal's website and may be found under the heading "Order". In this way the community can quickly and easily access details of all VR orders made by the Tribunal, whether made after a final hearing or as a result of mediation or compulsory conference.

The process of mediation in the Vocational Regulation stream has been very successful. When the Tribunal commenced operations on 1 January 2005, there was a degree of diffidence expressed about the role of mediation in the Vocational Regulation stream.

However, experience shows that many matters are capable of resolution in this way. This is often because following a complaint and investigation of a matter by a vocational regulatory body, the parties have not had a real opportunity prior to the proceedings in the Tribunal, to discuss, in a confidential setting, what may be considered an appropriate outcome of a complaint.

As the array of orders that appear on the Tribunal's website show, mediation can achieve an early resolution of a matter.

Of the Vocational Regulation proceedings referred to mediation (or compulsory conference), a number of matters referred also resulted in a successful narrowing of and case management prior to a final hearing.

Final hearings

Where a matter in the Vocational Regulation stream proceeds beyond mediation or compulsory conference, it

goes to a final hearing. Few matters are determined on the documents.

Because the requirements of section 11 of the *State Administrative Tribunal Act 2004*, the Tribunal that conducts a final hearing in this stream must be constituted of three members (four in the case of a proceeding under the Medical Act 1894). In short, this means that there is a presiding legal member (often the President or a Deputy President), a person who is registered in the relevant vocation, and a person who is familiar with the interests of the persons dealing with the persons registered in that vocation – effectively a community member.

In the reporting period, 98 vocational regulation matters went to a final hearing. Of these a number resulted in some form of disciplinary finding being made against the affected person. Only 24 (24.5%) resulted in the application being wholly dismissed.

Vocational regulation proceedings that go to a final hearing are typically resource intensive. Not only do they require three members of the Tribunal (four in Medical Act matters) to sit, but also they are often strongly contested. This is not surprising given that reputations and livelihoods are at stake. The longest hearing in the Vocational Regulation stream during the reporting period took 12 hearing days. While some proceedings in other streams – such as some applications under the *Equal Opportunity Act 1984* – can also take many hearing days, in most other streams a contested matter is usually of a shorter duration.

In most Vocational Regulation proceedings, a vocational regulatory body is legally represented. The responding parties are also often legally represented, but not invariably so. In most proceedings under the *Medical Act 1894* and the *Legal Practice Act 2003*, the responding party is usually legally represented. However by contrast, in proceedings under the *Builders' Registration Act 1939* and the *Painters' Registration Act 1961* and the *Security and Related Activities (Control) Act 1996*, the affected person is often self-represented. In other vocational areas there is a mixture of legal representation and self-representation. The degree of representation may well represent the extent to which the affected person's conduct is covered by a policy of professional indemnity insurance.

Time taken to finalise applications'

Of the matters that were finally determined, 180 Vocational Regulation applications (80%), were resolved within 27 weeks.

Percentage of Vocational Regulation Matters	Number of weeks to finalise
10%	4
20%	7
30%	9
40%	11
50%	13
60%	18
70%	20
80%	27
90%	35
100%	63

VR new applications received and finalised 2005/2006

Enabling Act	Number of applications received	Applications received as approximate % of all VR applications received	Number of applications finalised	Applications finalised as approximate % of all VR applications finalised
Architects Act 1921	1	<1%	1	<1%
Builders Registration Act 1939	95	33%	74	32%
Debt Collectors Licensing Act 1964	1	<1%	1	<1%
Dental Act 1939	1	<1%	1	<1%
Electricity Act 1945	1	<1%	1	<1%
Finance Brokers Control Act 1975	3	1%	1	<1%
Gas Standards Act 1972	1	<1%	1	<1%
Hairdressers Registration Act 1946	1	<1%		
Land Valuers Licensing Act 1978	3	1%	3	<2%
Legal Practice Act 2003	50	17%	24	11%
Licensed Surveyors Act 1909	2	<1%		
Medical Act 1894	17	6%	8	<4%
Motor Vehicle Dealers Act 1973	4	<2%	2	<1%
Nurses Act 1992	6	2%	5	<3%
Optometrists Act 1940	1	<1%	1	<1%
Painters Registration Act 1961	7	<3%	6	<3%
Physiotherapists Act 1950			2	<1%
Psychologists Registration Act 1976	3	1%	3	<2%
Real Estate and Business Agents Act 1978	8	<3%	9	<4%
Security and Related Activities (Control) Act 1966	76	26%	74	32%
Settlement Agents Act 1981	4	<2%	6	<3%
Travel Agents Act 1985 (WA)			1	<1%
Veterinary Surgeons Act 1960	1	<1%	3	<2%
Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000,	1	<1%	1	<1%
Workers Compensation and Injury Management Regulations 1982	1	<1%		
Total	288	100%	228	100%

Decisions of note

- ***Medical Board Of Western Australia and Roberman [2006] WASAT 152*** - The Tribunal considered the general principles arising in the cases and factors that must be taken into account when the question of costs arises in the Tribunal's review jurisdiction. This case considered the question of costs and the entitlement of the practitioners to costs where there is a withdrawal of an application by a vocational regulatory body. The Medical Board had a statutory obligation to conduct an inquiry under the Medical Act 1894, as it then applied and the withdrawal of the application was considered in the circumstances not to give rise to an award for costs.
- ***Legal Practitioners Complaints Committee and Clark [2006] WASAT 119*** - The Tribunal considered that the practitioner was guilty of unsatisfactory conduct when he acted for an elderly client in a position of conflict of interest and that there was a failure to ensure the client was independently advised by a fully briefed independent solicitor.
- ***Chan and The Nurses Board Of Western Australia [2005] WASAT 115 (on appeal to Court of Appeal)*** - The Tribunal considered whether recent convictions for stealing and fraud came within the meaning of "offence the nature of which refers the person unfit to practise as a nurse" and discussed relevant considerations including the meaning of the expression "fit and proper" under various vocational acts.
- ***Grover v Commissioner of Police*** [2005] WASC 263 - the Supreme Court (Johnson J) dismissed an appeal against the decision of the Tribunal to refuse to issue a crowd controller licence under the *Security and Related Activities (Control) Act 1996* (WA). The Court accepted that the Tribunal, that in determining whether an applicant is of "good character" for the purpose of holding such a licence, the Tribunal is entitled to take into account evidence of unresolved criminal charges, notwithstanding that no findings of guilt or otherwise had been made at the relevant times. The Court concluded that the fact that an allegation had been made which was not self evidently unsustainable is sufficient to adversely impact on the licensing officer's satisfaction as to a person's good character. The Tribunal's decision has previously been reported on the Tribunal's website, decisions database ***A and Commissioner of Police*** [2005] WASAT 121.

Act	Average weeks to finalise Vocational Applications	80% of matters finalised within weeks as shown (if no weeks shown then insufficient number of matters to draw a statistic.)
Architects Act 1921	20	
Builders Registration Act 1939	18	28
Debt Collectors Licensing Act 1964	18	
Dental Act 1939	19	
Electricity Act 1945	6	
Finance Brokers Ctrl Act 1975	2	
Gas Standards Act 1972	19	
Land Valuer Licensing Act 1978	15	
Legal Practice Act 2003	24	27
Medical Act 1894	16	22
Motor Vehicle Dealers Act 1973	11	
Nurses Act 1992	27	36
Optometrists Act 1940	10	
Painters Registration Act 1961	20	29
Physiotherapists Act 1950	25	
Psychologists Reg Act 1976	14	
Real Estate & Agents Act 1978	20	
Security Control Act 1996	13	22
Settlement Agents Act 1981	28	30
Travel Agents Act 1985 (WA)	18	
Veterinary Surgeons Act 1960	30	
Water Services Licensing Regs 2000	4	

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Administration

Executive Officer and Staff

Alexander Watt
Executive Officer

Alex Watt was appointed as the Tribunals Executive Officer in December of 2004. He was formerly a long serving senior officer for the Western Australian Industrial Relations Commission and prior to that worked in the areas of disability services, education, training and the banking sector. He has multiple qualifications in business and is a member of the Australian Society of CPA's.

On review of the 2005/06 year, it is satisfying to acknowledge that all of the Tribunal's 63 administrative and judicial support staff members performed beyond expectation, not only through their support to the performance of the Tribunal's decision making process but by also providing appropriate and helpful assistance to applicants and respondents and other interested persons.

Under the direction of the President, the Executive Officer along with management team members Anthea Chambers, Andrew Casella, Mark Charsley and Peter Sermon, greatly assisted the Tribunal in the exercise of its jurisdiction and the administration of the Act.

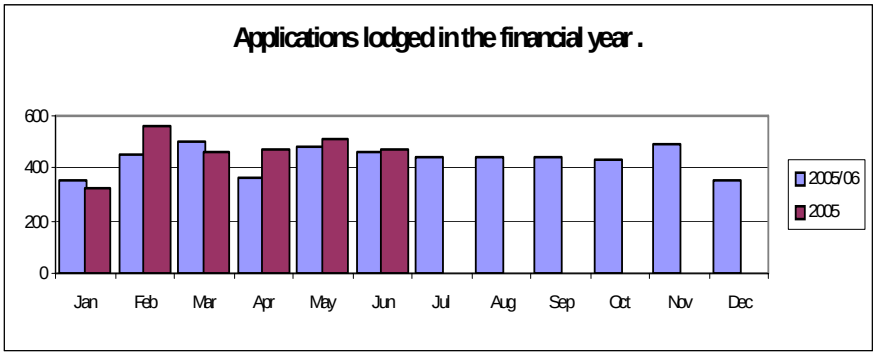
Examples of initiatives that the Executive Officer and staff assisted the Tribunal with during 2005/06 include:

- Consolidation of the Tribunal's practice, procedure and rules.
- Continued development of the publications and online resources.
- Engagement with the community.
- Implementation of the Aboriginal Service Plan.
- Business planning for digital transcription and video.

Consolidation of the Tribunal's practice, procedure and rules

During 2005/06, the Department of the Attorney General supported the Tribunal in its consolidation phase. The Tribunal was established in January 2005 and during 2005/06 service delivery strategies were directed to meeting core objectives. The Tribunal aims to have a short as possible period of time between lodgement of an application and its completion, less technicality and formality, less cost to the parties, quality settlement or narrowing of the issues through mediation and fair decisions.

Refinement of case management procedure ensured the Tribunals has met its objective of fast, efficient and less costly processes. The Tribunal, for most of the 5232 applications received, listed to a first hearing within a matter of weeks. For many of the 5406 applications (this includes those carried forward from the prior year) that were completed or finalised the average time from lodgement to completion was less than 15 weeks.



The State Administrative Tribunal Rules 2004 were twice amended in the year on the recommendation of the Rules Committee (see Appendix 4) to improve arrangements for the submission of documents, clarify who may represent an applicant in certain

matters and improve the processes by which documents may be summonsed. The Tribunals processes and procedures are expected to allow informality. Allied to this, Tribunal members continually seek to develop their knowledge and expertise in order to resolve disputes between parties

During the year work was undertaken on the preparation of Tribunal processes to cater for the six new jurisdictions that were conferred to the Tribunal and 3 jurisdictions repealed during the year. This takes the number of enabling Acts for which the Tribunal has jurisdiction to 140 with 830 enabling provisions. The Tribunal has identified 28 jurisdictions that may be conferred in 2006/07 through re-enactments and new legislation.

A review of the State Administrative Tribunal Regulations 2004 commenced during the year and it is expected the review will be completed early in 2006/07.

Funding for the Tribunals operations continues to be a source of great concern and there is a degree of optimism that the funding difficulties and issues will be resolved during 2006/07.

Continued development of publications and on line resources

The Tribunal assumes most parties will be self-represented persons (SRPs) and accordingly the Tribunal is well advanced in its plans to assist both the applicant and responding parties in proceedings.

The continued development of the Tribunals website as a valuable information resource to SRPs occurred during the year. This included making available on-line publications such as Practice Notes which provide specialised information on the various applications, tribunal procedure and processes. On line resources now also include all orders and decisions of the Tribunal.

Engagement with the Community

Contact with the community remains a significant priority for the Tribunal and for 2005/06, 71 presentations and attendances were made by members to community and special interest groups. Regional information forums and visits were held in the regional centres of the Kimberley, Pilbara, Mid West and Great Southern.

These forums and information sessions are not only an important tool for the Tribunal to provide information, assistance and advice to interested community members but are also an important source of feedback for the Tribunal.

Indigenous Australians

In accordance with the Aboriginal Services Plan, the Tribunals application processes were adjusted so that it will be possible to allow applicants to identify as Aboriginal or Torres Strait Islanders. The Tribunal will use such information to assist it in responding to the needs of indigenous Australians, prior to, during and after proceedings.

2006/07 Support Initiatives

For 2006/07 the Tribunal plans the following initiatives:

- Implement methods to collate data on service users who are Indigenous Australians
- Respond on the Western Australian Law Reform Commission (WALRC) report on culturally appropriate responses to Guardianship and Administration aboriginal parties.
- Recruitment of staff members who are of Aboriginal or Torres Strait Islander descent.

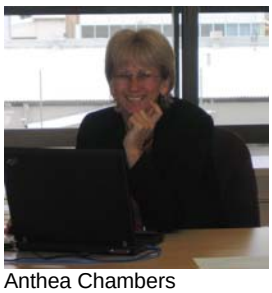
- Consider strategies for remote locations to access Tribunal services.
- Research and response for the statutory enquiry by the Legislative Council into the jurisdiction and operation of the Tribunal
- Seek the deployment of electronic lodgement of applications.
- Review and reform services for new Mental Health Act.
- Reappointment/ appointment of new sessional membership.
- Procure digital recording/ transcription systems
- Planning and preparation for electronic document workflow
- E Hearing Rooms (electronic case files, digital transcription)`
- Incorporate new or amended jurisdictions to the Tribunals application

Administrative support services

Administrative support is divided into four branches, Service Support, Decision Support, Community Relations and Business Service, each responsible to the Executive Officer for performance and function. A brief report on the activities of each follows:

Service Support

Service support comprises 21 staff and this branch receives and processes all applications in addition to responding to general enquiries and requests for assistance.



Anthea Chambers
Manager Service Support

Anthea Chambers manages this branch and in addition to qualifications in arts, social work and teaching Anthea brings to the Tribunal her experience as Executive Officer of the Guardianship and Administration Board.

Service Support staff guide intending applicants and assist with application forms either through the on line SAT Wizard or by telephone or by post. The SAT Wizard has been designed to help people apply to the Tribunal. Service support staff also use the wizard to help people identify the enabling laws, the appropriate application type and how the application needs to be lodged.

Service Support is further divided into sections that compliment the four Tribunal streams of Human Rights, Commercial and Civil, Development and Resources and Vocational Regulation.

Each Stream has a team leader, a supervisor and a number of service officers who can provide assistance to persons or organisations that want to make an application to the Tribunal. Recruiting staff to permanently fill all 20 positions in Service Support was a major focus of the year as was settling procedures for all streams.

Approximately 18 000 in person enquiries were assisted by our front counter staff during the year. Of these, approximately 1450 lodged applications at the counter, 5650 lodged documents and 11 000 made general enquiries.

The Tribunal aims to assist all parties in the lodgement and management of their matters without the need for legal representation.

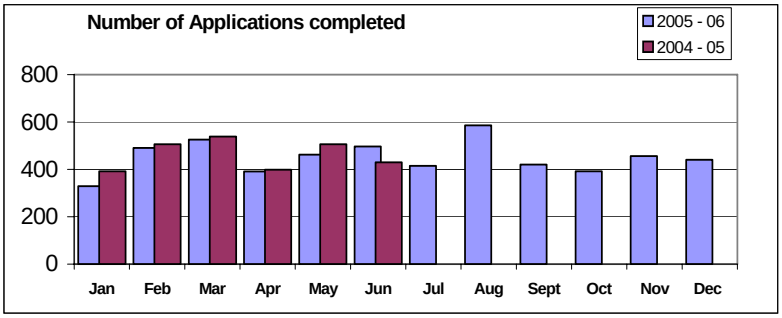
Decision Support

Decision Support is provided through the work of 15 staff who, during the year were managed by Peter Sermon and Mark Charsley. Mark previously worked for the former Guardianship and Administration Board as Manager Customer Services and has varied experience in social care, community legal information and alternative dispute resolution.

Mark Charsley
Manager Decision Support

Decision support staff, prepare and support the Tribunals hearing processes, making all necessary arrangements prior to, during and after hearings for the 5406 matters completed with 3500 of these having one or more hearings.

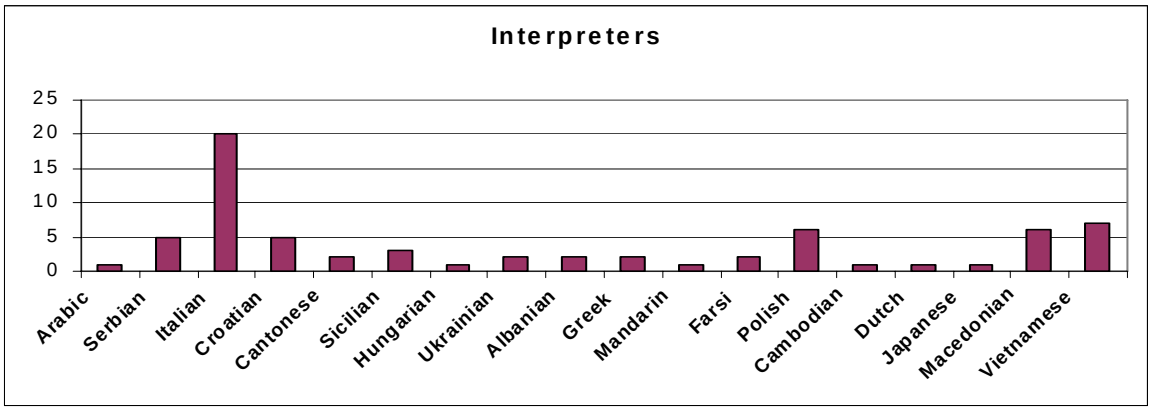
When matters are listed for hearing the needs of the parties must be considered. These needs include the ability to participate in hearings in which they feel secure and the Tribunal staff address any special needs to ensure all parties have the ability to participate.



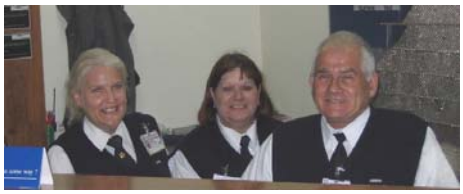
In the past year video conference facilities were used 41 times and teleconference 311 times. These facilities allow parties who are unable to physically attend the hearing, because they are in remote locations, interstate, out of the country or for some other reason, to attend the hearing and take part in the Tribunals processes. The Tribunal provides accessible parking for those who have mobility issues and in the last 6 months of this year these facilities have been accessed 158 times.

The diverse cultural background of WA residents is reflected in the Tribunal use of 86 interpreters over the year, Graph 1 provides a breakdown of the languages which were requested.

Graph 1—Languages requested for interpretation at SAT hearings



The Tribunal has 3 designated security officers who are on the premises at all times the building is open to the public.



Whilst the Tribunal operates in an informal manner it is essential everyone involved in a hearing can do so in a safe environment and feel able to take a full and active role in the process .In some situations security staff may sit in on a hearing in 2005/6 this was required for 143 hearings.

Community Relations

Community relations has the key role of maintaining the Tribunal's contact with the community, professional bodies and interest groups. During the year this branch has been managed by Mark Charsley and Peter Sermon.

Peter Sermon
Manager, Community Relations

Peter has more than 29 years experience in the public sector and has extensive experience in administration and management.

Community Relations' maintains the Tribunal website and application wizard and managing its development to meet the needs of Tribunal users. Community Relations also prepares and produces pamphlets and other publications.

The Community Relations Manager is the central point of contact for all matters relating to the Tribunal, not connected to case management of the application or the production of applications, such as feedback on the website.

Community Relations coordinates outreach and presentation requests, ensuring they are met in a timely and appropriate manner and arranges coordination of various aspects of the appointment of Sessional members.

During the year there were a total of 1210 electronic contacts (emails) received by the Tribunal and 1 700 000 hits were recorded on the Tribunal web site. The Tribunal is awaiting the conferral of over 25 re-enacted or new legislation and proclamation of over 20 new Acts that will have provisions for referral for review, review or appeal of decisions to the Tribunal. There were numerous seminars held over the last 12 months throughout the state, the response to the seminars was very positive.

The Tribunal advertised for sessional members during the year to meet the need to have specialised professional membership to meet statutory requirements. Advertisements were placed in the state and interstate papers, as well as professional magazines and periodicals. Twelve new sessional members were appointed during this year. The Tribunal will be advertising again later this year (2006) for applicants for sessional membership.

Local papers have carried articles at times during the year addressing various issues handled by the Tribunal and reporting on specific case decisions.

Business Services

Business Services supports the strategic objectives of the Tribunal through the effective management of its financial, human and physical resources, including accommodation and facilities and its records keeping requirements.

Business Services is resourced by 11 staff, headed by Andrew Casella who is supported by Team Leaders within both Records Services and Administration Services and the Librarian.

Andrew's background includes 8 years in public administration and brings experience in financial, contractual, human resources and information technologies to the Tribunal.

Administration Services comprises of four staff and in addition to coordinating and reporting on budget activity and drives financial processes, managing facilities, maintaining assets and other physical resources, this section also continued the development of reports and analysis on performance based indicators to the Tribunal.

Records Services is managed through a Coordinator Records Management, and supported by a Supervising Records Officer and support staff.

The library was continued to be supported by a part-time librarian, who handles the procurement and maintenance of the library resources, in support of the Tribunal's full-time and sessional members and Judiciary.

As a whole, the key achievements for Business Services during the 2005/06 financial year were:

- Further development of performance indicator models for the Tribunal within each stream;
- Reflow of around $2million in funding and gained progress on addressing baseline funding issues;
- Reviewed and consolidated the Tribunal's organisational structure;
- Established a functional Occupational Health & Safety Committee, in accordance with requirements under section 30(4) of the *Occupational Health & Safety Act 1984*.
- Initiatives proposed for Business Services for 2006/07 include:
  - Expansion of capabilities within some of the Tribunal's Hearing Rooms, to enable a fully functional digital recording and transcribing service;
  - Conduct a review of the rationalisation of the Tribunal's office accommodation, to enable capacity for future growth;
  - Implementation and execution of the Tribunal's Retention and Disposal Records Keeping Plan;
  - Develop a Business Continuity Plan, in accordance with the Department of Attorney General's requirements.
  - Design and implement the sessional members community portal, incorporating an automated claim for payment system.

Staffing

The Tribunal's optimum staffing level to meet the current work load is 92 Full Time Equivalents, however we currently have on average, only 79 Full Time staff.

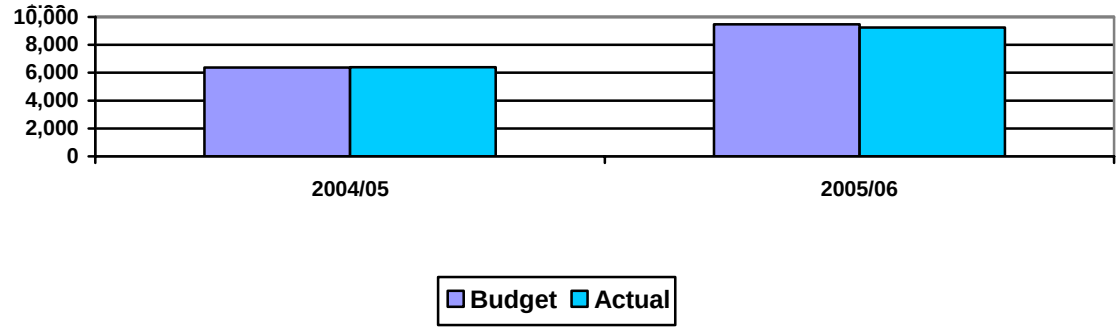
The above optimal figure includes 3 judicial members, 4 senior members, 10 ordinary members and 11 full time equivalents allocated to sessional member usage.

Having regard for budgetary considerations and use of sessional members in the Tribunal the actual average staffing level is 83 for the 2005/06 financial year.

Budget

The budget setting for the Tribunal is the subject of on-going discussions with the Department of the Attorney General and State Treasury.

Graph 2—Financial Summary



Freedom of Information

The Tribunal received 8 Freedom of Information requests during the 2005/06 year.

Of these 6 were resolved however 2 access applications, one the subject of an internal review, escalated to complaints lodged with the Freedom of Information Commissioner. The Commissioner confirmed the decision of the Tribunal to refuse access in both matters.

Arrangements with Other Agencies

Arrangements with Chief Magistrate under section 116

The President has concluded formal Arrangements with the Chief Magistrate that enable a Magistrate to sit as a member of the Tribunal, following a request made to the Chief Magistrate by the President

Arrangements with Parliamentary Commissioner under section 168

The President and the Parliamentary Commissioner (or Ombudsman) have made an agreement with regard to matters of public education, training of Tribunal members on the role of the Ombudsman, regular meetings between the President and the Ombudsman and referral of cases from the Tribunal to the Ombudsman.

Other agencies

Arrangements have also been settled with specific agencies to better serve applicants and respondents to proceedings in the Tribunal, including:

- State Solicitor's Office
- Equal Opportunity Commission
- Department of Land Information
- Office of the Public Advocate
- Office of the Public Trustee
- Office of State Revenue
- Western Australian Planning Commission

Levels of Compliance by Decision-Makers.

Section 150(2) of the *State Administrative Tribunal Act 2004* requires this report include details of the level of compliance by decision-makers with requirements under sections 20 and 21 to:

(i) notify persons of reviewable decisions and the rights to seek review; and
(ii) provide written reasons for reviewable decisions when requested to do so.

These two requirements are designed to ensure persons affected by adverse decisions know why the decision was made and that they have the right to seek review in relevant cases.

Decision-maker's whose decisions have been subject to review applications appear to have complied with their notification obligations, particularly the right to seek review.

If decision-makers were not complying, it might be expected that the Tribunal would receive applications for an extension of time to apply for review based upon the ground that no notice of the right of review was given. In the period of its operation, the Tribunal has not received applications for extension of time in those circumstances.

Nor has the Tribunal observed any significant degree of non-compliance by decision-makers with their obligations under section 20 to advise of review rights.

With respect to the obligations under section 21 to provide written reasons upon request, there appears to be general compliance by most decision-makers. However, the Tribunal has encountered in a small number of matters, some delays in receiving written reasons for decisions, which are the subject of review.

The Tribunal conducts forums for discussion with decision-makers whose decisions are subject of review by the Tribunal, and in that context uses the opportunity to remind decision-makers of their obligations under the Act.

Trends and Special Problems

Section 150(2) of the Act requires that the annual report include details of any trends or special problems, which may have emerged.

Trends

The Tribunal expects 15 new conferrals of jurisdiction, amendment, repeal and re-enactment to 12 jurisdictions and the repeal of 5 jurisdictions during 2006/07, bringing the number of conferred Acts to 162, up from 140.

Growth in the number of *Guardianship and Administration Act 1990* applications is expected to continue at 10% per year for the next four years. When 2005/06 is compared to the 2003/04 activity of the former Guardianship and Administration Board, the Tribunal has experienced growth of 38% in the number of applications. It is expected that Government will need to allocate appropriate resources to meet demand shifts in this particular jurisdiction.

The Tribunal estimates that it will receive some 6200 applications in 2006/07 and some 7600 applications in 2007/08. The growth in applications is expected through new legislative provisions, notably in Mental Health, Advance Health Care Planning, Residential Parks and Incorporated Associations.

The Tribunal has an Aboriginal Services Plan and the implementation of that plan will be an integral part of our response to the expected growth in Tribunal activity.

e-Tribunal

The Tribunal recognises community demand, particularly from people in regional and remote areas of Western Australia for greater electronic access to Tribunal services. Other Tribunals, both in Western Australia and in other Australian States, have deployed e Tribunal services with various levels of sophistication. The provision of e Tribunal services is a high priority especially those services for use by self represented applicants. Funds permitting we look forward to meeting community demand for on line services.

Resources

With the expected growth in the work of the Tribunal, it will be necessary that services are adequately resourced. Investment in e-Tribunal services will yield future resource savings however it may be necessary for adjustment to the Tribunals accommodation, staffing and technology requirement.

Critical to the future work and growth of the Tribunal are skilled and talented members. The current remuneration of the Tribunals non judicial members has not been adjusted since early 2004 and compares unfavourably with the remuneration arrangements offered to the non judicial members of like Tribunals elsewhere in Australia. I am optimistic that the members remuneration will be reviewed and adjusted during 2006/07 and that the adjustment will both attract and retain the knowledge and attributes that the community expects of the Tribunal.

Areas for reform

A number of proposals for improving the operation of the Tribunal were put forward in last year's Annual Report (see page 53-57) which still require attention.

Areas where law reform would seem appropriate have been mentioned in the earlier Stream reports.

One of these is the proposal that the functions of the existing Mental Health Review Board now be conferred on the Tribunal.

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Appendix 1 Judicial Members

Justice Michael Barker
President, State Administrative Tribunal

Justice Michael Barker graduated from the University of Western Australia with a Bachelor of Laws (Honours) in 1972 and was admitted to the WA Bar in December 1973. He first practised law with E M Heenan & Co in Perth between 1972-75. He established his own law firm, Barker & Allen, and was a member of it from 1975-78. In 1980, he took a Masters of Law degree from Osgoode Hall Law School, York University, Toronto, Canada. From 1981-85, he was a member of the Faculty of Law, Australian National University, Canberra. From 1986-90, he was a member of the predecessor law firm to Corrs Chambers Westgarth, Perth. In 1993 - 2002 Justice Barker practised as a Barrister at the Perth independent bar.

In 1990-93, Justice Barker was the part-time Chairman of the Town Planning Appeal Tribunal of Western Australia. In 1991-92, he was one of the Counsel Assisting the Royal Commission into Commercial Activities Government and Related Activities (WA Inc Royal Commission).

In 1996, Justice Barker was appointed Queen's Counsel. He was the Chair of the WA Chapter of the Australian Institute of Administrative Law for some years until 2003.

In May 2002, Justice Barker was the Chair of a Taskforce appointed by the State Attorney-General that recommended the establishment of a State Administrative Tribunal.

Justice Barker was appointed to the Supreme Court of Western Australia in August 2002, and was appointed President of the State Administrative Tribunal in December 2004.

Judge John Chaney, SC
Deputy President, State Administrative Tribunal

Judge John Chaney SC graduated from the University of Western Australia with the degrees of Bachelor of Jurisprudence in 1974 and Bachelor of Laws in 1975. He was admitted to practice in 1976.

Judge Chaney was first employed by Northmore Hale Davy and Leake (now Minter Ellison) and was a partner in that firm for 14 years before moving to Francis Burt Chambers as an independent barrister in July 1994. He was appointed Senior Counsel in 2002 and became a judge of the District Court in April 2004. Before going to the bench, he practised in a broad range of litigious matters in all superior courts, but in the last ten years principally practised in the areas of commercial litigation, medical negligence and planning law. Judge Chaney was president of the Law Society of Western Australia in 1991 and is a Foundation Director of the Australian Advocacy Institute Ltd. He served as a Commissioner of the District Court on three occasions between 1995 and 2001. In 2001, he was counsel assisting the Gunning Inquiry into Statutory Boards and Tribunals.

Judge Judy Eckert

Deputy President, State Administrative Tribunal

Judge Judy Eckert completed her law degree at the University of Western Australia, graduating with a Bachelor of Jurisprudence in 1979 and a Bachelor of Laws in 1980.

Judge Eckert completed her articles of clerkship with Northmore Hale Davy and Leake (now Minter Ellison) and was admitted to practice in December 1981. She became the first female partner of that firm in 1986. In 1991, Judge Eckert joined the Crown Solicitors Office where she practised for nearly 11 years, advising Ministers of the Crown and senior members of the public sector on a wide range of legal and policy issues. Prior to her appointment to the District Court and the Tribunal on 1 January 2005, Judge Eckert practised as an independent barrister and was closely involved in the development of the legislative package for the Tribunal. Judge Eckert was the former president of the Law Society of Western Australia (1995-1996) and Chair of the Real Estate and Business Agents Supervisory Board (2002-2004). She also taught Commercial Practice and Drafting at the University of Western Australia Law School from 1990 to 2003.

The Hon Robert Viol
Supplementary Deputy President

The Hon Robert Viol graduated with a Bachelor of Laws from the University of Western Australia in 1964, although he continued to study at UWA until 1967 to gain his Bachelor of Arts (Politics and Public Administration) while undertaking his articles with Ilbery Toohey & Barblett, Solicitors. He was admitted as a Barrister and Solicitor in September 1966.

He worked as a solicitor and barrister, Special Magistrate at the Childrens' court and Judge at the Workers' Compensation Board until his appointment as a Judge of the District Court in 1988, a role he undertook for some 16 years until 2004. Mr Viol's main areas of practice as a barrister and solicitor included family law, criminal law, industrial law, civil litigation, administrative law and public service law. He studied in the USA at the National Judicial College and also at the Judicial Studies Board in the United Kingdom. He obtained a professional certificate in arbitration in 2005 is an accredited mediator. He worked as an arbitrator at Work Cover during 2005 and early 2006. He was appointed as a Sessional Member of the Tribunal on 21 June 2005 and Supplementary Deputy President on 6 June 2006 for a period of six months.

Senior Members as at 30 June 2006

Clive Raymond
Commercial and Civil

Clive Raymond was first admitted to the practice of law in South Africa in 1976. He practised for 14 years as barrister at the Bar in South Africa and in Western Australia. As a solicitor, he was a partner in a leading national law firm and, later, a multi-disciplinary practice with an accounting firm. He has a wide range of commercial litigation experience, with particular expertise in alternative dispute resolution techniques. He is Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) and for a number of years has been a national councillor or national vice president of the Institute.

David Parry
Development and Resources

BA, LLB(Hons)(Syd), BCL(Oxon), Grad.Dip.Leg.Pract.(UTS). Prior to his appointment as a senior member of Tribunal, David Parry practised as a lawyer in the areas of planning, environmental, local government and administrative law. He obtained degrees in Arts and Laws (with Honours) from the University of Sydney, and was awarded a British Foreign Office/BTR plc Scholarship to read for the Bachelor of Civil Law degree at Oxford University, which he obtained in 1991. He has tutored in Evidence at the University of Sydney, and was Managing Editor of the Environmental Law Reporter from 2001-03. In 2003, he was a founding member of Martin Place Chambers, Sydney, the first specialist planning and environmental barristers' chambers in Australia. David heads the development and resources stream and is a member of the rules, resource management and community relations committees.

Jill Toohey
Human Rights

Jill Toohey was admitted to legal practice in Perth in 1981 and worked as a solicitor in private practice and in community legal centres. She was a Commissioner on the Legal Aid Commission (WA) from 1987-1993. In 1993 she was appointed full-time member of the Refugee Review Tribunal in Sydney. In 1998 she was appointed Registrar of the Refugee Review Tribunal. She has also worked as Registrar of the Administrative Appeals Tribunal (Cwth).

Murray Allen
Senior Member & President of the Mental Health Review Board

The Tribunal reviews (ie. hears appeals against) decisions made by the Mental Health Review Board under the *Mental Health Act 1996*.

Murray Allen is currently President of the Mental Health Review Board.

After practising law in Western Australia until 1978, Murray Allen held senior positions with the Commonwealth Treasury, the National Companies and Securities Commission and an international investment banking business. He was the regional commissioner for the Australian Securities Commission in WA between 1991 and 1996 and then WA's Ombudsman until 2001. Until his appointment to the State Administrative Tribunal, Murray was a consultant and part-time member of the Commonwealth Administrative Appeals Tribunal.

Full-time members as at 30 June 2006

Tim Carey

Tim Carey graduated from the University of Melbourne in 1981 with bachelor degrees in law and commerce. After a period as an associate to a Federal Court judge, he worked for 10 years in law firms in country Victoria and Melbourne, mainly in litigious matters ranging from personal injury/third party insurance and crime to commercial litigation and insolvency. In 1991, Tim commenced in private practice in Perth, working on a broad range of matters.

For the past 11 years, he was with the Australian Government Solicitor in Perth, where as a senior solicitor he practised in the areas of administrative law, migration, taxation appeals, bankruptcy and general litigation.

Felicity Child

Felicity Child has qualifications in both social work and law. She was a member of the Guardianship and Administration Board from 1992 until the incorporation of that jurisdiction into the Tribunal. She worked for over 10 years within a number of community legal centres in Western Australia and as a tutor at Curtin University in social work and welfare practice. Prior to her appointment to the Tribunal, Felicity was employed by Legal Aid WA.

Marie Connor

Marie Connor has studied urban and regional planning and holds a Bachelor of Arts (Urban and Regional Studies) and a Postgraduate Diploma (Urban and Regional Planning – Distinction). She has considerable experience in state and local government planning, and was a member of the Town Planning Appeal Committee and the Town Planning Appeal Tribunal prior to the establishment of the Tribunal.

Donna Dean

Donna Dean holds Bachelor of Arts and Bachelor of Social Work degrees from the University of Western Australia. She has extensive experience in a variety of areas of social work in WA and NSW. She was a part-time sitting member of the Social Security Appeals Tribunal. In 1997, Donna joined the New South Wales Office of the Protective Commissioner (OPC). The OPC protects and administers the estates of people unable to make financial decisions for themselves. More recently, Donna worked for the NSW Independent Commission Against Corruption before returning to Perth to take up her appointment with the Tribunal.

Bertus De Villiers

Bertus de Villiers (BA Law, LL.B, LL.D) is admitted as legal practitioner in Australia and South Africa. He is a visiting fellow of the Law School of the University of Western Australia. His areas of specialisation are constitutional and administrative law, environmental law and human rights, and native title and commercial law. He has published widely. His professional background includes positions as Manager (Principal Legal Officer) of the Goldfields Land and Sea Council and Principal Legal Officer for South African National Parks.

Jim Jordan

Jim Jordan first worked as a town planning consultant in Queensland and Victoria after graduating with a BA (UWA) and a Master of Urban Studies (UofQld). In 1979 Jim took up a position in Perth with the Minister for Planning's Town Planning Appeal Committee, progressing to Deputy Chairman in 1988 and in 1999 was made Acting Director of the

Minister's Planning Appeal Office. In 2003, with the abolition of the Ministerial appeal system, Jim became a member of the Town Planning Appeal Tribunal and then worked with Jackson McDonald. Jim also has an LLB (University of London), a Professional Certificate in Arbitration and Mediation and is an accredited mediator. He is a member of the Planning Institute of Australia and the Institute of Arbitrators and Mediators.

Jack Mansveld

Jack Mansveld has qualifications in accountancy and social work. He was employed in public accounting for 15 years, specialising in income tax and management accounting. He decided in 1986 to change careers and studied social work, graduating with first class honours in 1989. Since then he has managed a community legal centre, worked in the area of low-income housing policy, sat as a member of the Social Security Appeals Tribunal and, most recently, has worked as a guardian and Manager of Advocacy and Investigation with the Public Advocate (WA).

Peter McNab

Peter Donald McNab graduated in law from the University of Western Australia in 1978-79 and moved to the Northern Territory in 1979. In 2003, he was awarded a Masters in Law from the University of Melbourne. From 1980-1989 he worked in the Commonwealth Attorney-General's Department in Darwin and in 1989 he joined the Northern Territory University, where he became a Senior Lecturer in public law. At the same time, he was appointed as a member of the Social Security Appeals Tribunal, a part-time position he held until December 2002. In 1994, he held a senior position in the Office of the Northern Territory Anti-Discrimination Commissioner. In 2000, he started practising full-time as a barrister at the independent Bar in Darwin.

Maurice Spillane

Member Maurice Spillane was admitted as a solicitor in Ireland in 1978 and practised there for 10 years before coming to Perth with his family in 1988. Prior to being appointed to the State Administrative Tribunal he practised principally in the areas of medical law, professional indemnity, planning and local government law. He has been the chair of the Ethics Committee at Princess Margaret Hospital and the Telethon Institute for Child Health since 1996 and served as the President of the Kids Cancer Support Group for a number of years. He is also member of the Child Health Research and Education Advisory Council, a board member of the Mercy Group, a board member of The Living Centre (an organisation supporting the HIV/AIDS community in WA) and a member of the Australian Rugby Union judiciary for the Super 14.

Appendix 2 Sessional Members

State Administrative Tribunal Senior Sessional Members and Sessional Members (including non-judicial members appointed under section 117(5)) as at 30 June 2006.

Sessional Members – Senior

Member	Areas of Work/Expertise
Gillian Braddock SC	Legal Practitioner
Kenneth Bradley	Accountant, Former Public Trustee
Robyn Carroll	Legal Practitioner, University Academic (law)
Dr Roger Clarnette	Medical Practitioner
Prof Joan Cole	Physiotherapist
Jeffrey Colley	Finance Broker
Lesley Doherty	Hairdresser
Margaret Duckworth	Occupational Therapist
Chris Edmonds SC	Legal Practitioner
Dr Dale Evans	Medical Practitioner
Dr Louise Farrell	Medical Practitioner
Prof Kingsley Faulkner	Medical Practitioner
Laurence Foley	Podiatrist
Dr Stuart Gairns	Dentist
Alexander Gardner	Legal Practitioner, University Academic (Law)
Neville Garrity	Pharmacist
Dr Guy Hamilton	Medical Practitioner
Catherine (Katie) Hill	Occupational Therapist
Dr Eric Isaachsen	Medical Practitioner
John James	Medical Practitioner
Steven Jongenelis	Psychologist
Dr Max Kamien AM CitWA	Psychologist
Dr Christine Lawson-Smith	Medical Practitioner
Ross Ledger	Accountant
Dr Erik Leipoldt	Academic, Community Advocate
Hannah Leslie	Legal Practitioner
Paul Levi	Optometrist
Dr Michael Levitt	Medical Practitioner
David Liggins	Real Estate Agent, Licensed Valuer
Anna Liscia	Legal Practitioner
Dr Richard Lugg	Environmental Health Consultant
Timothy Mather	Veterinary Surgeon
Dr Michael McComish	Medical Practitioner
Dr Alan McCutcheon	Medical Practitioner
Kevan McGill	Engineer
Dr Mark McKenna	Medical Practitioner
Neil McKerracher QC	Legal Practitioner
Phillip Melling	General Practitioner
Jeannine Milsteed	Occupational Therapist
Diana Newman	Accountant
Michael Odes QC	Legal Practitioner
Dr David Oldham	Medical Practitioner

Member	Areas of Work/Expertise
Sessional Members - Senior	
Dr Anne Passmore	Occupational Therapist, University Lecturer
Dr John Penman	Medical Practitioner
Robert Priest	Land Valuer
Dr Pam Quatermass	Medical Practitioner
Anthony Ramage	Finace Broker
Josephine Stanton	Consultant in Health & Welfare
Carolyn Tan	Legal Practitioner
Hon Robert Viol	Legal Practitioner, Retired District Court Judge
Dr Gary Ward	Medical Practitioner
Brigadier A Gerry Warner	Australian Defence Force (Retired)
Mark Wiklund	Physiotherapist
Dr Peter Winterton	Medical Practitioner
Sessional Members	
Terry Ackland	Farmer
John Adderley	Town Planner
Ronald Anderson	Engineering Management (Retired)
Miriam Angus	Legal Practitioner
Keith Bales	Legal Practitioner
Penny Bedford	Manager of Care Facility and a Painter and Decorator
John Bray	Registered Builder
Elizabeth Brice	Real Estate Agent
Donald Brown	Town Planner
Harold Burkett	Painter and Decorator
Charles Brydon	Legal Practitioner
Ross Campbell	Electrical Fitter
Brian Carthew	Bank Manager (Retired)
Anna Ciffolilli	Legal Practitioner
Nicoletta Ciffolilli	Legal Practitioner
Peter Cook	Real Estate Agent
Anthony Coulson	Travel Agent
Paddi Creevey	Social Worker
Peter Curry	Mediator, Agricultural Scientist
Graham Devenish	Dental Prosthetist
Paul Druitt	Real Estate Agent
Pamela Eaves	Celebrant
Mary Elgar	Travel Agent, Nurse
Chris Elieff	Accountant
Magdeline Fadjiar	Legal Practitioner
Phil Faigen	Architect, Registered Builder, Arbitrator
Dr Robert Fitzgerald PSM	Consultant
Caroline Forster	Real Estate Agent
Patricia Fowler	Nurse
Lloyd Graham	Town Planner
John Harper	Licensed Security Consultant
Patricia Hills	Indigenous Community Representative
Barbara Holland	Trainer
Nicholas Hosking	Real Estate Agent, Finance Broker
Assoc Prof Bronwyn Jones	University Academic (Nursing)

Member	Areas of Work/Expertise
Sessional Members	
Kenneth Jones	Nurse
Barthalamos Kakulas QC	Legal Practitioner
Mary Kroeber AM	Nurse
Rodney Lane	Accountant
Karen Lang	Legal Practitioner
Dimitrios (James) Limnios	Real Estate Agent
Linley Lord	University Academic (Business)
Marilyn Loveday	Legal Practitioner
Alexander MacNaughten	Real Estate Agent, Land Valuer
Anthony Macri	Accountant
Philip McAllister	Architect
Mary McComish	Legal Practitioner, University Academic (Law)
Jim McKiernan	Senator (Retired)
Edward McKinnon	Surveyor
Peter Mittonette	Registered Builder
Rebecca Moore	Architect
Darren Mouchemore	Building Surveyor, Registered Builder
Charles Mulvey	University Academic (Economics)
Margaret Nadebaum	Consultant (Public Sector Issues)
Anthony Townsend	Retired Motor Vehicle Dealer
Debbie O'Toole	Research Officer
Val O'Toole	Social Worker
Robert (Jeff) Priest	Land Valuer, Real Estate Agent
Darryll Retallack	Registered Builder
Roy Scaife	Pilot (Retired)
Robert Smith	Bank Manager (Retired)
Jenny Smithson	Town Planner
Jane Toomer	Settlement Agent
Anthony Vigano	Veterinary Surgeon
Paul Wellington	Architect, Legal Practitioner, Arbitrator
Janette Wheare	Nurse
Paul Wilmot	Consultant (Aged Care)
Christina Winsor	Settlement Agent
Guy Wright	Anthropologist, Mediator
Patrice Wringe	Social Worker, Nurse

Appendix 3 Tribunal Presentations, Seminars and Forums

Date	Member	Community Relations Details
8/07/2005	Marie Connor	Attended conference on Water Law in Western Australia conducted by Enviromental Defenders Office (WA), (EDO (WA))
13/07/2005	Clive Raymond	Spoke at the Real Estate Institute of Western Australia (REIWA) Breakfast Session
14/07/2005-15/07/2005	David Parry	Attended the National Environmental Law Association (NELA) Annual conference in Canberra
20/07/2005	Clive Raymond	Made a presentation to the Strata Title Institute Annual Conference
29/07/2005	Judge Eckert	Chaired the Law Society Corporate Express
1/08/2005	Marie Connor	Prepared an article for the August edition of the Western Planner
04/08/2005-05/08/2005	Murray Allen	Attended the Mental Health Tribunals Meeting
9/08/2005	All Full time Members of the Tribunal	Attended the Council of Australasian Tribunals (COAT) WA Chapter establishment, Perth
12/08/2005	Jill Toohey	Delivered a presentation to the Disability Services Commission (DSC)
23/08/2005	Murray Allen	Delivered a presentation to the Nurses Seminar at Curtin University
25/08/2005	Judge Chaney	Delivered a presentation to the National Environmental Lawyers Assoc (NELA) Seminar on Environmental Review in Western Australia
7/09/2005	David Parry	Delivered a presentation to the Rotary Club of Scarborough.
13/09/2005	Judge Eckert, Jim Jordan, Bertus De Villiers and Peter McNab	Judge Eckert hosted the Australian Law Librarians Group visit to SAT
13/09/2005	Clive Raymond	Delivered a presentation to the Law Society of WA Conference – Rent Determinations
20/09/2005	David Parry, Marie Connor and Peter McNab	All attended and David Parry presented a paper at the Legalwise Seminar on Planning Law and Practice
07/10/2005-08/10/2005	Judge Chaney	Attended the Australian Institute of Judicial Administration (AIJA) Annual Conference on Technology in Courts and Tribunals in Wellington NZ
10/10/2005	Judge Chaney, David Parry, Marie Connor, Jim Jordan and Peter McNab	Training forum for Development and Resources Sessional members
11/10/2005	Judge Chaney, David Parry, Marie Connor, Jim Jordan and Peter McNab	Training forum for Development and Resources sessional members - presentations on practice and procedure
13/10/2005-14/10/2005	Jim Jordan	Attended the Planning Institute of Australia (PIA) Annual State Conference, Swan Valley.
19/10/2005-21/10/2005	Judge Eckert, Jack Mansveld and Donna Dean	Attended Lawyers Engaged in Alternative Dispute Resolution (LEADR) Training
20/10/2005	Judge Chaney, David Parry, Marie Connor, Jim Jordan and Peter McNab	Conducted Community Forums for Town Planners, Solicitors and any other interested parties
24/10/2005-28/10/2005	Judge Eckert	Attended the National Judicial Orientation Program for the Australian Institute of Judicial Administration (AIJA)

Date	Member	Community Relations Details
27/10/2005-28/10/2005	Donna Dean & Jack Mansveld	Attended the Australian Guardianship & Administration Committee (AGAC) Meeting in Hobart, Tas.
9/11/2005	Felicity Child	Attended "Respecting Patient Choices Ethico-Legal Sub committee"
9/11/2006	Justice Barker	Presentation to the Nurses Board workshop "Managing an Incident in the Workplace"
11/11/2005	Justice Barker and David Parry	Both attended and Justice Barker presented a summary paper at the Australian Institute of Judicial Administration (AIJA) Expert Evidence Seminar.
24/11/2005	Justice Barker	Presentation to the Taxation Institute of Australia (WA Chapter) Seminar
5/12/2005	Murray Allen	Presentation to Faculty of Psychiatry of Old Age, of the Royal Australia and NZ College of Psychiatrists (RANZCP)
15/12/2005	Jim Jordan	Attended the Local Government Planners Association Breakfast on Recent Tribunal Decisions Impacting on Local Government Planners
21/01/2006-25/01/2006	Justice Barker	Attended Supreme Court & Federal Court Judges Conference, Brisbane
23/01/2006	David Parry	Presentation to members on the Recent Supreme Court appeal: *Shire of Augusta Margaret River and Gray* [2005] WASCA 227
24/01/2006	Bertus De Villiers	Staff training on the Recent Supreme Court appeal: *Grover and Commissioner of Police* [2005] WASC 251
7/02/2006	David Parry	Attended the National Environmental Law Association (NELA) Water Law Seminar
12/02/2006	Murray Allen	Community Forum presentation to Nurses at Curtin University
13/02/2006	Judge Judy Eckert, Jill Toohey and Maurice Spillane	Judge Eckert, Jill Toohey and Maurice Spillane members' seminar on "Therapeutic Jurisprudence in the Tribunal particularly through mediation" .
15/02/2006	Clive Raymond	Participated in the Strata Titles Workshop
22/02/2006	David Parry	Delivered a presentation to the Community Legal Centres of Western Australia Inc Assoc
5/03/2006	Murray Allen	Community Forum presentation to Nurses, Curtin University
9/03/2006	Judge Eckert	Chaired the Australian Guardianship and Administration Committee Heads of Jurisdiction meeting
10/03/2006	Judge Eckert, Jill Toohey, Donna Dean, Felicity Child and Jack Mansveld	Participated in the Australian Guardianship & Administration Committee Meeting
15/03/2006	Bertus De Villiers	Attended the Lawyers Engaged in Alternative Dispute Resolution (LEADR) training
16/03/2006-17/03/2006	Judge Chaney and Judge Eckert	Both attended the District Court Judges Conference - Judge Chaney chaired a members' session on televising court proceedings
20/03/2006	All the Tribunal full time members.	Participated in the Tribunal's self-represented parties workshop
22/03/2006	Justice Barker	Presentation to the Lexis Nexis Property Law and

Date	Member	Community Relations Details
		Conveyancing Masterclass, Perth
30/03/2006	Murray Allen	Conducted a presentation to Senior Registrars training program for the Royal Australia and New Zealand College of Psychiatrists (RANZCP)
02/04/2006-05/04/2006	Marie Connor	Attended the Planning Institute of Australia conference, Gold Coast
5/04/2006	Justice Barker	Participated as an invited person at the International Tribunals Conference, ANU Canberra
06/04/2006-07/04/2006	Justice Barker, Judge Chaney, Bertus De Villiers, Marie Connor, Jill Toohey, Murray Allen and David Parry	All attended and Judge Chaney delivered paper to the 9th Annual Australian Institute Tribunals Conference of the Institute of Judicial Administration (AIJA)
11/04/2006	Clive Raymond	Attended the Strata Titles Institute Breakfast Session
11/04/2006	Clive Raymond	Made a presentation to the Institute of Arbitrators and Mediators Colloquium on mediation
02/05/2006-05/05/2006	Maurice Spillane and Tim Carey	Attended the 8th National Mediation Conference, Hobart
03/05/2006-07/05/2006	Judge Eckert	Attended the International Association of Women Judges Conference, Sydney
10/05/2006	Justice Barker	Law Week 2006 - Participated in hypothetical/panel discussion on the Future of the Supreme Court Law Library
10/05/2006	Jill Toohey, Jack Mansveld, Felicity Child, Donna Dean and Murray Allen	Conducted an Information Session/Forum for members of the Banking industry on issues pertaining to the Human Rights Stream
14/05/2006	Justice Barker	Delivered Community Forum presentations in the towns of Kununurra, Broome and Karratha and met with Local Government representatives, nurses and other interested parties
19/05/2006	Murray Allen	Delivered a presentation to Council of Official Visitors seminar
25/05/2006	Jill Toohey	Delivered a presentation to the Ombudsman and the Office of Public Sector Standards (OPSSC)
26/0520/06-28/05/2006	Jim Jordan	Attended the Institute of Arbitrators and Mediators Annual Conference, Cairns (IAMA)
29/05/2006	Jill Toohey	Jill Toohey made a presentation to the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Annual Congress
28/05/2006	All the Tribunal full time members	Attended seminars presented to members by Justice Stuart Morris, VCAT.
29/05/2006	All the Tribunal full time members	Attended the Council of Australasian Tribunals (COAT) WA Chapter meeting, at which Justice Stuart Morris made a presentation.
6/06/2006	Jill Toohey and Murray Allen	Attended the 3rd International Conference on Therapeutic Jurisprudence
07/06/2006-09/06/2006	Bertus De Villiers	Delivered a paper in South Africa on "Land reform: trailblazers seven successful case studies". Publisher, Konrad Adenauer Foundation, Johannesburg, March 2006.
07/06/2006-09/06/2006	Judge Eckert and Felicity Child	Attended the 3rd International Conference on Therapeutic Jurisprudence, Perth

Date	Member	Community Relations Details
8/06/2006	Judge Eckert, Jill Toohey and Maurice Spillane	Presented a paper to the 3rd International Conference of Therapeutic Jurisprudence, Perth
12/06/2006	Judge Chaney, David Parry and Marie Connor	Community Forum in Albany to local government representatives, town planners and interested community representatives
22/0620/06-23/06/2006	Peter McNab	Attended the Australian Institute of Administrative Law's Annual Administrative Law Forum (AIAL), Gold Coast
27/0620/06-28/06/2006	Jill Toohey, Jack Mansveld, Roger Clarnette and Felicity Child	Presentation to the Dying with Dignity in Neurodegenerative Diseases Forum

Appendix 4 Enabling Acts with the Total Number Of Applications Made

Table showing number of new applications received by enabling Act and provision in the reporting period 1 July 2005 to 30 June 2006.

Stream	Act	Section	No. of Applications
Commercial & Civil	Caravan Parks and Camping Grounds Act 1995	27(1)	2
	Commercial Tenancy (Retail Shops) Agreements Act 1985	6(1)(b)	2
		6A(1)(b)	1
		11(5)	3
		12(1)(b)	3
		12A(4)	1
		13(3)(a)	2
		13(7)	1457
		13(7b)	8
		14	4
		16(1)	34
		27(3)(b)	1
	Community Services Act 1972	17C(1)(a)	1
	Construction Contracts Act 2004	46(1)	3
	Consumer Credit (Western Australia) Act 1996	68(1)	3
		70(1)	1
		83(1)	1
		88(1)	1
		92	23
		93(1)	44
		93(2)	6
	Country Towns Sewerage Act 1948	62(2)	1
	Dangerous Goods (Transport) Act 1998	27	1
	Dangerous Goods (Transport) Act 1998	31(c)	2
	Dog Act 1976	17(1)	2
		26(5)(b)	2
		33F(6)(b)(ii)	2
		33F(6)(a)	1
		33F(6)(b)	1
		33G(2)(d)	1
	Firearms Act 1973	22(2)	20
	First Home Owner Grant Act 2000	31(1)	4
	Health Act 1911	137(ii)	2
		36(1)	12
	Local Government (Miscellaneous Provisions) Act 1960	295(3)(d)	1
		374(2)(a)	6
		380(3)	1
		389	1

Stream	Act	Section	No. of Applications
		401(3)	128
		401A(6)	3
		403(6)	2
		408(3)	4
		417(3)	1
	Retirement Villages Act 1992	56(1)(a)	1
		56(1)(b)	1
		57(1)	1
		63(1)	1
	Retirement Villages Act 1992	9(6)	1
	Road Traffic Act 1974	25(1)	2
		48(4)	36
	Soil and Land Conservation Act 1945	34(1)	10
		39(1)	2
	Strata Titles Act 1985	100(1)	4
		102(1)(e)	1
		102(1)(f)	1
		103D(1)	1
		103E(1)	1
		103F(1)	3
		103F(4)	1
		103G(1)	2
		103H(1)	1
		103I(1)	1
		103N(1)	1
		103P(1)	1
		27(3)(a)	1
		27(3)(b)	1
		83(1)	98
		85	3
		90	6
		91	1
		92	1
		93(1)	1
		94(1)	2
		95(1)	2
		97(1)	2
		99(1)	1
		99A(1)	2
	Swan River Trust Act 1988	68(2)	2
	Taxation Administration Act 2003	40(1)	41
Human Rights	Equal Opportunity Act 1984	135(1)	2
		85	4
		90(2)	16
		93(1)(a)	4
		93(1)(b)	64

Stream	Act	Section	No. of Applications
	Guardianship and Administration Act 1990	104A(1)	12
		106(1)	36
		106(5)	1
		108(3)(b)	1
		109(1)(a)	5
		109(1)(b)	3
		109(1)(c)	3
		109(2)(a)	2
		109(2)(b)	3
		112(4)	48
		17A(1)	15
		40(1) - Type 1	891
		40(1) - Type 2	583
		71A	1
		74(1)	12
		80(6a)	1
		82(1)	1
		84 - Type 1	410
		84 - Type 2	95
		84(1) – Type 1	1
		85(2) - Type 1	1
		85(2) - Type 2	9
		86(1) - Type 1	226
		86(1) - Type 2	42
		87(1) - Type 1	36
		87(1) - Type 2	4
	Mental Health Act 1996	148A(1)	7
		148A(2)	2
Resource & Development	East Perth Redevelopment Act 1991	45(1)	1
	Fish Resources Management Act 1994	66	1
		149(1)	3
	Jetties Act 1926	7A(1)(a)	2
		7A(1)(b)	1
	Land Administration Act 1997	220(c)	3
		222(1)	2
	Local Government Act 1995	2.27(6)	1
		3.25(5)	3
		6.77	4
		9.7(1)(a)	3
		9.7(1)(b)	1
		9.7(2)	1
	Metropolitan Region Town Planning Scheme Act 1959	35F(1)(b)	1
	Planning and Development Act 2005	Review of decision	2

Stream	Act	Section	No. of Applications
		251(2)	2
		253(3)	1
		249(1)	6
		251(1)	8
		251(2)	2
		251(3)	1
		252(1)	29
		252(2)	1
		255(1)	4
		252(2)	4
	Rights in Water and Irrigation Act 1914	26GG(1)(a)	1
		26GG(1)(f)	1
	Town Planning and Development Act 1928	10AA	20
		26(1)(a)(i)	45
		26(1)(a)(ii)	26
		26(1)(a)(iii)	3
	Town Planning and Development Act 1928	26(1)(ab)	2
		26(1)(ad)	2
		52(1)	1
		66(3)	3
		7B(6)(a)	2
		8A(1)	169
		Town Planning Schemes	1
		cl 27A Sch 1	2
	Valuation of Land Act 1978	33(2)	2
		36(1)	1
Vocational Regulation	Architects Act 1921	22A(3)	1
	Builders Registration Act 1939	12D	10
		13(1)	2
		13(2)	10
		14(1)	19
		41(1)	54
	Debt Collectors Licensing Act 1964	11(1)	1
	Dental Act 1939	30(2)	1
	Electricity Act 1945	31(1)	1
	Finance Brokers Control Act 1975	82	3
	Gas Standards Act 1972	13A(11)(c)	1
	Hairdressers Registration Act 1946	16A(1)	1
	Land Valuers Licensing Act 1978	27	3
	Legal Practice Act 2003	149(1)(b)	1
		180(1)	46
		20(9)	1
		202	1
		44(a)	1
	Licensed Surveyors Act 1909	20B	2

Stream	Act	Section	No. of Applications
	Medical Act 1894	12BB(1)(a)	3
		13(1)(a)	7
		13(1)(c)	5
		13(1)(d)	1
		13(9ba)	1
	Motor Vehicle Dealers Act 1973	20(1)(a)(i)	2
		20(1)(b)(i)	1
		10(2)(a)	1
	Nurses Act 1992	43(2a)	1
		63(1)(b)	3
		64(2)(g)	1
		78	1
	Optometrists Act 1940	26(1)	1
	Painters Registration Act 1961	16(1)	3
		18(1)	4
	Psychologists Registration Act 1976	39(1a)	2
		44	1
	Real Estate and Business Agents Act 1978	102(1)(a)	3
		102(1)(b)	1
		23(1)	3
	Real Estate and Business Agents Act 1978	93(1)	1
	Security and Related Activities (Control) Act 1966	67(1)	40
		67(3b)(a)	9
		72(1)	27
	Settlement Agents Act 1981	83	4
	Veterinary Surgeons Act 1960	23(2a)	1
	Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000, given effect to by s 61 Water Services Licensing Act 1995	Regulation 100(1)(b), & 100(2)	1
	Workers Compensation and Injury Management Regulations 1982	Regulation 41(a) Review	1
TOTAL			**5232**

Appendix 5 Rules Committee membership

The Rules Committee was established under section 172 of the *State Administrative Tribunal Act 2004*.

Members at 30 June 2006 were:

- The Hon Justice Barker;
- His Honour Judge Chaney;
- Her Honour Judge Eckert;
- Murray Allen;
- David Parry;
- Jack Mansveld;
- Tim Carey;
- Michelle Scott, (Public Advocate, community member); and
- Michael Hardy (legal practitioner, community member).