



State
Administrative
Tribunal

Western Australia

Annual Report 2007





SAT

State
Administrative
Tribunal

Western Australia

Hon Jim McGinty MLA
Attorney General
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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 2007.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Barker'.

The Hon Justice M L Barker
President

28 September 2007

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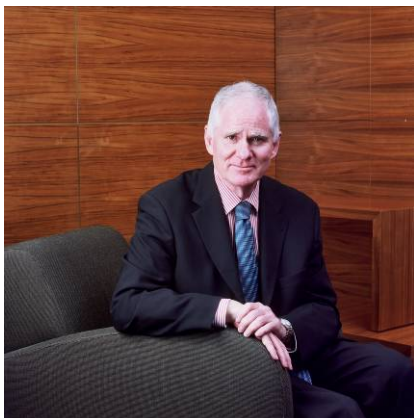
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PRESIDENT'S REPORT – THE LAST 12 MONTHS IN REVIEW



As President of the State Administrative Tribunal (the Tribunal), I am required by section 150(1) of the *State Administrative Tribunal Act 2004* (SAT Act) 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. The Attorney then causes a copy of the report to be laid before each House of Parliament, as provided by section 150(3).

This is my third report under section 150. It covers the period 1 July 2006 to 30 June 2007. Because my first report dealt with the first 6 months of the

Tribunal's operations after its commencement on 1 January 2005, this is the second report to deal with a full 12 month period of operation.

This report also coincides with the Legislative Council inquiry being conducted by that House's Standing Committee on Legislation into the jurisdiction and operation of the Tribunal, as required by section 173 of the SAT Act.

I reported in the last annual report that overall the Tribunal has performed very well in terms of meeting its primary objectives set out in section 9 of the SAT Act. I am pleased to report that the Tribunal has continued to perform well in terms of meeting these objectives, which are to determine matters:

- fairly, and according to the substantial merits of the case;
- as speedily and with as little formality and technicality as is practicable; and
- minimising the costs to the parties.

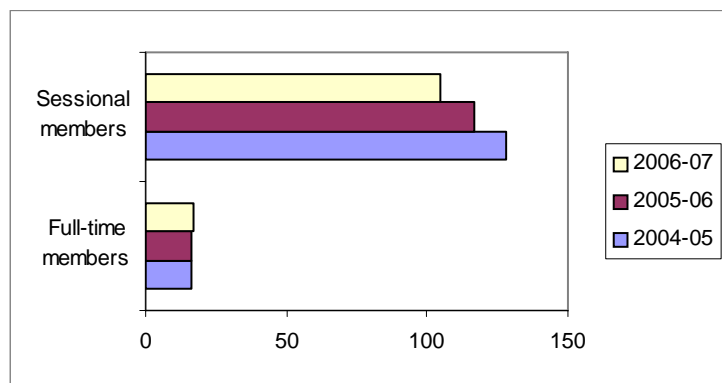
The Tribunal remains mindful of its section 9 objectives at all times and continues to assess and reassess the appropriateness of its practices and procedures, and resource base to the achievement of these objectives.

My first report dealt with a number of matters concerning the establishment of the Tribunal. My second report focused on the consolidation phase of the Tribunal, highlighting the Tribunal's developing practices and noting some statistics relating to the Tribunal's performance. This third report is made following a period during which the Tribunal has focused on the professional development of the members and staff. It also provides statistical information relating to the Tribunal's performance.

In the reporting period, the full-time complement of the Tribunal increased from 16 full-time members to 17. The Tribunal now has three judicial members, four senior members and 10 ordinary members. The tenth ordinary member was appointed at the beginning of the reporting period. The Tribunal has the work to keep these decision-makers very busy. Consideration will need to be given before long to the appointment of additional full-time members, particularly having regard to pressures in the Development and Resources stream.

The number of sessional members of the Tribunal decreased during the year (see **Graph 1**, following the expiration of the appointments of the initial complement of sessional members and a reappointment process that took into account the Tribunal's future needs. As at the end of the reporting period, 30 June 2007, there were 104 sessional members of the Tribunal.

Graph 1 – Members appointed to the Tribunal



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 President of the Board.

During the reporting period, additional jurisdiction was conferred on the Tribunal by the Parliament. As at 30 June 2007, the Tribunal exercised jurisdiction under some 143 enabling Acts, an increase of three on the number of Acts under which it exercised jurisdiction as at 30 June 2006.

In the reporting period, additional jurisdiction was conferred, consolidated or modified under the following enabling Acts:

- *Betting Control Act 1954 Amendments.*
- *Medical Radiation Technologists Act 2006.*
- *Optometrists Act 2005.*
- *Osteopaths Act 2005.*
- *Physiotherapists Act 2005.*
- *Podiatrists Act 2005.*
- *Psychologists Act 2005.*
- *Tobacco Products Control Act 2006.*
- *Trade Measurement Act 2006.*
- Unconscionable conduct – under *Commercial Tenancy (Retail Shops) Agreements Act 1985* – in relation to retail tenancies.

Four of these were new enabling Acts:

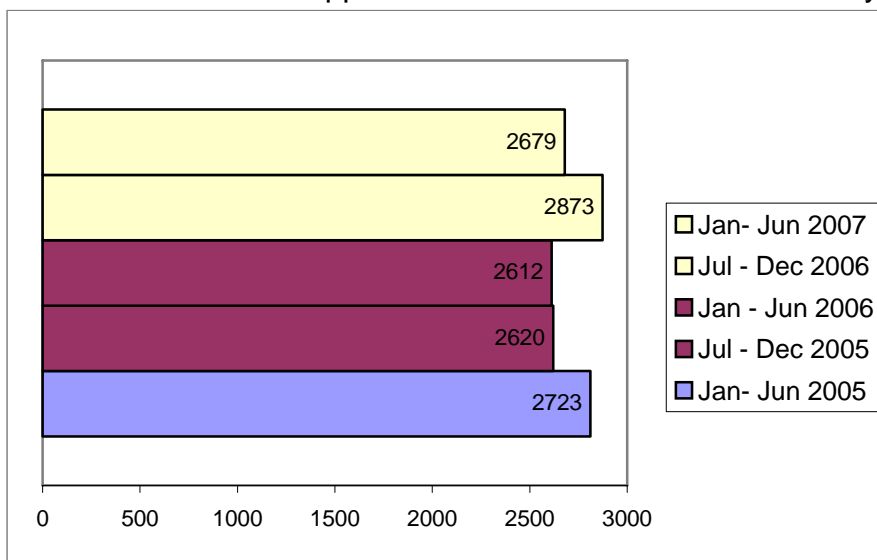
- *Betting Control Act 1954 Amendments.*
- *Medical Radiation Technologists Act 2006.*
- *Tobacco Products Control Act 2006.*
- *Trade Measurement Act 2006.*

The conferral of new jurisdiction necessarily means new and additional work for the Tribunal and has implications for the funding of the Tribunal. I consider a funding formula needs to be established within government so that conferrals of jurisdiction are always accompanied by appropriate funding to ensure the Tribunal has the necessary member and administrative resources to complete its new work without detriment to its performance in existing areas of work.

During the reporting period, the Tribunal received 5,552 applications and determined 5,876 applications (see **Graphs 2 and 3** below). Of the applications determined, 32 were in respect of "legacy" matters that had been transferred to the Tribunal from former adjudicators following the commencement of the Tribunal.

Graph 2 – Applications lodged with the Tribunal

The flow of new applications to the Tribunal was fairly constant during the first 18 months of the Tribunal's operation.

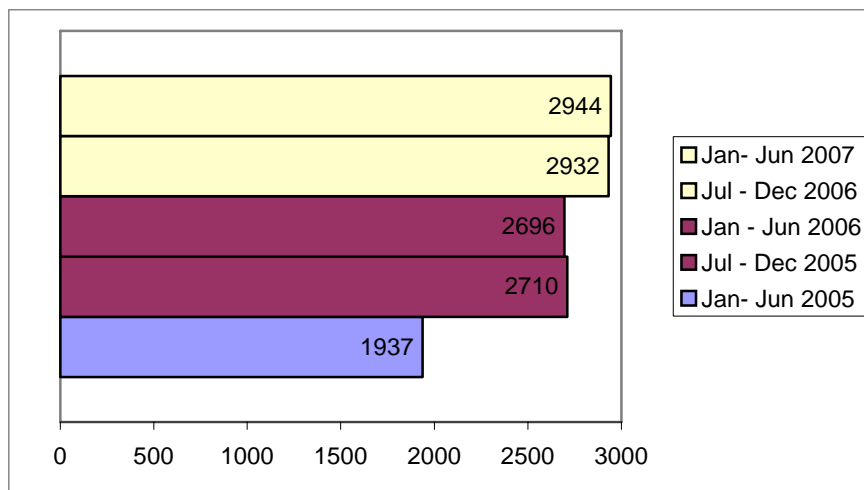


However, during the last 12 months a steady increase in the number of applications has been noted.

In the first six months of its establishment, 2,723 new applications were lodged. Approximately double that number, 5,232 new applications, were lodged in the 12 months to

30 June 2006. In the 12 months to 30 June 2007, 5,552 new applications were lodged with the Tribunal, representing an increase of 6% over the previous 12 month period.

Graph 3 – Applications completed by the Tribunal



Of the 897 legacy matters that were transferred to the Tribunal by former adjudicators following the establishment of the Tribunal, as at 30 June 2007 only four legacy matters remain to be determined.

As stated last year, some of these cannot be resolved until related external court

proceedings or environmental reviews being conducted by other agencies of government are finalised. All other matters are listed for finalisation.

It continues to be the case that the largest number of individual applications in the reporting period were made under the *Guardianship and Administration Act 1990* (the GA Act), with 2,593 applications.

This is not surprising given the increasing population in Western Australia, the changing demographic with an ageing population, and a growing appreciation in the

community of the need often to obtain the appointment of a guardian or an administrator to manage the affairs of vulnerable persons.

The next highest number of applications made to the Tribunal during the reporting year were under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (Retail Shops Act), with 1,734 applications. These tend to reflect the level of commercial activity in Western Australia.

Over the period of the establishment and consolidation of the Tribunal, the practices and procedures adopted have been tested and refined in order to meet the section 9 objectives. I reported on these developments last year. The developing practices and procedures used in each of the Tribunal's four streams are discussed in more detail later in this report.

I have consistently emphasised the importance of mediation and other facilitative decision-making techniques in the decision-making of the Tribunal. Mediation has been used with considerable success throughout the period since the Tribunal's establishment and has continued to be used with considerable success during the past 12 months. Statistical accounts of the successful use of mediation in the Tribunal are contained in the stream accounts later in this report. This means that many proceedings can be resolved without the need for a final, adversarial hearing.

All full-time members of the Tribunal, and a number of sessional members, are trained mediators.

Save in areas of decision-making under the GA Act – under which most applications go to a final hearing within eight weeks of lodgement – and a range of applications under the Retail Shops Act – which are dealt with on the documents – mediation is regularly used throughout all streams of the Tribunal.

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 formal decision-making.

The typical approach taken to the determination of applications, other than those arising under the GA Act and retail shops matters, continues to be for the Tribunal to:

- receive and register the application on the day it is lodged by a party;
- send notices of the directions hearing to all relevant parties within three days of lodgement of the application;
- hold the first directions hearing before a member of the Tribunal within 21 days of lodgement;
- enable parties to participate in the directions hearing either by attending in person, or by telephone or video conference if they reside outside the metropolitan area or for other good reason cannot attend in person;
- encourage the parties to participate in mediation without the need for a final hearing;
- otherwise, programme the application for hearing so that all necessary documents stating the parties' 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 GA Act are determined at a final hearing usually held within six to eight weeks after the application is lodged.

A range of decisions under the Retail Shops Act are decided entirely on the documents without any form of hearing.

The adoption of these procedures continues significantly to enable the Tribunal to realise its section 9 objective to decide matters as speedily as possible.

Performance details and more detailed discussion of factors bearing on performance are contained in each stream report later in this report.

While some of the performance benchmarks set last year were not met, the performance overall is very encouraging and the benchmarks remain in place for the forthcoming year.

I am pleased to report that the Tribunal's introduction of concurrent expert evidence procedures throughout the Tribunal, a matter introduced in last year's report, has continued to work with great success in the Tribunal and is well supported by parties, professional representatives and expert witnesses.

The Tribunal has now developed, for the benefit of expert witnesses and their representatives, a brochure explaining the function of concurrent expert evidence and the duties and responsibilities of witnesses and their representatives alike.



The brochure may be downloaded from the Tribunal's website at www.sat.justice.wa.gov.au.

The Tribunal has continued to find that the vast majority of parties in the Tribunal are self-represented or not legally represented. However, in some areas of decision-making, such as those involving state revenue, serious vocational regulatory proceedings, and major planning and development proposals, parties are regularly legally represented.

Nonetheless, the Tribunal continues to design, assess and reassess all of its practices and procedures on the basis that most parties in most proceedings will be self-represented.

The members and administrative staff of the Tribunal have been working at optimal levels throughout the life of the Tribunal, including during this last 12 months. In my view, additional resources are required by way of administrative staffing of the Tribunal to meet the growing workload and including that likely to arise from projected new jurisdictions. A review of the Tribunal's staffing needs should also consider the adequacy and mix of staff and opportunities for promotion within the Tribunal so that there are sufficient senior people supporting the Tribunal and opportunities for well-qualified people to gain promotion within the Tribunal.

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 jurisdiction, operation, the making of applications, practices and procedures, and decision-making, are to be found on the website.

In particular, the Tribunal Wizard continues to be extremely well-used by applicants. The Tribunal Wizard contains all the enabling Acts and relevant provisions under which proceedings can be commenced in the Tribunal, and enables an applicant to prepare an application on-line before printing it and lodging it with the Tribunal.

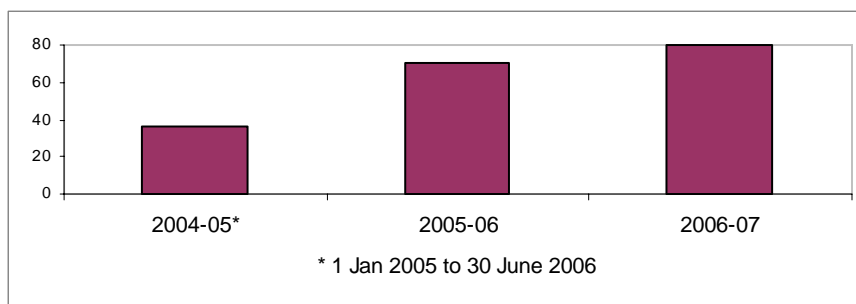
I have mentioned in previous reports that the Tribunal believes it will be able to provide increased convenience and access to citizens throughout the State, once the Tribunal has the capacity to act fully as an eTribunal and receive applications and other documents online onto its computer system. The financial resources of Government are required, however, to achieve this outcome in a timely manner.

The Tribunal continues to adopt decision-making practices whereby, whenever possible, decisions and reasons for decisions are given orally at the conclusion of the hearing or soon after. However, in other matters which are more complex, the Tribunal often reserves its decision which is delivered later, usually within a 90 day period.

All written reasons for a final decision (and some decisions on important preliminary issues), as well as final orders made by the Tribunal in areas that are not confidential under an enabling Act, are published on the Tribunal's decisions database on its website. A number of these decisions are also published in commercial law reports for the benefit of the legal profession and the community generally. The Tribunal's decisions also appear on the Austlii web site at www.austlii.edu.au. In these ways, the Western Australian community is able to access all significant Tribunal decisions and all relevant final orders.

The Tribunal continues to maintain a strong community relations programme, as set out in **Appendix 2** (see **Graph 4** below). The Tribunal remains committed to disseminating and gathering community information and feedback.

Graph 4 – Community Relations programmes



During the reporting period, the Tribunal completed a party survey which provided encouraging feedback on the fairness of practices and procedures adopted in the Tribunal.

However, there is always scope to develop and refine the decision-making systems adopted by the Tribunal and the Tribunal has kept its processes under constant review during the reporting period, especially in the course of member professional development seminars and stream reviews.

Additionally, the Tribunal notes any limitations to its decision-making systems provided by enabling Acts.

As noted in my last report, following an invitation from the Attorney General to do so, the Tribunal put forward a number of recommendations for reform of the SAT Act and enabling Acts to assist the more appropriate resolution of matters before the Tribunal. Many of these proposals have been adopted by the Attorney General and the Government and are proposed to be the subject of amending legislation in due course.

An important recommendation made by the Tribunal during the past year is that the functions of the Mental Health Review Board be conferred on the Tribunal. This recommendation is supported by the President of the Tribunal and the President of the Mental Health Review Board and has been accepted in principle by the Attorney.

The Tribunal continues actively to be involved in the operations of the Council of Australasian Tribunals (COAT). The Western Australian chapter of COAT has been established. I remain a member of the National Executive of COAT. The development of COAT is important to the growing professionalism of tribunals throughout Australia and New Zealand.

The vision for the Tribunal remains that it should become one of Australasia's leading tribunals that adopts best practice, innovative technology in making fair and timely decisions for the benefit of the people of the State of Western Australia. The performance of the Tribunal continues to make that vision a reality.

However, there is one rider to this comment. Unless the Tribunal is adequately resourced into the future to become an eTribunal with well-qualified members and staff, its capacity to maintain its good performance will, in time, be compromised and its ability to meet the section 9 objectives set by Parliament will be undermined.

Since the Tribunal was established, its full-time members, sessional members and staff have displayed considerable dedication and enthusiasm to helping the Tribunal realise this vision. I thank them all for their commitment.

In this regard, I am pleased to report that in 2007, the Salaries and Allowances Tribunal (S&AT) assumed responsibility from the Executive Government for assessing the remuneration of full-time, non-judicial members of the Tribunal. The S&AT inquired into the remuneration of the full-time, non-judicial members, and recognised the value of the functions performed by these members and set new remuneration levels effective as of 26 February 2007. Since then, the Governor in Executive Council has approved remuneration increases for sessional members.

As I complete this overview of the past 12 months, I would like to record my appreciation of the continued support and dedication of my Deputy Presidents, Judge John Chaney and Judge Judy Eckert, and the Tribunal's Executive Officer, Mr Alex Watt. Their leadership has been a significant reason for the Tribunal's continuing success.

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 SAT Act.

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ABOUT THE STATE ADMINISTRATIVE TRIBUNAL

The Tribunal is established under the following legislation:

- SAT Act
- State Administrative Tribunal Regulations 2004.
- State Administrative Tribunal Rules 2004.

The Tribunal's jurisdiction

Individuals, businesses, public officials and vocational regulatory bodies can bring before the Tribunal many different types of applications relating to civil, commercial and personal matters.

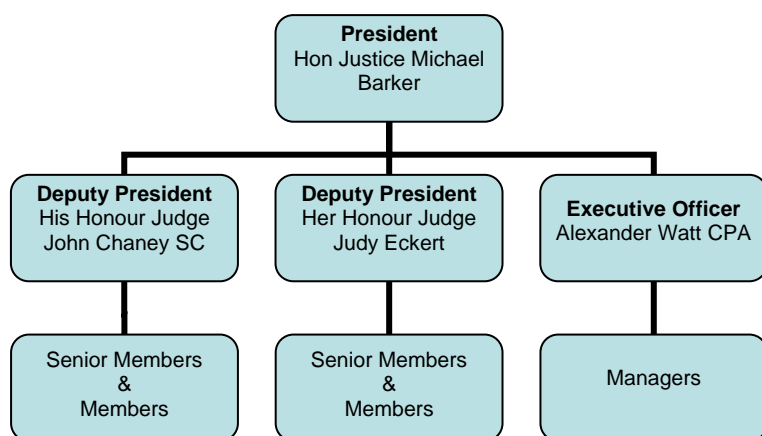
These can range from reviews of multi-million dollar tax assessments to dog destruction orders, disciplinary proceedings, guardianship issues and planning and land compensation matters.

Jurisdiction is currently conferred by 143 enabling Acts with over 860 enabling provisions.

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



The Structure of the Tribunal is as follows:



Under section 146 of the SAT Act the President is responsible to the Minister for the administration of this Act.

Under section 147 of the SAT Act it is a function of the President to advise the Minister of any action that the President considers would lead to the more convenient, economic, and efficient disposal of the

business of the Tribunal; the avoidance of delay in the conduct of proceedings or this Act or an enabling Act being rendered more effective.

Under section 148 of the SAT Act, the Executive Officer of the Tribunal is statutorily responsible to the President of the Tribunal and the staff to the Executive Officer.

Under section 170 of the SAT Act the Rules Committee (see **Appendix 5** for membership) may make rules of the Tribunal prescribing all matters that are required or permitted by the SAT Act to be prescribed by the rules, or are necessary or convenient to be prescribed by the rules for giving effect to the purposes of the SAT Act.

Vision

The Tribunal's vision is to be one of Australasia'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.

Objectives

The objectives of the Tribunal set out in section 9 of the SAT Act 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.

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
- gives reasons for all decisions and publishes written reasons for decisions on its website.

Core values

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

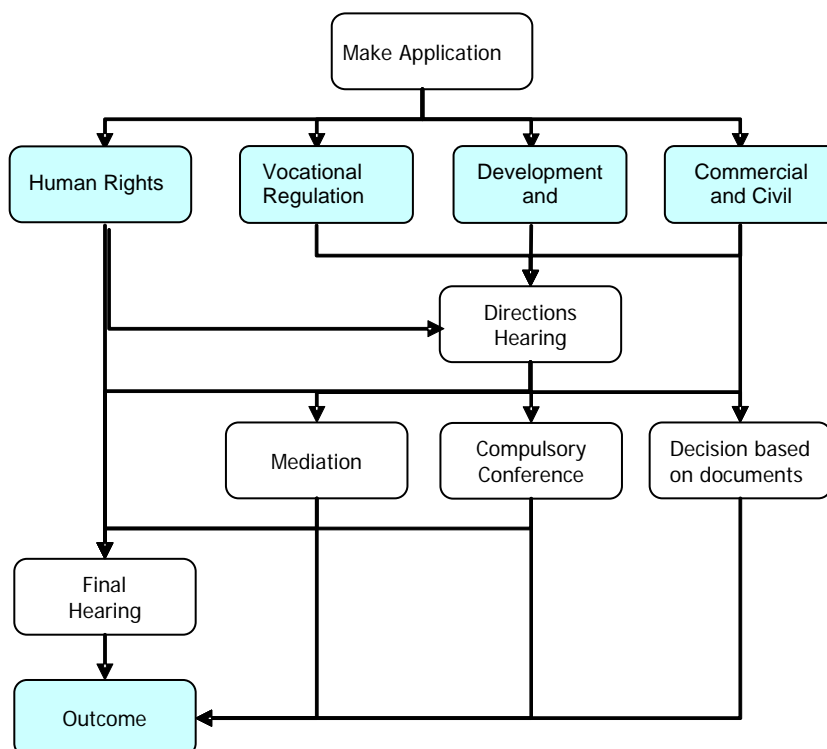
Performance

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 5,552 new applications were lodged with the Tribunal and 5,876 (including a number of "legacy" matters) were finalised.

The Tribunal's high level process for applications is shown in the following diagram.

Application Process



Behaviours

Behaviours are guided by:

- Members' Code of Conduct;
- Staff Code of Conduct;
- continuing professional development;
- commitment to diversity;
- providing every reasonable assistance;
- offering sustainable services; and
- commitment to a safe workplace.

Service environment

The Tribunal offers services throughout Western Australia, which is by area the largest State of Australia. Equity of services to metropolitan, regional and remote communities is a significant challenge to the Tribunal.

In its operating environment the Tribunal provides a modern single point of service.

The Tribunal's service environment presents the following opportunities:

Establishment

The creation of the Tribunal in January 2005 brought together over 56 former adjudicators spanning 140 enabling Acts and over 830 enabling provisions at that time. This provides an opportunity for a modern Tribunal to create new business methods and unify the formerly diverse processes and approaches to decision-making used by former adjudicators.

Consolidation

The development of the Tribunal has reformed the system of tribunals in Western Australia and we continue to consolidate and integrate services and processes. The capacity of the Tribunal to deliver fair decisions, speedily and informally, whilst successfully delivering nationally comparable performance benchmarks, is built upon the expertise and knowledge of members and staff.

Evolution and growth of jurisdictions

The successful establishment and consolidation of the Tribunal provides Government and Parliament with an appropriate forum to which citizens can look for administrative justice in the review and making of administrative decisions. In its first two years of operation 33 new, re-enacted or proposed laws have conferred additional jurisdiction on the Tribunal.

The growth and evolution of jurisdiction requires dedicated and specialised skills to be available to the Tribunal.

Self-represented persons

Developing accessible policies, practices and procedures that enable citizens to access and use the Tribunal, is of fundamental importance.

The Tribunal aims to build and maintain relationships with the diverse Western Australian community.

Resources

With significant growth in the Human Rights jurisdictions notably in

Guardianship and Administration Act matters, a commitment to innovation and accessibility through technology will assist the work of Tribunal reform.

Technology

In the earliest stages of planning for the Tribunal, expectations were for a Tribunal that offered the community services electronically on the Internet, by telephone or in person over the counter. The delivery of end to end electronic business processes continues to be fully realised, yet the eTribunal remains a central pillar of our business aspirations to give the community continuous access to high quality Tribunal services.

Community relationships

The Tribunal is committed to building and maintaining relationships with all stakeholders who have a primary interest in the delivery of the Tribunal's services, whilst promoting and maintaining its independence.

The Tribunal recognises the importance of linking with Government policy makers, decision-makers and service providers, vocational regulatory bodies, health professionals, the Ombudsman, Courts, land planning and resource bodies, business institutes and interest groups.

Sustainability

The Tribunal has a commitment to providing our present service to the community without compromising our ability to meet the future needs of the community. This requires both innovation and leadership.

Tribunal Streams

- **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 2,670 or 48% of all applications. The average time from lodgement to completion of an application is 53 days.

- **Development and Resources stream**

This stream reviews decisions made by Government agencies and local government regarding planning, development and resources, and also hears matters relating to land valuation and compensation.

This stream accounts for 474 or 9% of all applications. The average time from lodgement to completion of an application is 175 days.



- **Vocational Regulation stream**

This stream hears complaints concerning occupational misconduct and reviews decisions concerning occupational registration and accounts for 231 or 4% of all applications. The average time from lodgement to completion of an application is 148 days.

- **Commercial and 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 and accounts for 2,176 or 39% of all applications. The average time from lodgement to completion of an application is 40 days.

Graph 5 – Applications received by stream

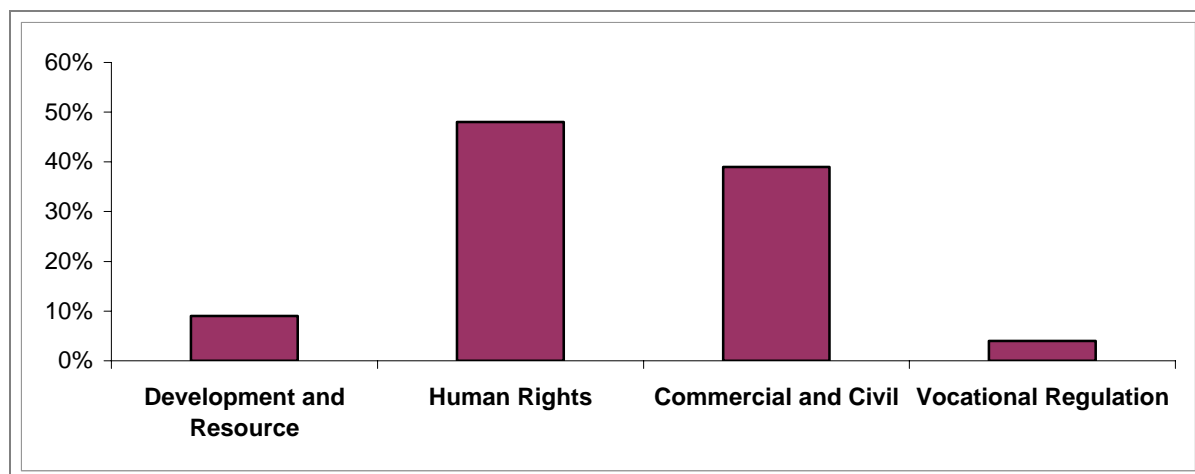


Table 1 – Year at a glance

Item	2006-07	2005-06	2004-05 ^{#1}
Applications lodged	5,552	5,232	2,723
Matters finalised	5,876	5,406	2,686
Acts			
Snapshot of main applications received per Act:			
Commercial Tenancy (Retail Shops) Agreement Act	1,734	1,516	822
Consumer Credit (WA) Act	48	79	17
Local Government (Miscellaneous Provisions) Act	73	147	89
Strata Titles Act	136	139	73
Taxation Administration Act	18	41	30
Planning and Development Act	410	60	n/a
Town Planning and Development Act (Repealed)	n/a	276	199
Equal Opportunity Act	67	90	27
Guardianship and Administration Act	2,593	2,441	1,166
Builder's Registration Act	77	95	42
Legal Practice Act	30	50	16
Security and Related Activities (Control) Act	84	76	45
Our People			
Judicial members	3	3	3
Full-time members	14	13	13
Tribunal employees ^{#3}	68	63	59
Total sessional members	104	128	117

Note:

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

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

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

The Tribunal recognises that the community appreciates transparent information about our performance.

For the Tribunal the leading indicator of efficiency is centred on the time it takes for parties to obtain a decision after the making of an application.

In those jurisdictions in which the Tribunal most frequently makes decisions, the following table provides 2005-2006 percentage benchmarks for matters completed by stream with an indication of the number of weeks taken and compares this performance to 2006-2007.

Table 2 – Benchmark performance

Commercial and Civil							
		2005-06			2006-07		
		30%	50%	80%	30%	50%	80%
Strata Titles	Weeks	9	16	29	5	10	25
Subdivision / Local Govt (Misc Provisions)	Weeks	3	9	26	7	12	31
Consumer Credit	Weeks	<4	<4	12	3	5	8
Review of Building Disputes Tribunal decisions	Weeks	10	18	29	9	17	35
Commercial Tenancy *	Weeks	6	15	29	9	16	34
Road Traffic	Weeks	7	10	13	3	6	14
Firearms	Weeks	13	19	22	10	14	24
Overall Performance	Weeks				6	10	24
Development and Resources							
		2005-06			2006-07		
		30%	50%	80%	30%	50%	80%
Development	Weeks	12	20	30	14	19	32
Subdivision	Weeks	15	23	31	16	25	49
Local Govt notices	Weeks	12	18	49	19	42	63
Compensation for compulsory acquisition	Weeks	6	25	28		12	
Local Govt approvals	Weeks	18	27	44	5	10	16
Rating	Weeks		26			36	36
Fisheries	Weeks	26		28			
Overall Performance	Weeks				14	19	36
Human Rights							
		2005-06			2006-07		
		30%	50%	80%	30%	50%	80%
Mental Health	Weeks	9	10	24	4	5	7
Equal Opportunity	Weeks	12	19	28	13	21	34
Guardianship and Administration	Weeks	6	7	10	5	6	8
Overall Performance	Weeks				5	7	9
Vocational Regulation							
		2005-06			2006-07		
		30%	50%	80%	30%	50%	80%
Vocational Acts	Weeks	9	13	27	7	13	35

* These figures exclude the Retail Shops Act s 13(7) applications.

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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 also 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 *Road Traffic Act 1974*.

During the reporting year, the CC stream received 2,176 new applications and finalised 2,242 applications, excluding legacy matters transferred from previous adjudicators. **Table 3** sets out details of the applications received and the applications finalised during the reporting year.

Table 3 – New CC applications received and finalised 2005-06 and 2006-07

Subject of application	Number of applications received		Number of applications finalised	
	05/06	06/07	05/06	06/07
Animal Welfare Act 2002	0	2	0	2
Births, Deaths and Marriages Registration Act 1988	0	1	0	0
Builders' Registration Act 1939 section 41	54	54	42	62
Business Names Act 1962	0	1	0	1
Caravan Parks And Camping Grounds Act 1995	2	1	0	3
Commercial Tenancy (Retail Shops) Agreements Act 1985 – section 13*	1,502	1,682	1,503	1,696
Commercial Tenancy (Retail Shops) Agreements Act 1985 – Other*	49	52	42	63
Community Services Act 1972	1	0	1	0
Construction Contracts Act 2004	3	2	3	2
Consumer Credit (Western Australia) Agreements Act 1996	79	48	84	54
Country Towns Sewerage Act 1948	1	0	0	1
Dangerous Goods (Transport) Act 1998	3	1	3	0
Dog Act 1976	9	7	5	10
Firearms Act 1973	20	25	28	25
First Home Owner Grant Act 2000	4	3	5	1
Health Act 1911	13	8	10	11
Local Government (Miscellaneous Provisions) Act 1960	146	73	150	81
Marketing of Potatoes Act 1946	0	1	0	1
Retirement Villages Act 1992	5	4	5	4
Road Traffic Act 1974	38	61	38	49
Soil and Land Conservation Act 1945	12	0	4	13
Strata Titles Act 1985	136	136	135	153

Subject of application	Number of applications received		Number of applications finalised	
Swan River Trust Act 1988	2	0	2	0
Taxation Administration Act 2004	41	11	45	9
Taxi Act 1994	0	3	5	1
Transport Co-ordination Act 1966	0	0	0	0
Total	2,120	2,176	2,110	2,242

* As to Commercial Tenancy applications: section 13 applications are determined on the applicants' papers without any form of hearing and do not represent a significant workload notwithstanding their volume – the "Other" applications are proceedings all of which are referred to a hearing.

The statistics reflect an overall drop in the number of applications received by the CC stream compared with the previous year. This is largely attributable to a substantial reduction of applications made under the *Local Government (Miscellaneous Provisions) Act 1960* from 146 applications in the 2005-2006 year to only 73 applications in the year under review. Most applications under this legislation relate to notices served on owners or builders to remove structures for which building approvals have not been obtained.

The *Local Government (Miscellaneous Provisions) Amendment Act 2007* will empower local councils to grant retrospective building approvals and will come into operation on a date to be proclaimed. This may suggest that councils are withholding notices to demolish, in order to address the issue once the amending legislation comes into operation.

Outcomes facilitated by the Tribunal

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.

CC stream members have made a concerted effort to use the directions hearing process to the best possible advantage as a means of communicating directly with the parties.

The Tribunal's objectives require the resolution of matters fairly and according to the substantial merits of the case and the Tribunal is also obliged by virtue of section 32 of the SAT Act to take measures that are reasonably practicable to ensure that the parties understand the nature of the assertions made and the legal obligations of those assertions.

Consequently, in some of the CC stream's areas of jurisdiction, such as Strata Titles, which is very technical and requires that applications be brought under specific sections of the legislation, it is necessary for members, during the directions hearing, to be satisfied that there is a proper basis for the application.

In many instances the communication with the parties results in applications being amended so that the Tribunal is able to proceed to determine the dispute, properly identified, in accordance with its substantial merits.

There are, however, many other benefits which flow from the discussion which occurs during the directions hearing. In some cases, it is the first time at which the parties each reach an understanding of the position of the other. This sometimes leads to the proceedings being adjourned to enable discussions between the parties and, quite frequently, in strata matters, for appropriate proposals to be put to the strata company to be considered in a general meeting of members.

Whereas, in the first year and a half of the Tribunal's operations, members were more inclined to refer matters immediately to mediation, that is not occurring as readily, because of the use which is made of the directions hearing. There are, of course, many instances in which the facilitation of a member through mediation is required.

The combined result of members' efforts during directions hearings and in the conduct of mediations is that 242 matters were resolved without the need for a final hearing. During the reporting year, 30 matters which were referred to mediation and not successfully resolved through that process, were listed to a final hearing.

Applications resolved by final hearing or final determination on the documents

During the reporting year, the CC stream finalised 283 matters by way of a final hearing or final determination on the documents. For at least the first year of the Tribunal's operations, most of the final decisions made by the CC stream were written decisions. The availability of written decisions dealing with key issues within the stream's jurisdiction has enabled members to give oral reasons for decision in an increasing number of cases. During the reporting year, 222

oral decisions were delivered as against 61 written decisions.

In addition during the reporting year, the CC stream made a number of both oral and written related decisions which were not final decisions. **Table 4** sets out details of these related decisions made by the CC stream during the reporting year.

Table 4 – CC related decisions

Subject of decision	Number of decisions	
	2005-06	2006-07
Costs	23	6
Interim (Injunction) Orders	21	26
Stay applications	13	9
Grant of leave to review	11	12
Preliminary issues	5	7
Joinder of parties	3	4
Invitation to decision-maker to re-consider	1	20
Total	77	84

Table 4 illustrates that of the related decisions made by the CC stream, the highest proportion related to invitations to the original decision-maker to reconsider.

Section 31 of the SAT Act permits the Tribunal at any stage of a review proceeding to invite the decision-maker to reconsider the decision. This power has been used more frequently, often at the invitation of the representative of the decision-maker, because circumstances, which may even have arisen after the decision was made, suggest that reconsideration is likely to lead to an outcome which is satisfactory to the applicant.

This helps to avoid an unnecessary hearing, or further hearing, on the merits of the application.

The number of applications for costs decreased in the year under review,

when compared to the previous year. This may be due to an increasing awareness that the starting point in proceedings before the Tribunal, is that each party bear its own costs. Costs were awarded in only two matters during the year under review.

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 the Tribunal. These included 162 matters transferred from the Commercial Tribunal and 62 matters transferred from the Strata Title Referee. By the end of the 2005-2006 all but 19 legacy matters had been completed and all but one of those were completed in the reporting year. The one outstanding matter was set down for a final hearing on a date shortly after the end of the reporting year.

Members of the CC stream



**Senior Member
Clive Raymond**

The work of the CC 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 are principally allocated to the CC stream are Tim Carey, Bertus De Villiers and Jennifer Hawkins.

In addition, two full-time members, Peter McNab and Maurice Spillane, are allocated equally to the CC stream and to the Development and Resources stream. The judicial members of the Tribunal also hear matters in the CC stream.



**From the left; Members Tim Carey, Maurice Spillane, Senior Member Clive Raymond and Member Bertus De Villiers.
Absent; Member Jennifer Hawkins**

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

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

Maurice Spillane was formerly a solicitor with experience in a wide range of areas including planning and local government law and mediation.

Jennifer Hawkins was formerly a solicitor with many years of experience, principally in the areas of commercial and insurance litigation.



Member Jennifer Hawkins

Peter McNab practiced as a barrister at the Independent Bar in Darwin and prior to that, worked in the Commonwealth Attorney-General's Department and in a senior position in the Office of the Northern Territory Anti-Discrimination Commissioner.

Members of the CC stream are also on occasion listed to determine or mediate applications in other streams. Further, all CC stream members are actively involved in Vocational Regulation work in respect of proceedings under the *Builders' Registration Act 1939*, the *Painters' Registration Act 1961* and *Security and Related Activities (Control) Act 1996*.

Sessional members

In January 2007, 16 sessional members were appointed to the Tribunal and allocated principally, or partially, to the CC stream. In addition, 13 sessional members were appointed for general allocation across all streams. These sessional members are very experienced in a wide range of occupations. Use of that experience is made by appointing sessional members to panels in proceedings for the review of decisions of the Building Disputes Tribunal under the *Builders' Registration Act 1939*, and for rental reviews under the Retail Shops Act. A sessional member also determines

applications made under section 13 of the Retail Shops Act. Sessional members with the requisite experience are also appointed to sit in panels in relation to the vocational areas of jurisdiction for which the CC stream has responsibility under the *Builders' Registration Act 1939*, the *Painters' Registration Act 1961* and the *Security and Related Activities (Control) Act 1996*.

Training and professional development of members

In July 2006, all the full-time members of the CC stream participated in the two day Tribunal Kunamarri Conference in which the performance and future aspirations of the Tribunal were discussed.

In early August 2006, all the members of the CC stream attended a planning forum at which a presentation was given on the CC stream's principal areas of jurisdiction, for the benefit of the new stream members, and the practices and procedures of the CC stream were reviewed.

At the end of August, Judge Chaney, together with all members of the CC stream, attended an afternoon induction run specifically for the CC stream by Landgate, in order to demonstrate practically the system of lodgement of strata plans, registration and issue of strata titles, and to discuss practical considerations relating to registration of Tribunal orders.

In February 2007, all members of the CC stream attended a forum on commercial tenancies presented by Senior Member Clive Raymond and Sessional Member Keith Bales.

Also in February 2007, Judge Chaney, Senior Member Clive Raymond and members of the staff conducted an induction and training seminar for newly appointed sessional members likely to

be appointed on panels to hear building-related applications under the *Local Government (Miscellaneous Provisions) Act 1960*, the *Builders' Registration Act 1939* and the *Painters' Registration Act 1961*. The topics addressed at the seminar included the work of the CC stream, directions hearings, the use of mediation, conduct of members, and conflicts of interest.

In June 2007, Senior Member Clive Raymond, and Members Peter McNab, Jennifer Hawkins and Bertus De Villiers attended the 10th Annual Institute of Judicial Administration Tribunals conference in Melbourne. Senior Member Clive Raymond made a presentation at the conference on decisions on the documents.

Directions hearings and case management

All members of the CC stream participate 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, or a judicial member. This process has caused a developed system of case management to be introduced. This has the advantage that the presiding member builds up knowledge of the matter prior to the hearing and it 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 1984* 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 is 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 or hearings is used to determine whether it is appropriate for the matter to be referred to a mediation or compulsory conference.

Facilitative dispute resolution

As indicated earlier, mediation is used very 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 be used to achieve an overall settlement.

In limited circumstances a compulsory conference may be used for the same purpose, where the parties are on the face of it unwilling to co-operate, 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. As with the position of the convenor of a compulsory conference, 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. During the reporting year 242 applications before the CC stream were resolved without the need for a final hearing, as a result of either the directions hearings, referrals to mediation or compulsory conferences.

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. 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 and decisions on the documents

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 of 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 to 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 Statements 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.

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 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.

In most cases, in reviews of the decision of the Building Disputes Tribunal, 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 SAT Act,

consideration may be given to new material in the course of a de novo hearing.

Expert evidence

The CC stream has made use of the practice established within the Tribunal of requiring expert witnesses 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.

Expert witnesses are generally required to 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.

While the occasions on which expert evidence is required are more limited in the CC stream than in some other streams of the Tribunal, the developed expert evidence procedure has been used in the conduct of disputed rent review applications under the Retail Shops Act. There is also scope for the use of the procedure in dealing with the review of decisions of the Building Disputes Tribunal, where technical expert evidence may be required.

A pamphlet has been prepared *A Guide for Experts Giving Evidence in the State Administrative Tribunal* to assist expert witnesses and parties to understand the experts' obligations to



the Tribunal and the Tribunal's procedures for expert evidence.

An order is usually made requiring a party who engages an expert to attend a mediation or compulsory conference, or to give evidence in the proceedings to give the pamphlet or any orders

relating to expert evidence to the expert.

The order also usually requires the expert witness to acknowledge in his or her statement of evidence that he or she has read the pamphlet and agrees to be bound by the obligations stated in it.

Time taken to finalise applications

Table 5 sets out the performance benchmarks to which the CC stream committed as set out in the 2005-2006 annual report.

Table 5 – CC performance benchmarks of number of weeks taken to finalise CC applications 2005 -06

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 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 6 – Number of weeks taken to finalise CC applications 2005-06 and 2006-07

Percentage of applications	Strata Titles		Local Govt (Misc) Provisions		Consumer Credit	
	Weeks		Weeks		Weeks	
	05/06	06/07	05/06	06/07	05/06	06/07
10%	3	2	1	2	2	2
20%	5	4	2	3	3	2
30%	9	5	3	7	<4	3
40%	13	7	5	9	<4	3
50%	16	10	9	12	<4	5
60%	20	13	12	17	5	6
70%	24	20	19	21	9	7
80%	29	25	26	31	12	8
90%	40	40	37	49	20	13
100%	60	107	66	95	43	192

Percentage of applications	Building Disputes Tribunal		Commercial Tenancy		Road Traffic		Firearms	
	Weeks		Weeks		Weeks		Weeks	
	05/06	06/07	05/06	06/07	05/06	06/07	05/06	06/07
10%	4	2	4	2	3	2	<8	2
20%	6	6	5	3	6	2	10	7
30%	10	9	6	9	7	3	13	10
40%	14	12	12	11	8	4	18	13
50%	18	17	15	16	10	6	19	14
60%	21	23	19	23	11	8	20	16
70%	26	28	24	25	12	10	21	19
80%	29	35	29	34	13	14	22	24
90%	33	57	32	97	16	24	36	48
100%	44	169	50	132	36	58	50	118

Table 7 sets out for convenience the average weeks taken in each category of matter to achieve each of the three benchmark stages, 30%, 50% and 80%, of the total matters completed. The total at the foot of the table reflects the weighted average across all benchmark categories, the applicable number of those matters and the average number of weeks to complete them at each benchmark stage.

Table 7 – Performance benchmarks of number of weeks taken to finalise CC applications 2006-07

Benchmark Category	30%	50%	80%
Builders Registration	9	17	35
Commercial Tenancy*	9	16	34
Consumer Credit	3	5	8
Firearms	10	14	24
Local Govt (Misc) Provisions	7	12	31
Road Traffic	3	6	14
Strata Titles	5	10	25
Weighted Average	6	10	24
Benchmark	10	16	28

* These figures exclude the Retail Shops Act s 13(7) applications.

The performance benchmarks have been bettered during the reporting year but there are some categories where the time taken to finalise matters has exceeded the time taken in the 2005-2006 reporting year. Performance in all categories, other than Building Disputes Tribunal matters, was equal to or better than the benchmark at the 50% stage. However, at the 80% stage, performance in respect of review of Building Disputes, Commercial Tenancy and Local Government was outside the benchmark. The probable reasons for that differ in each category.

In relation to Local Government, in the 2005-2006 reporting year, the tendency was to set matters down for a mediation hearing. This brought matters to a head fairly quickly, but it placed local authorities under some pressure and was not always convenient for the parties. As a result, in this reporting year the tendency has been, in the majority of cases, for the local authority and the applicant to cooperate with regard to the provision of evidence sufficient to satisfy the local authority that the application should be granted, without the need for a

mediation hearing. While that process has been more convenient for the parties, it has resulted in the time taken to complete matters being protracted.

As **Table 7** reflects, 50% of Commercial Tenancy matters were finalised efficiently up to the 50% benchmark stage, yet the 80% benchmark was not achieved. This is probably due to the nature of the proceedings. There are many Commercial Tenancy proceedings which by their nature have to be dealt with in a more formal way. Ordinarily, the Tribunal's proceedings require the parties to file Statements of Issues, Facts and Contentions together with a bundle of the documents on which they rely. In some Commercial Tenancy cases, parties are unable to formulate Statements of Issues, Facts and Contentions until they have access to the other side's documents. While this may explain the slower finalisation of matters at the 80% stage, it will be necessary to ensure that tight case management is maintained so that the parties are compelled to progress matters with all due expedition.

In relation to the review of the decisions of the Building Disputes Tribunal under the *Builders' Registration Act 1939*, it was raised in the 2005-2006 annual report that the nature of the review process of these decisions means that the efficiency with which matters can be made ready for a final hearing is affected by the time limits with which reasons for decision can be provided by the Building Disputes Tribunal. It was reported that arrangements had been put in place to ensure that notification of the commencement of proceedings in the Tribunal was not left to the parties, so as to enable the Building Disputes Tribunal to prioritise the provision of reasons for decision in matters which were subject to proceedings before the Tribunal. It was expected that this would resolve the difficulties being experienced.

Regrettably, during the reporting year there has been no improvement and there is continued delay in the provision of reasons, and almost without exception, the provision of transcripts of evidence. A further meeting was held with the Chairman, Registrar and Case Manager of the Building Disputes Tribunal to discuss the delays which were occurring and the frustration expressed by parties that orders by the Tribunal for the Building Disputes Tribunal to produce reasons for decision were not being complied with. The meeting identified that the delays being experienced could be avoided if the Building Disputes Tribunal was able to provide transcripts of the hearings before it more promptly. The practice in the Building Disputes Tribunal is that oral reasons for decision are given at the conclusion of the hearing in the vast majority of the cases. The Tribunal was of the view that a transcript incorporating oral reasons for decisions would be sufficient for it to dispose of most applications for leave to review decisions, and that in those cases in

which more formal reasons were required, an order could be made for that to occur. It was anticipated this would result in fewer formal written reasons for decision having to be provided, which in turn would have the effect that when written reasons for decision were required, they could be provided within a more reasonable time frame. It is understood that transcripts of hearings before the Building Disputes Tribunal are provided by a contractual arrangement between the Builders' Registration Board and a service provider and not in accordance with the scheme under which transcripts are provided to the courts and this Tribunal. Consequently, it was necessary for the Building Disputes Tribunal to review how its transcripts were to be provided in the future.

Whatever steps may have been taken by the Building Disputes Tribunal to review how to provide transcripts of hearings more promptly, that has not occurred. Unless addressed, this and the delay in providing written reasons for decision will be a cause of ongoing delay in the completion of these matters by the Tribunal. It is a matter of concern that there is a consistent failure to comply with orders of the Tribunal to provide reasons for decision within a specified, and more than reasonable, time. Such non-compliance brings both the Building Disputes Tribunal and the processes of this Tribunal into disrepute.

The timeframe within which strata matters are being finalised at each benchmark stage represents a significant improvement over the previous 2005-2006 reporting year. This is a reflection of the success of the CC stream in facilitating outcomes through the directions hearing process and through mediation and in particular is due to the increasing extent to which oral decisions are being given.

Community relations

During the reporting year, advantage was taken of a number of opportunities to engage with community interest groups, in one form or another.

In August 2006, arrangements were made for Judge Chaney, Senior Member Clive Raymond, and Members Bertus De Villiers, Tim Carey, Jennifer Hawkins and Maurice Spillane to attend an induction at Landgate. This provided an opportunity to meet key Landgate personnel involved, particularly, in strata title registration. The induction provided a very useful insight into the process of preparation and lodgement of strata plans and the process by which strata title is issued. Matters of mutual interest were discussed such as the process to be followed in the lodgement of Tribunal orders where those orders need to be notified on the strata plan.

In August and December 2006 and March and May 2007 Senior Member Clive Raymond attended meetings of the Community Titles Advisory Committee, in which representatives of interested bodies within the strata title industry and Government reviewed aspects of the *Strata Titles Act 1985*.

In September 2006, Senior Member Clive Raymond made a presentation to the Property Law Council of Western Australia in relation to the practices and procedures of the Tribunal in Commercial Tenancy matters. Also in September 2006, Senior Member Clive Raymond attended the Strata Title Institute's Annual General Meeting.

In October 2006, Member Maurice Spillane lectured at the University of Western Australia in relation to the respective roles of professional boards and the Tribunal, the nature of

disciplinary proceedings, and the role of lawyers in representing professionals in disciplinary proceedings.

In December 2006, Senior Member Clive Raymond was invited to attend and attended a function of the Builders' Registration Board at which its new website was launched.

In June 2007, CC stream members Bertus De Villiers, Jennifer Hawkins, Peter McNab and Clive Raymond attended the 10th Annual Australian Institute of Judicial Administration Tribunals Conference in Melbourne. Senior Member Clive Raymond made a presentation on decisions on the documents. Also in June 2007, Senior Member Clive Raymond attended the Annual General Meeting of the Institute of Arbitrators and Mediators Australia, WA chapter.

Publications

During the reporting year a pamphlet was published to assist parties in understanding the processes by which compliance with orders of the Tribunal may be enforced.

The pamphlet is written in plain English and provides a clear explanation of the applicable procedures. The pamphlet covers the enforcement of orders requiring the payment of money as well as orders other than for a sum of money and the means by which an order may be sought under section 95 of the SAT Act. It explains that an order that section 95(1) applies to the Tribunal's principal order has the result that failure to comply is an offence for which a penalty of up to \$10,000 may be imposed. The pamphlet also addresses the enforcement of orders made on review and the enforcement of procedural orders made by the Tribunal.

Decisions of note

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

- **Westpac Custodian Nominees Limited and Commissioner of State Revenue [2006] WASAT 203** (Barker J). In this matter the Tribunal reviewed the decision of the Commissioner of State Revenue to the effect that share transfers in favour of numerous transferees, including the applicants, in relation to particular shares were in respect of an "unlisted WA Security" as that term is defined by section 16, section 100 and Second Schedule Item A4 (1) of the *Stamp Act 1921*. The shares were also considered by the Commissioner to be dutiable on the basis that the documentation that preceded the execution of the share transfers in favour of the various investors disclosed a binding agreement that was concluded before the securities were quoted on the Australian Stock Exchange. The Tribunal set aside the Commissioner's ruling that the share transfers were dutiable on the basis of the existence of a binding agreement concluded prior to quotation on the stock exchange. However, the decision under review was otherwise upheld because the shares in question constituted part of the stapled securities that were quoted on the stock exchange and it could not be said that the shares were themselves quoted. Accordingly, the share transfers were in respect of an "unlisted WA security" as defined.
- **Wignall and Commissioner of Police [2006] WASAT 206** (Barker J, Mansveld M, Lord SessM). The applicant, a member of the Coffin Cheaters motorcycle club, applied for a review of a decision of the Commissioner of Police refusing the application for a firearms licence under the *Firearms Act 1973*. In the light of evidence concerning the applicant's criminal record, the criminal records of a number of persons who are members of the Coffin Cheaters motorcycle club, and the culture of "a motorcycle gang" like the Coffin Cheaters in a recent incidence involving violence in the use of firearms in the Perth metropolitan area by persons said to be members of the Coffin Cheaters motorcycle club, the Tribunal concluded that it was not desirable in the interest of public safety that the applicant be issued with a firearms licence, and that the applicant was "not a fit and proper person" to hold a firearms licence.
- **South Veterinary Group Pty Ltd and Sharpe [2006] WASAT 222** (DeVilliers M). In this matter, for the purposes of an interim application, the Tribunal had to determine whether an arguable case could be made that premises used for a veterinary business were used predominantly for a business involved in the sale of goods in order to constitute a retail shop premises under the Retail Shops Act. On the basis that the applicant's evidence established that approximately 75% of the income was derived from the sale of goods such as dog food, over the counter medications and medications associated with the treatment of pets during and after surgery, the Tribunal accepted that the premises were used predominately for the purposes of the retail sale of goods and went on to grant interim relief to the applicant.
- **Abbey Beach Resort Management Limited and Water Corporation [2006] WASAT 231** (McNab M). This

was a review of the decision by the Water Corporation to classify the Abbey Beach Resort as "commercial" rather than "residential" in respect of certain sewerage charges. The Tribunal concluded that the land was used as a managed investment and made a return to syndicate members, that it was advertised and marketed as a resort, making it indistinguishable from its commercial competitors, and that for all intents and purposes it was carried on as a business undertaking trading for profit in the commercial hotel and resort accommodation market in Busselton. The Tribunal concluded that the land was therefore being used for a commercial purpose and affirmed the decision under review.

- ***Tangent Nominees Pty Ltd and Edwards*** [2006] WASAT 243 (Raymond SM, DeVilliers M). In this matter the Tribunal had originally refused the applicant leave to review a decision of the Building Disputes Tribunal, except on one ground, which was that the Building Disputes Tribunal lacked jurisdiction because the respondent had failed to give a preliminary notice as required under the *Builders' Registration Act 1939* and the *Home Building Contracts Act 1992*. An appeal against that decision was refused by the Supreme Court and at the final hearing of the review, limited to the above single ground of review, the Tribunal upheld the applicant's contentions. The Tribunal found that the giving of a preliminary notice was a jurisdictional prerequisite and that the Building Disputes Tribunal had committed a jurisdictional error because no preliminary notice had been given. The decision of the Building Disputes Tribunal was therefore set aside.
- ***Radford and the Owners of Miami Apartments Strata Plan 45236***

[2006] WASAT 293 (DeVilliers M). The applicant had purchased a lot in the strata title scheme "off the plan" prior to registration of the strata plan. The contract of sale showed that the roof area of the development was described as "common property". Settlement of the applicant's purchase occurred after the first Annual General Meeting of the strata company. At the first Annual General Meeting the proprietors voted unanimously to amend the by-laws to the effect that the roof area of the common property be re-subdivided and that the proprietors of two specific lots would become the owners of the re-subdivided lots for no consideration payable to the other proprietors. The Tribunal rejected the respondent's contentions that the applicants had no standing to bring the application because they were not proprietors when the decision in question was made. However, the Tribunal found that it could not resolve the dispute pursuant to its general powers under section 83 of the *Strata Titles Act 1985* because section 83(4) excluded it from doing so where the act sought to be impugned related to a duty or function which could only be exercised or performed pursuant to a unanimous resolution, resolution without dissent, or a special resolution. The Tribunal further found that the amendments to the by-laws could not be repealed pursuant to section 93(3) *Strata Titles Act* because all the proprietors were informed about the proposed by-laws, had an opportunity to discuss it and supported the proposal so that regard had been had to the interests of all proprietors before the decision was made. The Tribunal found that there had been no breach of the *Strata Titles Act* in the conduct of the Annual General Meeting and

therefore relief could not be granted under section 97 of the *Strata Titles Act*.

- ***Maber and the Owners of Strata Plan 11391 [2007] WASAT 99*** (Chaney J). In this matter, in the course of determining a preliminary issue as to the nature of resolution required to grant permission for proposed work on common property within the strata title scheme, the Tribunal considered the provisions of the *Strata Titles Act* concerning the use of, and work on, common property, and in relation to the making of by-laws. The Tribunal characterised the proposal put to the strata company by the applicants as a proposal of the type contemplated in section 42(8) of the *Strata Titles Act* for the making of a by-law granting special privileges to the applicants and concluded that in accordance with section 42 a resolution without dissent was required.
- ***Maber and the Owners of Strata Plan 11391 [2007] WASAT 99(S)*** (Hawkins M). Following the decision referred to in the preceding paragraph, the applicants sought orders pursuant to section 85 and section 95 of the *Strata Titles Act* that the respondent strata company had unreasonably refused the by-law proposal. The Tribunal expressed the view that the obligation under section 35 of the *Strata Titles Act* was to manage the common property for the benefit of all proprietors, and that this was a good governance provision that required the balancing of the interests of proprietors. The Tribunal concluded that the reasons outlined by those proposing the proposal were not less reasonable than those advanced by the applicants and accordingly the Tribunal was not satisfied that an unreasonable refusal

as required by section 95 of the *Strata Titles Act* (WA) had occurred.

- ***Pearce and Germain [2006] WASAT 305*** (Viol J Supp Deputy President). The proceedings concerned an application made under the Retail Shops Act in which part of the relief claimed was of an equitable nature. The Tribunal examined its powers under the enabling legislation and previous decisions made by the Commercial Tribunal and the Tribunal. It was concluded that apart from the power to grant relief in the nature of an injunction, which was authorised by an express power to order a party to do or to refrain from doing a particular act, that the Tribunal did not have power to grant equitable relief under the Commercial Tenancy legislation.
- ***Diploma Construction Pty Ltd and Esslemont Nominees Pty Ltd [2006] WASAT 350*** (Raymond SM). The applicant sought to review a decision of an adjudicator made under the *Construction Contracts Act 2004* in which the adjudicator had held that the application had been prepared and served in accordance with section 26 of that Act. The Tribunal held that the effect of section 46(1) and section 46(3) read with section 31(2) of the Act was to limit the right of appeal or review of a decision by an adjudicator to dismiss an application for adjudication, to one of the grounds stated in section 31(2)(a) of the Act. Further, that if the adjudicator determined that the application did not fall to be dismissed on those grounds and proceeded to determine the merits of the adjudication, that determination was not reviewable by the Tribunal. The application was accordingly dismissed.

- ***Loveland and the Owners of Northlands Centre Strata Plan 17160* [2006] WASAT 358**

(Carey M). The applicant sought an order for the removal of signs affixed to the front fascias of individual lots, being common property of a commercial strata complex. The Tribunal concluded that resolutions of the council of owners, granting retrospective approval for the signs, were instances of the exercise of the council's delegated authority to undertake the functions of the strata company. Further, that the issue of signage fell within the management and control of common property for the benefit of all the owners, which did not require a unanimous resolution or resolution without dissent of the strata company. The council of owners was therefore authorised to make the resolutions, the effect of which was to permit the signs to remain, and the application was dismissed.

- ***Commodore Homes (WA) Pty Ltd and Deegan* [2007] WASAT 45** (Raymond SM). The Tribunal heard an application for leave and a review of a decision of the Building Disputes Tribunal together. The Building Disputes Tribunal had determined a matter contrary to an earlier decision of the Tribunal which was directly in point. In doing so the Building Disputes Tribunal referred to, but stated that it was not persuaded by the decision of the Tribunal but set out no analysis of the Tribunal's decision. After considering the Building Disputes Tribunal's reasons for decision, the Tribunal was not satisfied that its earlier decision and a later decision which approved it were clearly wrong and indicated that it would therefore follow those decisions. The Tribunal referred to the established requirement that

there be consistency in decision-making and observed that the administration of the law before the Building Disputes Tribunal would become unpredictable, to the detriment of the public interest, if the Building Disputes Tribunal did not follow the decision of the Tribunal. Further, that even if the Building Disputes Tribunal considered that a decision of the Tribunal is wrong, it should follow the decision. However, in doing so the Building Disputes Tribunal might express its doubt or even more strongly held dissenting view, together with the reasons for that view. In that circumstance, it lies with the losing party to decide whether to proceed to a review before the Tribunal and persuade the Tribunal to change its view, or if need be, ultimately, to appeal to the Supreme Court. In that way, the Tribunal observed that the integrity of the decision-making process could be maintained.

- ***Hooper and The Owners of the Pines at Ellenbrook Strata Plan 37402* [2007] WASAT 145** (Raymond SM). This was an application in relation to the basis upon which levies were raised in a strata title retirement village. The applicant sought to impugn a by-law passed by way of a special resolution as a Schedule 2 by-law under which levies were to be raised based on the number of occupants of a dwelling rather than on unit entitlement. The Tribunal concluded that a by-law passed to vary the basis upon which contributions were to be levied on proprietors was properly characterised as a Schedule 1 by-law, and consequently, could be made only by way of a resolution without dissent. The Tribunal made an order invalidating the resolution, setting the by-law aside and directed that a copy of the order be lodged

with the Registrar of Titles. The decision examines the basis upon which by-laws are to be characterised as either a Schedule 1 or Schedule 2 by-law.

- ***Braham and Evans* [2007] WASAT 124** (Carey M). In this matter the applicant applied for leave to review a decision of the Building Disputes Tribunal on a number of grounds. The grounds included that the Building Disputes Tribunal lacked jurisdiction or power because the house had been completed for more than six years prior to the complaint being made; that the jurisdictional requirement to give a preliminary notice had not been complied with; that as subsequent purchasers of the dwelling the complainants lacked standing to bring the complaint; and that the Building Dispute Tribunal had failed to comply with its natural justice obligations. On the question of jurisdiction/power, the Tribunal found that the house was unfit for occupation and therefore the building work was not completed. Consequently the time for making the complaint had not commenced to run and the complaint had been made within time. The Tribunal examined closely the requirement to give notice of the hearing and authorities relevant to the circumstances in which delivery of notice could be deemed to have been received pursuant to section 70(1) of the *Interpretation Act 1984*. The Tribunal further found on the factual circumstances of the case that the Building Disputes Tribunal had discharged its obligation to give prior notice of the possible orders which might be made against the applicant. Further, the Tribunal followed an earlier decision dealing with the proper construction of section 12A of the Act, in which it was found that a

neighbour came within the description of "any person" in section 12A(1) of the Act, and therefore the complainants had standing in the proceedings. The application for leave was dismissed.

- ***Cavill and Mulholland* [2007] WASAT 158** (McNab M). In this matter, the Tribunal had to determine as a preliminary issue whether the use of a multi-storey apartment in Joondalup for short-term letting constituted a breach of the strata company by-laws. The by-laws prohibited the use of a lot or any part of the common property for any purpose which might be in breach of the by-laws, the regulations or the by-laws of the local authority, or any government regulation or law. It was therefore necessary to determine whether the use in question was permitted under the relevant Town Planning Scheme which it was accepted had the force of law and fell within the class described as "the regulations or by-laws of the local authority or any government regulation or law". Under the applicable Town Planning Scheme the building had been approved for the permitted use or development of land confined to "Multiple Residential Dwellings". That term was not defined under the Town Planning Scheme but upon analysis of a number of authorities, the Tribunal concluded that the use of the word "residential" connoted permanent residing and therefore the preliminary issue was determined in favour of the applicants.

A number of the decisions of the CC stream of the Tribunal have been reported in the State Reports corresponding to the year under review. The number of matters reported in the State Reports have increased in each year of operation of the Tribunal.

Decisions can be viewed on the Tribunal's website at www.sat.justice.wa.gov.au by selecting the Decisions Database webpage and following the prompts.

CC Decisions on appeal in the Supreme Court (including Court of Appeal):

- ***Re Carey; ex parte Exclude Holdings Pty Ltd* [2006] WASCA 219**: an application for judicial review of a strata title decision of the Tribunal was dismissed. The Court of Appeal laid down important rules governing judicial review and the need for parties to appeal SAT decisions in a timely way.
- ***Rowell v Clark* [2006] WASC 159**: the Court reversed the Tribunal's decision in relation to the by-laws of a strata company and remitted the matter to the Tribunal for re-determination by a differently-constituted Tribunal.

Areas for reform

In the 2005-2006 Annual Report, it was reported that the President had raised the need for amendments to be made to the Retail Shops Act to enable the Tribunal to entertain equitable claims and defences in Commercial Tenancy disputes. The Attorney General has consented to the amendments and Parliamentary Counsel has been instructed to address the necessary changes.

Also during the previous reporting year, the President provided the Attorney General with comments on the previous report to the Attorney General prepared by the Strata Titles Referee, and in addition made a number of other recommendations for amendments to the *Strata Titles Act 1985*. These comments and recommendations have formed part of the basis for instructions which have been given to Parliamentary Counsel.

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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, non-planning local government approvals, fisheries, water, rating, land valuation, land tax, soil and land conservation, compensation for compulsory acquisition of land and related matters under 42 enabling Acts.

Most of the work of the DR stream involves the review of decisions of original decision-makers.

The principal area of original jurisdiction allocated to the DR stream involves the determination of compensation for the compulsory acquisition of land.

Applications received and applications finalised

During the reporting year, the DR stream received 474 applications (an increase of 95 applications or approximately 29% over the previous reporting year) and finalised 481 applications (an increase of 102 applications or approximately 27% over the previous reporting year). As in the previous reporting year, in 2006-2007 the DR stream finalised a greater number of applications than the number of applications that were filed.

Table 8 sets out details of the applications received and the applications finalised during the reporting year in comparison to the previous reporting year.

Table 8 – DR applications received and applications finalised 2005-06 and 2006-07

Subject of application	No. rec'd 05-06	% rec'd 05-06	No. fin'd 05-06	% fin'd 05-06	No. rec'd 06-07	% rec'd 06/07	No. fin'd 06-07	% fin'd 06-07	% Diff rec'd 05-06 06-07	% Diff fin'd 05-06 06-07
Development	220	60%	199	53%	302	64%	295	61%	+37%	+48%
Subdivision	94	26%	108	29%	82	17%	90	19%	-13%	-17%
Local government notices	25	7%	26	7%	21	4%	35	7%	-16%	+35%
Compensation for compulsory acquisition of land	5	1%	5	1%	10	2%	2	<0.5%	+100%	-60%
Local government non-planning approvals	5	1%	5	1%	22	5%	21	4%	+340%	+320%
Rating	4	<1%	8	2%	2	<0.5%	2	<0.5%	-50%	-75%
Fisheries	3	<1%	12	3%	1	<0.5%	1	<0.5%	-67%	-92%
Land valuation	3	<1%	4	1%	2	<0.5%	5	1%	-33%	+25%
Review by President of determination of non-legally qualified member in planning matter	3	<1%	4	1%	8	2%	8	2%	+167%	+100%

Subject of Application	No. rec'd 05-06	% rec'd 05-06	No. fin'd 05-06	% fin'd 05-06	No. rec'd 06-07	% rec'd 06/07	No. fin'd 06-07	% fin'd 06-07	% Diff rec'd 05-06 06-07	% Diff fin'd 05-06 06-07
Water	2	<1%	1	<1%	6	1%	4	<1%	+ 200%	+ 300%
Land tax	1	<1%	2	<1%	6	1%	6	1%	+ 500%	+ 200%
Disqualification of local government councillor	1	<1%	1	<1%	1	<0.5%	0	---	---	-100%
Review or rejection of application by Executive Officer	1	<1%	1	<1%	0	---	0	---	-100%	-100%
Review of order of Minister for Planning that local government pay another local government's costs	0	---	1	<1%	0	---	0	---	---	-100%
Ministerial referral of representations for report and recommendations	0	---	2	<1%	0	---	1	<0.5%	---	-50%
Jetty	0	---	0	---	8	2%	4	<1%	+ 800%	+ 400%
Soil and land conservation	0	---	0	---	0	---	4	<1%	---	+ 400%
Local government requirement as to specifications for roads or waterways	0	---	0	---	3	<1%	3	<1%	+ 300%	+ 300%
Total	367	100%	379	100%	474	100%	481	100%	+29%	+27%

Table 8 shows the following significant changes in the workload of the DR stream between the reporting year and the previous reporting year:

- An increase of 82 applications or approximately 37% received and an increase of 96 applications or approximately 48% finalised in development matters.
- An increase of five applications or 100% received in compensation matters.
- An increase of 17 applications or 340% received and an increase of 16 applications or 320% finalised in

local government non-planning approval matters.

- A reduction of two applications or approximately 67% received and a reduction of 11 applications or approximately 92% finalised in fisheries matters.
- An increase of five applications or approximately 167% received and an increase of four applications or 100% finalised in reviews by the President of decisions of non-legally qualified members in planning matters.

- An increase of four applications or 200% received and an increase of three applications or 300% finalised in water matters.
- An increase of five applications or 500% received and an increase of four applications or 200% finalised in land tax matters.
- An overall increase of 107 applications or approximately 29% received and 102 applications or approximately 27% finalised in the DR stream.

Table 8 also shows that the bulk of the DR stream's work during both the reporting year and the previous reporting year involved the review of decisions of State and local government authorities concerning town planning (development and subdivision) applications and the review of decisions of local government authorities concerning notices and non-planning applications.

These matters constituted approximately 90% of all DR applications received and approximately 92% of all DR applications finalised during the reporting year.

Applications resolved by final hearing or final determination on the documents

During the reporting year, the DR stream resolved 174 applications by final hearing or by final determination entirely on the documents without the need for a hearing (approximately 36% of all applications finalised). During the previous reporting year, the DR stream resolved 140 applications by final hearing or by final determination entirely on the documents (approximately 37% of all applications finalised).

The proportion of applications that required a final hearing or determination on the documents therefore decreased marginally between 2005-2006 and 2006-2007.

Table 9 sets out details of the applications resolved by final hearing or final determination entirely on the documents during the reporting year in comparison to the previous reporting year. It also indicates what percentage of the number of applications in each category was determined entirely on the documents without the need for a hearing.

Table 9 – DR applications resolved by final hearing or determination on the documents 2005-06 and 2006-07

Subject of application	No. 05/06	% 05/06	No. on docs. 05/06	% on docs. 05/06	No. 06/07	% 06/07	No. on docs. 06/07	% on docs. 06/07	No. Diff. 05/06-06/07	% Diff. 05/06-06/07
Development	80	57%	17	21%	109	63%	30	28%	+29	+36%
Subdivision	27	19%	8	30%	27	16%	6	22%	0	---
Fisheries	8	6%	1	12.5%	0	---	0	---	-8	-100%
Local government notices	6	4%	5	83%	8	5%	3	37.5%	+2	+33%
Rating	5	4%	0	---	1	<1%	1	100%	-4	-80%
Land valuation	4	3%	0	---	3	2%	1	33%	-1	-25%
Review by President of determination of	4	3%	4	100%	8	5%	8	100%	+4	+100%

Subject of application	No. 05/06	% 05/06	No. on docs. 05/06	% on docs. 05/06	No. 06/07	% 06/07	No. on docs. 06/07	% on docs. 06/07	No. Diff. 05/06-06/07	% Diff. 05/06-06/07
non-legally qualified member in planning matters										
Land tax	2	1%	0	---	6	4%	3	50%	+4	+200%
Ministerial referral of representations for report and recommendations	2	1%	0	---	1	<1%	0	---	-1	-50%
Local government non-planning approvals	1	<1%	1	100%	4	2%	0	---	+3	+300%
Water	1	<1%	0	---	0	---	0	---	-1	-100%
Compensation for compulsory acquisition	0	---	0	---	2	1%	0	---	+2	+200%
Soil and land conservation	0	---	0	---	4	2%	0	---	+4	+400%
Jetty	0	---	0	---	1	<1%	0	---	+1	+100%
Total	140	100%	36	26%	174	100%	52	30%	+34	+24%

Written reasons were produced for 170 of the 174 applications resolved by final hearing or final determination entirely on the documents during the reporting year. In 10 cases (nine involving development and one involving subdivision), the written reasons were edited versions of the transcript of oral reasons given at the conclusion of the hearing. In four cases (three involving development and one involving a local government notice), oral reasons were given for the decision at the conclusion of the hearing, but written reasons were not requested by a party or produced by the Tribunal on its initiative.

The differences in the number of applications resolved by final hearing or final determination on the documents between the reporting year and the previous reporting year shown in **Table 9** are generally proportionate to the differences in workload shown in **Table 8**.

In particular, there was a significant, proportionate increase in the number of

applications finalised by final hearing or determination on the documents in development matters (29 applications or approximately 36%), Presidential reviews of non-legally qualified members' decisions in planning matters (four applications or 100%), land tax (four applications or 200%) and soil and land conservation (four applications compared to zero in the previous year).

There was a significant, proportionate decrease from eight to zero in the number of fisheries applications resolved by final hearing or determination on the documents. The relatively high number of fisheries applications resolved during the previous reporting year was due principally to outstanding legacy matters inherited from the former Fisheries Objections Tribunal rather than new applications.

When the Tribunal was established in January 2005, the DR stream inherited 42 objections from the Fisheries

Objections Tribunal and finalised all of these matters in the first 18 months.

Many of these objections had remained undetermined by the former adjudicator for years.

Written reasons for non-final decisions

In addition, during the reporting year, the DR stream published 21 written reasons for decision which were not final decisions. During the previous reporting year, the DR stream

published 18 written reasons for decision which were not final decisions.

Table 10 sets out details of non-final written decisions published by the DR stream during the reporting year in comparison to the previous reporting year. It also indicates what percentage of the number of decisions in each category was determined entirely on the documents without the need for a hearing. **Table 10** does not include non-final decisions for which only oral reasons were given.

Table 10 – Written reasons for DR non-final decisions 2005 06 and 2006 07

Subject of decision	No. 05/06	% all written 05/06	No. on docs 05/06	% on docs 05/06	No. 06/07	% all written 06/07	No. on docs 06/07	% on docs 06/07	No. Diff. 05/06-06/07	% Diff. 05/06-06/07
Preliminary issue – town planning	5	3%	5	100 %	11	6%	10	91%	+6	+ 120%
Costs	4	3%	1	25%	4	2%	3	75%	0	---
Joinder/leave to make submissions/ intervention	3	2%	1	33%	2	1%	1	50%	-1	-33%
Extension of time to commence proceedings	3	2%	0	---	0	---	0	---	-3	-300%
Preliminary issue – soil and land conservation	1	<1%	0	---	0	---	0	---	-1	-100%
Leave to amend plans	1	<1%	1	100 %	1	<1%	0	---	0	---
Exclusion of documents	1	<1%	1	100 %	1	<1%	0	---	0	---
Preliminary issue - jetty	0	---	0	---	1	<1%	1	100 %	+1	+ 100%
Interlocutory injunction	0	---	0	---	1	<1%	1	100 %	+1	+ 100%
Total	18	11%	9	50%	21	11%	16	76%	+3	+17%

Tables 9 and 10 show the following changes between the reporting year and the previous reporting year:

- The number of written decisions published by the DR stream increased by 37 or approximately 23% from 158 to 195.

- The proportion of all written decisions which resulted from a determination entirely on the documents without the need for a hearing increased from approximately 28% to approximately 35%.

- The proportion of written final decisions which resulted from a determination entirely on the documents without the need for a final hearing increased from approximately 26% to approximately 30%.
- The proportion of written non-final decisions which resulted from a determination entirely on the documents without the need for a hearing increased from approximately 50% to approximately 76%.

Facilitative dispute resolution

Facilitative dispute resolution involves the resolution of applications with the assistance of Tribunal members, but without the parties having to engage in a final hearing or final determination on the documents with a consequent win/loss Tribunal-imposed decision. Facilitative dispute resolution includes active case management, mediations and compulsory conferences. Facilitative dispute resolution conducted by members of the DR stream remains a critical component of

the way in which applications are resolved in the stream. In both the reporting year and the previous reporting year, approximately 60% of applications in the DR stream were resolved through facilitative dispute resolution without the need for a final hearing or final determination on the documents.

Applications requiring a final hearing or final determination on documents

In the reporting year, only approximately 36% of applications in the DR stream (compared to approximately 37% in the previous year) required a final hearing or final determination on the documents.

Table 13 compares the performance of the DR stream during the reporting year and the previous reporting year with TPAT during 2004 in relation to the proportion of town planning and local government notice applications that were resolved by final hearing or final determination on the documents.

Table 11 – Town planning and local government notice applications resolved by final hearing or final determination on the documents 2005/06 and 2006/07 compared with TPAT appeals resolved by final hearing 2004

Type of application	No. TPAT apps. res. by final hearing 2004	No. TPAT apps. rec'd 2004	% TPAT apps. res. by final hearing 2004	No. DR apps. res. by final hearing or on docs. 05/06	No. DR apps. rec'd 05/06	% DR apps. res. by final hearing or on docs. 05/06	No. DR apps. res. by final hearing or on docs. 06/07	No. DR apps. rec'd 06/07	% DR apps. res. by final hearing or on docs. 06/07
Development	145	212	68%	78	220	35%	109	302	36%
Subdivision	32	99	32%	27	94	29%	27	82	32%
Local Govt notices	8	12	67%	6	25*	24%	8	21**	38%
Total	185	323	57%	111	339*	33%	144	405**	36%

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

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

Table 11 shows that a significantly lower proportion of applications require resolution by final hearing or determination on the documents in the DR stream than was the case before the former adjudicator. During the reporting year, only 36% of town planning and local government (LG) notice applications required resolution by final hearing or determination on the documents compared to 57% in TPAT.

Benefits of facilitative dispute resolution

As noted in the 2005-2006 Tribunal annual report, three important benefits flow from the DR stream's emphasis upon and success in facilitative dispute resolution:

- First, the significant reduction in the proportion and number of planning and local government notice proceedings which require a final hearing or determination on the documents, 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 or determination.
- 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 an application is not resolved through case management, mediation or a compulsory conference, at the very least contested issues are often 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, in June 2005, the DR stream received an appeal to the Minister for the Environment from a decision of the Swan River Trust.

By the end of the 2005-2006 reporting year, all but 12 of the 168 legacy matters received by the DR stream had been finalised. During the 2006-2007 reporting year, nine of the 12 remaining legacy matters were finalised.

The three outstanding legacy matters (two of which are related) involve subdivision applications which cannot be finalised because the proposals are still the subject of environmental assessments by the Environmental Protection Authority or the Minister for the Environment under the *Environmental Protection Act 1986* – see Areas for reform below.

Members of the DR stream



Senior Member
David Parry

Full-time members

The work of the DR stream is overseen by the President Justice Michael Barker and Deputy President Judge John 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 are principally allocated to the stream are Marie Connor, a town planner and formerly a member of TPAT, and Jim Jordan, a town planner who also holds a law degree and was formerly a senior member of TPAT.

In addition, two full-time members, Peter McNab, who was formerly a barrister and university lecturer specialising in administrative law, and Maurice Spillane, who is a lawyer with experience in local government and planning law, are allocated equally to the DR stream and to the CC stream.

Members of the DR stream are also occasionally listed to determine or mediate applications in other streams.

Sessional members

In January 2007, 17 sessional members were appointed to the Tribunal and allocated principally or partially to the DR stream. These sessional members include four town planners, four architects, a town planner/architect, a town planner/surveyor, a surveyor, two land valuers, an environmental scientist, an engineer, an anthropologist, and a lawyer with experience in water law.

During the reporting year, sessional members, sitting on their own, determined approximately 40% (55 out of 136) of all town planning (development and subdivision) applications that required a final hearing or final determination on the documents. This was a significant increase in both the number and the proportion of town planning applications determined by sessional members compared to the previous reporting year in which sessional members,

sitting on their own, determined approximately 22% (24 out of 107) of town planning applications that required a final hearing or final determination on the documents.

Between 2005-2006 and 2006-2007 there was approximately a 21% increase (107 to 136) in the number of town planning applications that required a final hearing or final determination on the documents. The DR stream needed to use sessional members to accommodate this significant increase in workload.

In addition, during the reporting year, sessional members sat as part of a panel with one or two full-time members in another 14 town planning final hearings. This was an increase of



From the left: Senior Member David Parry, Members Jim Jordan, Marie Connor and Peter McNab

four or 40% over the previous reporting year. Panels are only used where appropriate having regard to the issues, complexity and

significance of the case. The increase in use of sessional members to sit on panels between 2005-2006 and 2006-2007 was generally proportionate to the increase in workload in town planning applications.

In total, during the reporting year, sessional members were involved in approximately 51% (69 out of 136) of final hearings or final determinations on the documents in relation to town planning applications. This was a significant increase in both the number and the proportion of town planning applications over the previous reporting year in which sessional members were involved in approximately 32% (34 out of 107) of final hearings or final determinations on the documents in relation to town planning applications.

Limitations on use of sessional members in DR stream

The DR stream would not have been able to accommodate its workload in 2005-2006, much less the significant increase in workload in 2006-2007, without heavy reliance on sessional members.

However, experience gained over the first two years of the Tribunal's operation indicated the following four principal limitations on the use of sessional members:

- Availability – Sessional members who are actively engaged in their profession may have difficulty in finding time for Tribunal work, including time to write reserved decisions.
- Conflicts of interest – Sessional members who are in active town planning practice in particular inevitably have conflict issues from time to time. On occasion, the extent of conflict had only become apparent close to a final hearing, giving rise to difficulties in allocating an alternative member.
- Inconsistency of approach – Despite training of sessional members by full-time members, it is unfortunate, although inevitable, that sessional members who determine applications only irregularly do not always employ the same approach as full-time members who specialise in the work of the DR stream.
- Administrative burden – The use of sessional members places an additional burden on the full-time members in having to educate, mentor and carry out administrative tasks on behalf of their sessional colleagues. Such administrative tasks include replying to correspondence, reviewing and forwarding additional submissions

and supervising the production of reasons for decisions and orders. These activities reduce the time full-time members have available to conduct facilitative and other dispute resolution and reduce their efficiency.

The 17 sessional members who were appointed in January 2007 were selected from a large group of applicants following a rigorous interview process. Issues of availability and conflict of interest were discussed in the interviews. The result is that these issues have proven to be significantly less of a concern in the six months following the appointment of the new sessional members than in the six months prior to their appointment.

As discussed below (see training and professional development of members), a full day induction and training seminar was conducted for the sessional members shortly after their appointment. In addition, the full-time members have provided formal and informal mentoring for the sessional members. In consequence, inconsistency of approach has been reduced, although not eliminated. However, owing to the appointment of new sessional members and the need to increasingly use sessional members to keep up with workload in the DR stream, the administrative burden on the full-time members has increased.

Need for appointment of two additional full-time members

Owing to the significant increase in the work load of the DR stream during the reporting year, it will become necessary to consider the appointment of further full-time members to Tribunal for allocation principally to the DR stream. The additional full-time members should ideally comprise a town planner and an architect.

The appointment of two additional full-time members to the DR stream would:

- increase stream efficiency and timeliness;
- eliminate the problems of availability, conflicts of interest, inconsistency of approach and administrative burden;
- significantly reduce the need to utilise sessional members; and
- enable the two legally-qualified members who are allocated equally to the DR and CC streams to undertake more work in the CC stream and in other areas of the Tribunal which have also experienced an increase in workload.

Training and professional development of members

In July 2006, all full-time members of the DR stream participated in the two day Tribunal Kunamarri conference discussed elsewhere in this report.

In September 2006, Deputy President Judge John Chaney and Senior Member David Parry attended the bi-annual Australian Conference of Planning and Environmental Courts and Tribunals (ACPECT) in Queensland in which Judge John Chaney chaired a session and Senior Member David Parry made a presentation on the work and procedures of the DR stream.

In December 2006, Deputy President Judge John Chaney and all full-time members of the DR stream participated in a full-day stream seminar in which they discussed topics including Tribunal-appointed experts, expert evidence, invitations to councillors to attend mediations, applications to make submissions, partial settlement following mediation, rights of way and restrictive covenants, planning conditions, and training of sessional members.

In February 2007, a full-day induction and training seminar was conducted for the newly-appointed sessional members who are principally allocated to the DR stream. The topics addressed at the seminar included the work of the DR stream, directions hearings and standard orders, mediations and compulsory conferences, conducting a hearing, decision writing, natural justice, conduct of members and conflicts of interest.

In May 2007, Member Marie Connor and Member Jim Jordan attended different days of the Planning Institute of Australia National Conference in Perth. President Justice Michael Barker addressed the conference on the urban planning of Perth.

In June 2007, Senior Member David Parry and Members Marie Connor, Jim Jordan and Peter McNab attended the 10th Annual Australian Institute of Judicial Administration Tribunals conference in Melbourne. Senior Member David Parry made a presentation at the conference on lawyers in tribunal proceedings.

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 not represented by a lawyer or town planner, are listed for an initial directions hearing before a full-time member other than the senior member for a one hour appointment on Wednesdays.

These directions hearings take place around a table and usually include an explanation of the process, identification of issues, mediation of issues and consideration of alternative solutions.

Revenue and fisheries applications are listed for an initial directions hearing before the President on Tuesdays. All other DR applications are allocated to a weekly directions list conducted by Deputy President Judge John Chaney and/or Senior Member David Parry on Fridays. In these directions hearings, the Tribunal adopts a hands-on approach to identify the key issues in dispute and to determine the most appropriate method to achieve a quick and just resolution with minimum cost to the parties. The merits of the application are not generally explored in detail, but matters are often referred to mediation or a compulsory conference for this to occur.

Mediations and compulsory conferences

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

The purpose of mediation is to resolve a dispute by settlement between the parties or to narrow the issues in dispute. Mediation is a confidential, co-operative, problem-solving process designed to help the parties find constructive solutions to their dispute with the assistance of a trained mediator. A compulsory conference is similar to mediation but usually involves the member taking a more interventionist approach. If, following mediation or a 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, in review applications, that it is appropriate to do so.

As noted earlier, in the reporting year, approximately 60% of applications in the DR stream were resolved through facilitative dispute resolution, principally involving active case management, mediations and compulsory



conferences, without the need for a final hearing or a final determination on the documents. In the 2005-2006 annual report for the Tribunal, it was noted that experience during that reporting year indicated that word of the success of Tribunal mediation had spread and that parties often jointly requested mediation at the outset. This trend has continued during the reporting year. 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 of the full-time members of the DR stream and two sessional members are trained mediators.

If mediation does not result in settlement of proceedings, the member who conducted the mediation cannot be involved in the determination of the proceedings unless the parties consent. If a compulsory conference does not result in settlement of proceedings, the member who conducted the compulsory conference cannot be involved in the determination of the proceedings 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 previous reporting year, the DR 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 or compulsory conference.

In the 2005-2006 annual report for the Tribunal it was reported that councillors had played a constructive role in the process of mediation and in the communication of the outcome to the rest of the elected council. Experience over the reporting year has confirmed that this is the case.

During the reporting year, the President, Deputy President Judge John Chaney and Senior Member David Parry met with representatives of the WA Local Government Association who suggested improvements to the form of the standard order used to invite councillors to attend mediations and compulsory conferences. As a result of those discussions, standard order 14 was amended to read as follows:

"The Mayor or President of the respondent is invited to attend and/or nominate one or more councillors and/or the chief executive officer of the respondent to attend the [mediation/compulsory conference]."

Final hearings and determinations on the documents

As in the previous reporting year, most applications that required a final hearing or final determination on the documents involved a (an oral) hearing. However, the number of applications

that were finally determined on the documents without the need for a final (oral) hearing in the DR stream increased from 36 to 52 and the proportion increased from approximately 26% to approximately 30% between 2005-2006 and 2006-2007.

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).

In the 2005-2006 annual report for the Tribunal it was 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. The report stated that this change would improve the efficiency of the DR stream, in particular by allowing Senior Member David Parry to determine such applications where appropriate. This suggestion was adopted during the reporting year in the draft *Acts Amendment (Justice) Bill 2007*.

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

Other DR applications are listed before a single member or a panel of two or three members, depending on the issues, complexity and significance of the case. Panels generally comprise two members with Senior Member David Parry or another member designated by the President presiding.

During the previous reporting year, the DR stream trialed 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. This practice has continued during the reporting year in appropriate cases.

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 advance of the hearing, in the absence of the parties or their representatives, 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, two, three or four expert witnesses have often given concurrent evidence together in DR hearings. On one occasion, six witnesses gave evidence together

including one by video link from the United States of America.

In the 2005-2006 annual report for the Tribunal it was noted that experience over that reporting year indicated that the practice of expert conferral and concurrent evidence significantly reduced the length of hearings and greatly assisted members to make the correct and preferable decision. Experience over the

reporting year confirms that this is undoubtedly the case. Discussions with members of equivalent bodies at the ACPECT and AIJA tribunals conferences during the reporting year indicate that the DR stream's practice in relation to expert evidence reflects Australian and New Zealand best practice and in many respects leads all equivalent jurisdictions.

In August 2006, the DR stream conducted two two-hour seminars on expert evidence, as part of its development and resources consultation forum, which were attended by interested persons, including experts, local government and State authority officers and lawyers. Each session consisted of a screening of a video produced by the AIJA on concurrent evidence in a land compensation case conducted in the NSW Land and Environment Court (the equivalent jurisdiction to the DR stream in that State), an explanation of any differences in the Tribunal process, a discussion about the DR stream's expectations for expert evidence, and a general feedback session.

As a result of suggestions made during these sessions and further discussion among members of the DR stream during the full-day stream seminar in December 2006, Senior Member David Parry prepared a pamphlet entitled

A guide for experts giving evidence in the State Administrative Tribunal and drafted amendments to the standard orders made at directions hearings.

The pamphlet and amended standard orders were adopted by the Rules Committee and published in May 2007.

The pamphlet *A guide for experts giving evidence in the State Administrative Tribunal* assists expert witnesses and parties to understand experts' obligations to the Tribunal and procedures for expert evidence. The pamphlet sets out the experts' obligations and provides guidance as to statements of evidence, conferral and joint statements of expert witnesses, and concurrent evidence of expert witnesses.

The Tribunal usually makes an order requiring a party who engages an expert to attend a mediation or compulsory conference or to give evidence in the proceedings to give the pamphlet and any orders relating to expert evidence to the expert.

The Tribunal also usually makes an order requiring an expert witness to acknowledge in his or her statement of evidence that he or she has read the pamphlet and agrees to be bound by the expert's obligations stated in it.

Time taken to finalise applications

Performance benchmarks for the finalisation of applications in the DR stream were established and published in the Tribunal's 2005-2006 annual report.

Table 13 sets out the number of weeks taken to finalise applications in the DR stream overall and in the principal areas of the work of the DR stream during the reporting year, in comparison to the benchmarks. There were insufficient numbers of applications finalised in compensation for compulsory acquisition, rating and fisheries applications to provide meaningful benchmark data.

Table 12 – Number of weeks taken to finalise DR applications 2005-06 and 2006-07 in comparison to benchmarks

Benchmark		DR stream		Development		Subdivision		LG notices		LG non-planning approvals		Other	
% apps	Wks	05/06	06/07	05/06	06/07	05/06	06/07	05/06	06/07	05/06	06/07	05/06	06/07
30%	12	14	14	12	14	15	16	12	19	18	5	17	10
50%	20	22	21	20	19	23	24	18	42	27	10	26	16
80%	30/ 45*	31/ 49*	34/ 63*	30	31	31	46	49	63	44	16	28	32

* 45 weeks for the finalisation of 80% of local government notice applications and 30 weeks for the finalisation of all other applications.

Table 12 indicates that:

- The 30% and 50% benchmarks were marginally exceeded for the DR stream as a whole, despite the significant increase in overall workload, although there was a one week improvement in relation to the 50% benchmark compared to the previous reporting year.
- The 80% benchmark was exceeded by four weeks for applications other than local government notice applications (three weeks more than in the previous reporting year) and by 18 weeks for local government notice applications (14 weeks more than in the previous reporting year). These benchmarks were exceeded due to the time taken to finalise 27 subdivision applications (see below) and 10 local government notice applications (see below). If these 37 applications were excluded from the calculations, the 80% benchmarks would have been met for the DR stream as a whole.
- The benchmarks were substantially met in development matters, which accounted for approximately 61% of applications finalised during the reporting year, despite the significant increase in workload in this area.
- The benchmarks for finalisation of 30% and 50% of subdivision matters were exceeded by four weeks (one week more than in the previous reporting year) and the benchmark for finalisation of 80% of subdivision matters was exceeded by 16 weeks (15 weeks more than in the previous reporting year). The 80% benchmark (reflecting 27 applications over the 50% benchmark) was exceeded due to a number of significant and complex subdivision applications that took a considerable period of time to mediate, including four legacy matters, the final hearing of two other legacy matters, and the inability of the Tribunal to determine a number of applications until the completion of environmental assessment by the Environmental Protection Authority and authorisation by the Minister for the Environment under the *Environmental Protection Act 1986* – see Areas for reform below.
- The benchmarks for finalisation of local government notice applications were substantially exceeded. However, the numbers of applications in each benchmark category were quite small, 10 in the 30% category, an additional seven in the 50% category and an additional 10 in the 80% category. As noted in the 2005-2006 annual report, the finalisation of these applications may take a considerable period of time as it is often dependent on the lodgment and determination of an application for retrospective development approval. In the reporting year, about 11 of the 27 applications finalised in these categories were carried over from previous years while awaiting external approvals.
- The benchmarks for finalisation of local government non-planning applications were met in half the time specified despite the relatively significant increase in the number of applications in this area. This was a substantial improvement in the result for 2005-2006 (improvements of 13 weeks for 30%, 17 weeks for 50% and 28 weeks for 80%).

Community relations

As noted in the Tribunal's 2005-2006 annual report, towards the end of the last reporting year the Tribunal commenced a series of regional information forums in relation to the work and procedures of the DR stream. In May 2006, the President discussed the work of the DR stream, as well as

the other streams, in Kununurra, Broome and Karratha in the north-west of the State. These forums were attended by councillors and council officers, as well as other interested persons.

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

The regional information forums have continued during the reporting year.

In July 2006, Senior Member David Parry spoke at the Planning Institute of Australia State Conference in Kalgoorlie to planners and local government representatives from regional WA.

In August 2006, Senior Member David Parry made a presentation to councillors and local government officers from the Peel Region in Mandurah.

In October 2006, the President, Deputy President Judge John Chaney and Senior Member David Parry conducted an information session for 45 council officers and councillors from nine local governments in the south-west.

In February 2007, Deputy President Judge John Chaney and Senior Member David Parry presented a seminar in Geraldton for 20 representatives from eight local governments in the mid-west.

The topics addressed at the regional information forums included an overview of the Tribunal, review and original proceedings, the work of the DR stream, commencement of proceedings, the role of directions hearings, mediations and compulsory conferences, identification of issues in dispute, and hearings. The forums have been well attended and received.

Forums have been held in most large population centres of the State.

As noted earlier, in August 2006 the DR stream conducted two two-hour seminars on expert evidence as part of the development and resources consultation forum which were attended by interested persons, including experts, local government and State authority officers, and lawyers.

During the reporting year, Senior Member David Parry adjudicated in the 2006 and 2007 seasons of the Schools Conflict Resolution and Mediation (SCRAM) competition. In September 2006, Deputy President Judge John Chaney and Senior Member David Parry adjudicated in the grand final of the 2006 SCRAM competition at Edith Cowan University.

In November 2006, Deputy President Judge John Chaney addressed the Heritage Council of WA on the way the DR stream deals with heritage issues.

In May 2007, Member Marie Connor made a presentation on how mediations are conducted in planning review proceedings at a Law Society of WA/LEADR seminar during Law Week.

Also in May 2007, Member Jim Jordan gave a lecture on the work of the DR stream to post-graduate town planning students at the University of Western Australia.

Publications

The following pamphlets were published during the reporting year to assist parties in the DR stream:

- *Information about class 1 planning applications;*
- *Information about class 2 planning applications; and*
- *Documents that may be required by the State Administrative Tribunal in planning applications.*

The pamphlets are written in plain English and provide detailed and practical guidance to parties and their representatives on how matters proceed in the DR stream from the filing of the application to its finalisation.

The pamphlets cover development, subdivision, local government notice and local government non-planning approvals matters, which collectively make up approximately 90% of the workload of the DR stream. However, the pamphlets are also of assistance to parties involved in miscellaneous review matters which proceed in a similar way to class 2 planning applications and which collectively make up a further approximately 6% of the workload of the stream.

The *Information about class 1 planning applications* and *Information about class 2 planning applications* pamphlets cover the following topics:

- What is a class [1/2] planning application?
- How do I make an application for review?
- Can I be represented by a lawyer or agent?
- What happens if my application is outside the 28 day time limit?
- What happens after my application is lodged?
- What happens in a class [1/2] directions hearing?
- What is mediation and compulsory conference?
- What documents will be required by the Tribunal?
- What do I need to do before a final hearing?
- Is there a fee for a final hearing? [class 2 pamphlet]
- What happens in a final hearing?
- What happens after the final hearing?

- What happens if the matter is settled between the parties?
- When does the decision take effect?
- Can an application for review be withdrawn?

Documents that may be required by the State Administrative Tribunal in planning applications provides an explanation of what documents may be required and contains examples of Statements of Issues, Facts and Contentions, a bundle of documents and a witness statement.

Since January 2007, a monthly Development and Resources Decisions Bulletin has been published which contains summaries of all written reasons for decisions in the DR stream. The bulletin is posted on the Tribunal's website and is emailed free of charge to interested people when they subscribe via the Tribunal's website. There are currently 394 email subscribers to the bulletin.

In January 2007, a consolidated list of all written reasons for DR decisions made since the establishment of the Tribunal with catchwords was published on the Tribunal's website. This consolidated list will be updated every six months.

Decisions of note

A number of important DR decisions were published during the reporting year.

During the reporting year, three DR decisions were published in the *Local Government and Environmental Reports of Australia* (LGERA) which is the principal national law reports in relation to town planning and local government law.

These were the first WA tribunal decisions ever published in the LGERA. In addition, 18 DR decisions were published in the *State Reports of*

Western Australia (SR (WA)) during the reporting year, which is an increase of four over the previous reporting year.

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

- ***WR Carpenter Properties Pty Ltd and Western Australian Planning Commission [2006] WASAT 200*** (Parry SM, Jordan M, Adderley SessM) – This case involved a 98-lot subdivision application at Bunker Bay. The Tribunal determined that the proposal was materially inconsistent with the provisions of a rural strategy, which the local planning scheme sought to implement, because it was not a rural residential subdivision, in consequence of the average and predominant size of lots and its appearance as a residential settlement. The proposal was also materially inconsistent with the rural strategy and an applicable State Planning Policy, because of the likely significant and detrimental impact on rural and natural landscape values when viewed from important public viewing positions. The subdivision was refused.
- ***Watson and Valuer-General [2006] WASAT 224*** (McNab M) – This case concerned the proper approach to the valuation of a home in a retirement village. The property was individually valued and the total valuations were aggregated to achieve a total Gross Rental Value. The Tribunal reviewed the law and practice of valuation in this area.
- ***Rafferty and City of Joondalup [2006] WASAT 229*** (Parry SM) – Landowners presented a structure plan, which would increase the residential density coding of their land from "R20" to "R80", for the approval of the local government. The local government had a discretion under the local planning scheme to require the preparation and presentation to it of a structure plan as a prerequisite to its support for rezoning, reclassification or subdivision of land or consideration of a development application. However, the local government had not required the structure plan in question and resolved that "there is no occasion for making a decision concerning the need for a structure plan". The Tribunal determined that the landowners did not have a right to seek review of the resolution. The scheme did not contemplate or provide for the presentation for approval of a structure plan which had not been required by the local government. The landowners' structure plan and any determination of it was a legal nullity. The application for review was dismissed.
- ***Morea Architects and Town of Vincent [2006] WASAT 263*** (Parry SM) – This case involved an application for review of: local government notices that required the cessation of shop and storage use of a building and the removal of signage. The Tribunal identified five important matters for consideration by local governments in determining whether to exercise a discretion to give a notice. The Tribunal determined to set aside the notice in relation to use, because use of the site as a shop and ancillary storage did not require development approval under the local planning scheme. The notice in relation to signage was affirmed, because the local planning scheme required development approval for the signage, which had not been obtained, and, in the circumstances, it was appropriate to exercise discretion to require the removal of the signage and the restoration of the building façades.

Unusually, the Tribunal made an order that the local government pay the applicant's professional costs and disbursements of the application for review of the use notice, because there was no reasonable basis upon which the notice could have been given.

- ***Sin-Aus-Bel Pty Ltd and Western Australian Planning Commission [2006] WASAT 266*** (Chaney J) – The applicant applied to amalgamate four lots which comprised the site of the Ascot Inn on the foreshore of the Swan River in Ascot, and to subdivide the land into two lots. One of those lots comprised an area which corresponded with a portion of the land that was reserved for parks and recreation under the *Metropolitan Region Scheme*. The application specified that the proposed use of the larger lot, being the unreserved land, was for unit development. The Western Australian Planning Commission granted approval of the application to amalgamate and subdivide the land, but imposed a condition requiring that the smaller lot, comprising the reserved land, be ceded to the State free of cost and without payment of compensation. The applicant sought a review of that condition by the Tribunal. It argued that the condition had been imposed for an ulterior purpose, namely to avoid the State having to acquire the land for value. It also argued that the condition was not reasonably related to the proposed subdivision, and was, in all the circumstances unreasonable. The Tribunal considered the long standing policies of the respondent and its predecessors, and considered the likely impact of the ultimate development of the land upon the use and management of the reserved portion of the land. It concluded that it was appropriate to consider the

subdivision application in the context of the likely future development of the land. In that context, the Tribunal accepted that the condition did serve a legitimate planning purpose, and was reasonably related to the proposed subdivision. It considered that the condition was, in all the circumstances, reasonable, and should be affirmed.

- ***J&P Metals Pty Ltd and Shire of Dardanup [2006] WASAT 282*** (Connor M) – This case concerned a development application to upgrade an existing landfill facility from Class II to Class III landfill which was refused consent by the local government. The local government based its decision solely on community opposition to the proposal and failed to identify any environmental planning issue on account of which the application should be refused. The Tribunal determined that community opposition could not of itself be a determinative matter, as it was but one of many considerations relevant to the determination of the application. The elevation of this consideration to the sole criterion was an error. The upgrade of the existing landfill facility from Class II to Class III would not prejudicially affect the amenity of the area and was consistent with the orderly and proper planning of the locality. Development approval was therefore granted. As the local government failed to genuinely attempt to make the decision on its merits, unusually, it was ordered to pay the applicant's professional costs and disbursements.
- ***Tran and Town of Vincent [2006] WASAT 316*** (McNab M, Moore SessM) – This case concerned the extent to which "heritage values" expressed in planning instruments

could be applied to prevent the demolition of a 1930s bungalow which had a long and direct association with the well known Perth dairy family, the Brownes. The Tribunal accepted that the bungalow had significant historical, aesthetic, cultural and social heritage values and affirmed the respondent's decision. The application of the Town's planning framework meant that the correct and preferable decision was to refuse demolition.

- **Barrett-Lennard and Western Australian Planning Commission [2006] WASAT 319** (Jordan M) – This case concerned a subdivision application to create four lots. One of the issues was whether the lot sizes would be too small for the additional uses that would be possible. The Tribunal found that having four 1-hectare lots instead of one 4-hectare lot with the additional use potential was not acceptable. The Tribunal considered, but did not support, the applicant's suggested use of restrictive covenants to prevent the carrying out of the additional uses.
- **Bird and Shire of Broome [2006] WASAT 338** (Barker J) – This case concerned applications to operate camel tours on Cable Beach in Broome. The Shire approved the successful applicant's applications following a tender process. The Tribunal found that while the Shire had called for "tenders" it had in substance invited applications for trading licences under the *Shire of Broome Trading, Outdoor Dining and Street Entertainment Local Law 2003*, and assessed them as such. The Tribunal found that the Council assessed all relevant applications by reference to weighted criteria that included a "Price – 50%" weighting, by which the applicant stated the "annual licence fee" it was prepared

to pay for the licence. The Tribunal held that it was not open to the Shire under the *Local Government Act 1995* to impose a "licence fee" in this way. In effect, the Shire had treated a licence as property it owned and which it was at liberty to sell to the highest bidder, a process not envisaged by the Trading Local Law or the *Local Government Act 1995*. The Tribunal set aside the decision of the Shire and sent the determination of the applications back to it for determination in accordance with the Tribunal's reasons for decision.

- **Adbooth Pty Ltd and City of Perth [2006] WASAT 343** (Parry SM) – The parties to planning review proceedings raised preliminary issues in relation to authority to give owner's consent to the lodgment of a development application for approval for the placement and replacement from time to time of general commercial advertisements on public telephone booths and pedestals located on road reserves. The Tribunal determined that the owner of the telephone booths and cabinets is not an owner of the land to which the development application relates and is therefore not authorised to give owner's consent to the lodgment of the development application. The Tribunal also determined that the local government is not the owner of road reserves within its district. However, by virtue of its care, control and management of road reserves, the local government is an agent authorised in writing for the purpose of signing the development application by the owner of the road reserves, namely, the Crown. The Tribunal determined that, exercising the functions and discretions of the local government in the review, it has power to give owner's consent in relation to development proposed on road reserves in order to enable the

substantive assessment of the development application to take place. The Tribunal considered that it was appropriate to give owner's consent.

- ***Yungngora Association Inc and Shire of Derby/West Kimberley [2006] WASAT 378*** (Barker J, McNab M) – This application concerned a claim for an exemption from the payment of rates levied by the Shire of Derby/West Kimberley on a pastoral lease (Noonkanbah Station) in the far north-west of the State. The exemption from rates was sought on the basis that the whole of the land was being used exclusively for charitable purposes. The Yungngora Association Inc holds the pastoral lease. A long line of Australian cases had recognised that steps taken towards the amelioration of the vast discrepancy between the living standards and opportunities of Aboriginals compared with other Australians meant that organisations like Yungngora, which pursued these objectives, could be regarded as "charities" in law. In this case, the Yungngora Association operated the pastoral lease through a service company that outwardly operated like a commercial entity. At that time that company ran at a loss. However, it was clear on the material before the Tribunal that the exploitation of the pastoral lease addressed the economic, social and cultural development of the local Aboriginal community, who were deeply involved in decision-making concerning, and otherwise directly benefited, from the pastoral lease. The use of most of the land through the operation of the lease also provided training and self-management skills, addressed local unemployment and was linked to the attachment of Aboriginals to land. Subsidised food, in the form of meat from the land, was also provided to the vast majority of local Aboriginal residents. The Tribunal determined that the pursuit of these objects involves charitable purposes under Australian law and that the use of the land for charitable purposes was "exclusive" use.
- ***Western Australian Planning Commission and CPP Pty Ltd [2006] WASAT 379*** (Barker J) – The President confirmed an earlier ruling of the Tribunal that a review application lodged under the *Town Planning and Development Act 1928*, before that Act was repealed, should be determined on the basis that section 20(5) of that Act continued to apply to the review proceedings notwithstanding the repeal of the *Town Planning and Development Act 1928* by the *Planning and Development Act 2005*.
- ***Hope and City of Joondalup [2007] WASAT 8*** (Parry SM) – A property owner sought development approval for a change of use in a low density residential area from single house to short stay accommodation for families of up to eight members for periods of seven to 60 days. The Tribunal determined that the proposed use was not relevantly "residential" development, as it did not involve human habitation on a permanent basis. The proposed use was, therefore, not consistent with the objectives and purposes of the residential zone, with the consequence that it was not permitted. The Tribunal also determined that, if the proposed use were capable of approval, the application would warrant refusal in the exercise of discretion, because of its likely adverse impacts in terms of social cohesion and noise, and because it would set an adverse

planning precedent in the circumstances.

- ***Pearl Bay Enterprises Pty Ltd and Shire of Harvey [2007] WASAT 68*** (Parry SM, Affleck SessM) – The Shire granted development approval for 71 short-stay accommodation units and associated facilities at a former caravan park site subject to conditions including a requirement for connection of the development to the public sewer at the property boundary. The developer sought review of this condition and proposed an alternative condition requiring the connection of the development to the public sewer via a private sewerage pumping station on site and a private sewerage main within public road reserves for a distance of 470 metres. The developer also proposed conditions requiring it to provide a \$10,000 bond for 10 years to the Shire for the maintenance, upgrading or replacement of the private sewerage facilities and to enter into a legal agreement with the Shire to ensure that it and its successors in title indemnify the Shire for the maintenance, upgrading or replacement of the infrastructure and maintain insurance in this regard. The Tribunal determined that the Shire's condition could be lawfully imposed. In particular, the condition: would not significantly alter the development in respect of which the application was made or leave open the possibility that it would be significantly different; did not seek to fulfill a public need the existence of which bears no relationship with the development, because the developer was likely to recoup the costs of pre-funding; and had a proper planning purpose. The Tribunal also determined that the Shire's condition was reasonable and appropriate, given the scale and value of the development. Finally, the Tribunal

determined that the applicant's alternative condition was not appropriate as it would be contrary to the orderly and proper planning of the locality. In particular, the condition: would give rise to an unreasonable enforcement burden on the Shire in ensuring the execution of deeds by land owners and the maintenance of insurance; would cast primary responsibility for maintenance and repair of the sewerage main on the Shire, which is not the sewerage authority for the district; and may frustrate the provision of future public sewerage infrastructure.

- ***Boulter and City of Subiaco [2007] WASAT 71*** (Parry SM) – This case concerned a development application for two-storey single houses on each of two adjoining narrow and small allotments. The Tribunal determined that although the southern house had very poor solar access, it incorporated solar and environmentally sound design principles to the maximum extent possible, having regard to the size, orientation and dimensions of the lots and the need to avoid potential impacts on the adjoining property to the south. The Tribunal therefore granted conditional development approval. The Tribunal observed that the case highlighted a difficulty which can result from the split planning system in Western Australia, which is unique to this State, under which subdivision control and assessment is undertaken at State level whereas development control and assessment is generally undertaken at local government level. In this case, the proposed southern house, while a reasonable response to characteristics of the approved allotment, has very poor solar access. This difficulty raised the issue of whether, in some contexts, such as urban infill, a single system

of development/subdivision control and assessment may be preferable.

- ***Adbooth Pty Ltd and City of Perth [2007] WASAT 76*** (Parry SM, Jordan M, Moore SessM) – This case concerned a development application for the placement and replacement from time to time of general commercial advertisements on public telephone booths and pedestals on road reserves at various sites in Perth, East Perth and Northbridge. The applicant was in the process of installing signage panels at the sites in order to display standard telephone services advertising which is exempt under Federal law from the requirement to obtain development approval under State law. The Tribunal determined that although the existence of a standard telephone services advertisement constitutes an element that contributes to the character of the area, it does not define the character; there are significant differences between standard telephone services advertising and general commercial advertising; and in any case, various policy provisions warranted the refusal of the application in relation to most signs. The Tribunal found that general commercial advertising was not characteristic of the City in general or of the localities in question in particular, with the exception of two confined areas – of which one was relevant – where the approval of general commercial advertising in bus shelters had changed the character, at least at pedestrian level. The Tribunal also determined that the applicable planning instruments and policies did not contemplate that general commercial advertising, as opposed to commercial advertising associated with an on-site business, was or should be characteristic of the City or of any part of it. Finally, the Tribunal found that there is an

appreciable difference in character between general commercial advertising and commercial advertising associated with an on-site business. Development approval was refused.

- ***Jacobs and City of Subiaco [2007] WASAT 84*** (Chaney J) - As a result of a mediation process in the Tribunal, modified plans of a proposed development were submitted to the local government. The applicants sought access to a copy of the officer's report in relation to the modified plans. The local government objected to access being granted. The Tribunal considered the general public policy associated with the protection of things said or done in the course of mediations, as reflected in section 55 of the SAT Act, and determined that granting access to a confidential report produced following mediation would tend to undermine the operation of the mediation system. Access to the report was denied.
- ***Moore River Company Pty Ltd and Western Australian Planning Commission [2007] WASAT 98*** (Chaney J, Parry SM, Connor M) – This case concerned an application for review of the refusal of a 660-lot subdivision application near to the mouth of the Moore River which was "called in" by the Minister for Planning and Infrastructure on the basis that it raised issues of regional importance. The Minister directed the Tribunal not to determine the application, but rather to prepare a report to her. The Tribunal conducted a nine day hearing in which it examined the history of relevant regional and local planning. It examined the impact of policies concerning principles of sustainability which had been developed in recent years. The Tribunal concluded that it

should recommend against approval of the subdivision by reason of its inconsistency with various State planning policies concerning sustainable use and development of land, the likelihood that it would defeat the intent of a proposed new local planning scheme, and the fact that it did not comply in certain respects with the existing planning scheme.

- **Edwards and Department for Planning and Infrastructure [2007] WASAT 101** (Barker J) – The Tribunal determined that it has jurisdiction and power to entertain a collateral attack on the validity of jetty licences and development approvals granted to a third party in proceedings for review of the refusal of jetty licences under the *Jetties Act 1926* and development approval under the *Planning and Development Act 2005*.
- **Landpark Holdings Pty Ltd and Western Australian Planning Commission [2007] WASAT 130** (Parry SM) – This case concerned a two-lot subdivision of land which was coded R2.5 under a local planning scheme. The scheme required the use and development of land to conform to the *Residential Design Codes of Western Australia* (2002). The minimum site area set by Table 1 of the Codes was approximately double the size of the proposed allotments and the proposed frontages were less than the minimum frontage set by Table 1 of the Codes. The Commission contended that this proposed subdivision conflicted with the scheme and was therefore incapable of approval, unless one of six exceptions were established. The Tribunal determined that approval of the subdivision did not conflict with the scheme as use or development of

land did not include subdivision. Moreover, the Codes recognised that the Commission or the Tribunal may approve a subdivision which involves allotments that are smaller in area than the minimum site area that corresponds to the residential density code that applies to the land for development purposes. The Tribunal also determined that, if there had been a conflict, the application would nevertheless have been capable of approval, because it was consistent with the reasons for imposing the coding under the scheme. The Tribunal determined that it was appropriate, in the particular and somewhat unusual circumstances of the case, to depart from the Commission's policy that the minimum site area and frontage requirements of the Codes form the basis for the subdivision of land and to grant subdivision approval for allotments which are smaller than the minimum site area corresponding to the coding of the land, because: the site formerly comprised two allotments of approximately the size of the proposed allotments; the proposed allotment sizes were consistent with that which is characteristic in the locality; there would not be any significant streetscape impact; and there would not be any loss of natural vegetation.

- **Smith and City of Fremantle [2007] WASAT 153** (Parry SM) – This case concerned whether the installation of a standard-sized air-conditioning unit in an elevated position to the side of a suburban house was "development" and required development approval. The Tribunal determined that the installation of the air-conditioning unit in the circumstances of the case satisfied both the literal meaning of, and the purpose served by, the definition of "development".

The installation, therefore, required development approval.



Decisions can be viewed on the Tribunal's website at www.sat.justice.wa.gov.au by selecting the Decisions Database webpage and following the prompts. The DR stream also publishes a monthly bulletin which contains summaries of all written decisions for the respective month, these are also available on the website. You can subscribe to this monthly bulletin whilst visiting the website.

DR Decisions on appeal in the Supreme Court (including Court of Appeal):

- ***Commissioner of State Revenue v De Campo* [2007] WASCA 136:** the Court of Appeal upheld the Tribunal's decision in relation to exemptions for land tax purposes.

- ***Re the State Administrative Tribunal; ex parte McCourt* [2007] WASCA 125:** the Court of Appeal upheld the Tribunal's decision in respect of two contesting development applications.
- ***Town of Cottesloe v Multiplex (Marine Parade) Pty Ltd* [2007] WASCA 113:** the Court of Appeal reversed the Tribunal's decision on a preliminary issue in respect of a development application.
- ***Wilson v Western Australian Planning Commission* [2007] WASC 39:** the Court upheld the Town Planning Appeals Tribunal's decision in relation to a town planning matter after the matter was transferred to the Tribunal.
- ***Yallingup Residents Association (Inc) v State Administrative Tribunal* [2006] WASC 162:** on a judicial review application, the Court upheld the Tribunal's decision in relation to joinder of a ratepayers' association in a development application.

Areas for reform

It was reported in the Tribunal's 2005-2006 annual report that the work of the DR stream during that reporting year highlighted the following four areas for reform:

- First, as noted earlier, it was 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 of two or three members. As noted earlier, this suggestion has been adopted in the draft *Acts Amendment (Justice) Bill 2007*.
- Second, it was 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. This suggestion has also been adopted in the draft *Acts Amendment (Justice) Bill 2007*.

- Third, it was 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 the Tribunal constituted by or including a judicial member.

This suggestion was not taken up by Government during the reporting year. Consideration should be given to its implementation. 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 the 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 (New South Wales 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, it was noted that the DR stream has been constrained in its ability to achieve the objective stated in section 9(a) of the SAT Act, 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 the 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, the Tribunal is precluded by section 41 of the *Environmental Protection Act* 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 the 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 s 41 of the *Environmental Protection Act* 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 SAT Act 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* 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 very long. 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 the Environment.

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* 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.

This suggestion was not taken up by Government during the reporting year. Consideration should be given to it to enable the Tribunal to adhere to its statutory objectives and to enable more timely and streamlined environmental planning assessment of proposed developments.



It is to be noted that section 37(1) of the SAT Act 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 the Environment to intervene in proceedings

which concern a proposal which has been referred to the EPA for environmental assessment under the *Environmental Protection Act*. This would enable all environmental planning issues to be determined in a single proceeding.

As noted earlier, of the 167 legacy matters inherited by the DR stream from former adjudicators, the only three that remained and could not be finalised at the end of the reporting year were applications for review concerning subdivision applications where the proposals were subject to environmental assessment. In addition, the Tribunal is unable to adhere to its statutory obligation to act as speedily as is practicable in relation to a number of non-legacy applications that are subject to environmental assessment proceeding.

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HUMAN RIGHTS STREAM

The work of the Human Rights stream

Most of the work of the Human Rights (HR) stream is in the Tribunal's original jurisdiction and comprises applications under the GA Act and the *Equal Opportunity Act 1984* (the EO Act).

In its review jurisdiction, the HR stream reviews decisions made by single members under the GA Act 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*.

During the reporting year, the HR stream received 2,674 applications and finalised 2,890 applications. At 30 June 2007 all legacy matters had been finalised.

Table 13 details applications received and finalised by the enabling Act.

Table 13 – HR applications lodged and finalised 2006-07

Act	Applications received	As % of all HR applications received	Applications finalised	As % of all HR applications finalised
Guardianship & Admin. Act	2,593	97%	2,806	97%
Equal Opportunity Act	67	2.5%	74	2.6%
Mental Health Act	10	0.4%	9	0.3%
Children and Community Services Act	4	0.1%	1	-

Applications under the GA Act comprise the largest single jurisdiction dealt with by the Tribunal and include applications for the appointment of a guardian or administrator, reviews of orders, applications relating to enduring powers of attorney, and for directions as to how a guardian or administrator should perform their functions.

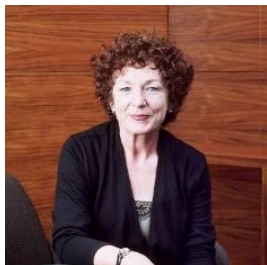
The Commissioner for Equal Opportunity referred 67 matters to the Tribunal during 2006-2007. Forty-eight were referrals under section 93(1)(b) of the EO Act, that is, where the Commissioner's endeavours to resolve a complaint by conciliation have not been successful. Ten were referrals under section 90(2) that is, where the Commissioner has dismissed a complaint as frivolous, vexatious, misconceived, lacking in substance or relating to an act not made unlawful by the EO Act, and the complainant has exercised their right to request the Commissioner to refer the matter to the Tribunal. There were three applications under section 135 of the EO Act for an exemption from the provisions of the Act and one application was received from the Commissioner under section 85 for an interim order under section 126 pending her determination of the complaint. These applications are referred to later in this section.

Almost all persons appearing before the Tribunal in guardianship and administration matters and in Mental Health Review Board reviews represent themselves. In equal opportunity matters, parties are often represented by the Commissioner for Equal Opportunity, union solicitors or private practitioners, 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.

Table 14 – GA Act applications lodged and finalised 2006 07

Type of application	Number of applications received	Number of applications finalised
Section 40 - appointment of guardian	582	709
Section 40 - appointment of administrator	933	957
Section 17A - review by Full Tribunal	11	15
Section 84 - periodic review by Tribunal	586	617
Section 85 - mandatory review	24	26
Sections 86, 87 - application by party for review	319	333
Section 112(4) - application to inspect documents	41	43
Section 104A - recognise EPA made in another jurisdiction	8	8
Section 106 - declaration of incapacity; EPA in force	29	32
Section 109 - intervention in EPA	37	39
Section 74 - administrator seeking directions	13	17
Other	10	10
TOTAL	2,593	2,806

Members of the Human Rights stream



**Senior Member
Jill Toohey**

The work of the stream is overseen by the President and Deputy President Judge Eckert.

Full-time members of the stream are Senior Member Jill Toohey and Members Felicity Child, Donna Dean and Jack Mansveld.

Twenty-one 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.

Three new sessional members appointed on 1 January 2007 have brought additional experience to the guardianship and administration jurisdiction in particular, as well as to the other HR jurisdictions.

Quarterly half-day professional development sessions are held for full-time and sessional members in the guardianship and administration jurisdiction.



**From the left: Member Donna Dean,
Senior Member Jill Toohey,
Member Felicity Child and
Member Jack Mansveld**

Directions hearings and case management

Directions hearings in equal opportunity matters and mental health reviews are held each Friday by Judge Eckert and/or Senior Member Jill Toohey.

In EO Act matters, a first directions hearing is normally held two to three weeks after the Commissioner's referral is lodged.

Parties are usually required to attend mediation or a compulsory conference with a view to seeing if settlement can be achieved, or identifying the issues in dispute.

Applications under the *Mental Health Act 1996* are listed for a directions hearing on receipt and are listed for final hearing as quickly as possible. Orders are made for the production of relevant medical records and attendance of medical witnesses.

Applications under the GA Act are listed as soon as possible after lodgement for a final hearing within eight weeks or for a shorter time if circumstances require. Urgent hearings can be convened on the day an application is received if necessary.

The Tribunal has recently streamlined procedures for urgent hearings held out of office hours. These usually involve applications for the appointment of a guardian to consent to medical treatment, or to consent to a forensic procedure in cases of alleged sexual assault, where the person concerned is incapable of giving consent or is unconscious or in a coma. Urgent hearings are usually conducted by telephone and oral orders made.



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

Directions hearings are not normally held in the GA Act proceedings but may be held where there are complex legal or factual issues, multiple parties, or where aspects of how the hearing will be conducted need to be settled.

Cases where the Tribunal considers an investigation is needed are referred to the Public Advocate for investigation pursuant to section 97(1)(iii)(c) of the GA Act. Where it appears that an investigation would assist, the matter is assessed by the Public Advocate Liaison Officer, who is located at the Tribunal's premises, who conducts an initial assessment and recommends whether a section 97(1) referral is required. From 1 December 2006 to 30 June 2007, 139 new matters were referred to the Liaison Officer and 70 referral letters were sent to the Public Advocate requesting an investigation.



Where the Public Advocate is proposed as guardian but no investigation is required, the Public Advocate is formally notified of the proposed appointment. From 1 December 2006 to 30 June 2007, 22 notifications were sent. As well, orders are sometimes made at a hearing for an investigation.

Facilitative dispute resolution

Mediation is used extensively in equal opportunity matters. At the first directions hearing, the Tribunal normally requires parties to attend mediation, or a compulsory conference to identify the issues in dispute.

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 attended a conciliation conference at the Equal Opportunity Commission, even apparently intractable disputes are frequently resolved by means of early mediation. Approximately 50% of matters are settled at, or shortly after, mediation. Over 90% of all matters settle without the need for a final hearing.

Compulsory conferences are also used in equal opportunity matters to identify and resolve the issues in dispute. They prove particularly useful in matters where one or both parties are self-represented and are unfamiliar with legal processes.

Mediation as a process separate from the final hearing is only occasionally used in guardianship and administration proceedings.

However, the final hearing commonly involves the use of facilitative dispute resolution techniques, including a mix of fact-finding and mediation. The GA 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 in the same way as they are in others. Nevertheless, mediation has been used and has proven very useful in some cases, particularly where family members are in conflict.

Final hearings

Most final hearings in HR stream matters are oral but a small number of applications are determined on the papers. Matters which are decided on the papers include applications for recognition of an enduring power of attorney (EPA) made in another jurisdiction, which depend on substantial compliance with the form of EPA used in Western Australia. Some applications for exemption from the provisions of the EO Act are 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 GA Act proceedings the Tribunal must be constituted by either one or three members. In the majority of matters the Tribunal sits as a single member.

Where a matter involves complex legal or factual issues, the Tribunal is constituted by three members. These applications are usually determined at a single hearing at the end of which decisions are delivered orally.

The EO Act does not prescribe the number of members who may sit on a hearing but the presiding member must be a judicial member or a senior member. Approximately 90% of these matters are resolved prior to 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 common for written reasons to be delivered.

Sixty-seven matters were referred to the Tribunal by the Commissioner for Equal Opportunity during the year. Of the 67 complaints of discrimination that were decided by a hearing of the Tribunal, 21 were upheld and 28 dismissed, the remainder were withdrawn. Two applications for exemption from compliance with the Act were decided during the year.

In both cases the Tribunal decided that the exemption was not needed because the conduct concerned did not constitute unlawful discrimination and it dismissed the application.

In *Mental Health Act 1996* 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 GA Act are generally listed for hearing as soon as they are received. The aim is to finalise 80% of applications within eight weeks of lodgement. For the period July 2006 to June 2007, 2105 applications were finalised within eight weeks of lodgement.

Table 15 – the GA Act applications – percentage finalised within time standard

Percentage of applications finalised within 8 weeks	80%
Percentage of applications finalised within 9 weeks	84%
Percentage of applications finalised within 10 weeks	88%

The benchmark is 80% of applications finalised within eight weeks.

Table 16 – Number of weeks taken to finalise HR applications for 2006-07

Benchmark Category	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Equal Opportunity Act	6	10	13	16	21	26	28	34	40	105
GA Act	1	4	5	6	6	7	7	8	10	99
Mental Health Act		1	4	4	5	6	6	7	9	85
Human Rights	6	10	13	16	21	26	28	34	40	105

Community relations

Judge Eckert chaired a session, and Senior Member Toohey made a presentation, at the Third International Conference on Therapeutic Jurisprudence in August 2006 on therapeutic jurisprudence in the Tribunal and in guardianship and administration proceedings in particular.

In March 2007 Judge Eckert and the full-time members attended the Australian Guardianship and Administration Committee National

Conference in Melbourne. Senior Member Toohey presented a paper on procedural fairness in guardianship and administration proceedings.

Members of the HR stream have given presentations during the year to Government and non-government agencies. In May 2007 a forum was held for mental health workers who are involved in guardianship and administration proceedings. The forum covered a range of topics including how to be most effective as a participant in proceedings and security at Tribunal hearings.

Further forums for professional applicants are planned.

In October 2006 the Tribunal launched a monthly GAA Bulletin which includes summaries of all written reasons published in the previous month. The Bulletin has been well-received and is circulated widely by email within Western Australia and to other States.

Decisions of interest

- ***Chew and Director General of the Department Of Education And Training [2006] WASAT 248***

(Eckert J, Toohey SM, Mulvey SessM) – Unlawful discrimination on ground of race – Accent a characteristic of race – Vicarious liability – Provision of services – Comparator – Damages – Evidence of loss – Causative link.

The applicant alleged that the respondent unlawfully discriminated against her on the ground of race in the provision of services. The applicant was a mature age university student undertaking a Graduate Diploma in Early Childhood. She complained that, while on placement at a primary school, her supervisor spoke to her about her accent and made derogatory comments about her accent in front of the class. She alleged that her practical teaching experience was terminated early on the ground of race. She also alleged indirect discrimination in that she claimed that the effect of the above conduct was she was required to speak in an Australian accent. The allegations were denied.

The Tribunal found the applicant to be a more credible witness than her supervisor. However, it found that the alleged acts of discrimination except one, either did not happen in the way the applicant alleged or, if

they did happen, did not constitute unlawful discrimination. It was not satisfied that the termination of her practical teaching experience was on the grounds of race.

The Tribunal found that the supervisor had said to the class, that the applicant "speaks funny", that that comment was derogatory and that the supervisor would not have made it about a person who spoke in an upper class English accent or an Australian accent. It found her conduct amounted to unlawful direct discrimination on the ground of race. It did not accept there was indirect discrimination. The respondent, her employer, had not taken all reasonable steps to prevent the conduct.

The Tribunal did not award damages as there was no evidence linking the damages claimed to the alleged discriminatory conduct. It ordered that the respondent apologise to the applicant for the discriminatory conduct and for failing to provide an environment where the conduct could not have occurred. The Tribunal also ordered the respondent to provide a copy of its letter of apology and these written reasons to the university with a request that the letter and reasons be placed on the applicant's academic file.

- ***RJC [2006] WASAT 279*** (Child M) – Guardianship and administration – Psychiatric illness – Patient discharged from involuntary status under the *Mental Health Act 1996* but detained in hospital – Need for a guardian to decide accommodation and services and to consent to medical treatment – Appointment of the Public Advocate as guardian as no other person suitable or willing.

The Tribunal appointed the Public Advocate as guardian of a man with a long-term mental illness who, at the time of the appointment, was a patient at an approved hospital under the *Mental Health Act 1996*. At the time of the appointment, the man had been discharged from involuntary status under the *Mental Health Act 1996* but was effectively detained in hospital.

The psychiatric evidence indicated that the man was not capable of making judgments in matters relating to his person. As there was no one with lawful authority to make decisions for him in relation to his treatment and care, and the contact he had with other persons, a guardian was appointed with these functions. The Tribunal also considered that there was a need for a guardian to act on the man's behalf in planning for his future accommodation and care so that he could return to live in the community on discharge from hospital. A guardian with the relevant authority was also needed to liaise with the Public Trustee, his appointed administrator, so that the discharge plan could include decisions about expenditure from his estate on any accommodation plan developed.

- **A and J [2006] WASAT 287** (Toohey SM, Hamilton SSessM, Jongenelis SSessM) – Guardianship – Administration – Intellectual disability – Guardianship order sought in order to monitor proposed represented person's relationship with fiancé – Proposed represented person vulnerable to exploitation and abuse – Fiancé convicted of sex-related offences – Conflicting capacity evidence – No immediate need for a guardian alleged – Proposed represented person in need of

oversight and care but not in need of a guardian – Most of proposed represented person's estate subject of a trust – Capable of managing financial affairs – Not in need of an administrator.

The applicant asked the Tribunal to appoint a guardian and an administrator for her sister, J, who had an intellectual disability. J was the sole beneficiary of a trust established by her deceased father and was expected to receive a damages payout in relation to a motor vehicle accident. The applicant believed that J was at risk of financial, sexual and emotional exploitation and abuse by her fiancé who had recently served two years imprisonment for the sexual assault of one of J's friends who was also intellectually disabled.

The applicant did not seek to end J's relationship with her fiancé but wanted a guardian appointed to monitor the relationship and, if necessary, stop contact between J and her fiancé and his friends. An administrator was sought to stop the possibility of financial abuse.

The Tribunal found that J's intellectual disability impaired her decision-making capacity in ways that made her vulnerable to exploitation and abuse. However, it was satisfied that J was sufficiently able to identify potential and actual abuse and, if necessary, to seek assistance from the support services and others around her, and that assistance and support would be available to her. It found that the potential for financial abuse was limited by the fact that most of J's estate was the subject of a trust and beyond the scope of an administrator's authority.

The Tribunal gave weight to J's strongly expressed wishes to maintain her relationship with her fiancé and her independence from her family. It also took into account that the applicant did not say there was an immediate need for a guardian, but that a need might arise in the future. It also took into account the applicant's concession that there was probably a less restrictive means of meeting any financial needs than a formal appointment.

The Tribunal decided that, on the balance of the evidence before it, J was not in need of a guardian or an administrator.

- ***Edney and Public Transport Authority [2006] WASAT 362*** (Toohey SM, Mansveld M) – Impairment – Age – Indirect discrimination – Applicant had difficulty walking and negotiating steps – Local bus service rerouted – Whether changes imposed a requirement or condition – Tribunal not satisfied a requirement or condition within meaning of the Act – In any event respondent's conduct reasonable having regard to the circumstances of the case.

The applicant complained that the consequences of the respondent's decision to re-route his local bus service amounted to indirect discrimination against him on the grounds of impairment and age. The Tribunal found that the fact the applicant had to walk further to catch the bus and, if he decided to take a train to walk up an incline at the train station, was not a requirement or condition within the meaning of the *Equal Opportunity Act 1984*. The Tribunal found that, even if it were a requirement or condition, it was reasonable having regard to the

circumstances of the case. The Tribunal dismissed the application.

- ***Kassa and Bitmead [2006] WASAT 375*** (Toohey SM, Spillane M, Mulvey SSessM) – Sexual harassment – Employment – Applicant claimed sexual harassment by manager comprising unwelcome comments, invitations, telephone calls and SMS messages – First respondent admitted conduct but claimed relationship was consensual – Applicant found not credible on matters central to her claims and on other matters – Tribunal not satisfied any conduct was unwelcome – Application dismissed – No conduct for which second respondent liable.

The applicant claimed that the first respondent sexually harassed her at work and that the second respondent, their employer, was liable for his conduct. The harassment was alleged to include unwelcome personal remarks, invitations to meet outside work, showing her a photo of male genitalia, and telephone calls and SMS messages. The first respondent did not deny that a friendship developed between him and the applicant that went beyond a working relationship, but said it was initiated by her and was consensual. He did not deny sending her SMS messages; he did not deny making telephone calls to her but said she did the same to him. Further, he said, he and the applicant had met twice outside work at her invitation, including once at her home. The applicant maintained that she responded to the unwelcome conduct only because the first respondent was her boss and she believed her employment would be jeopardised if she rejected his advances. She denied initiating contact with him and, in particular, denied making phone

calls to him, and meeting him outside work.

The Tribunal was not satisfied that the applicant was a credible witness and rejected much of her evidence. It did not accept that the first respondent's conduct was unwelcome. It found she had made numerous telephone calls to him and met him on two occasions outside work, including at her home, and that she had either initiated contact or willingly reciprocated his advances. The Tribunal dismissed the complaint.

- **Re C; Ex Parte I and D [2007] WASAT 10** (Toohey SM, Child M, James SSessM) – Guardianship – Review of order appointing the Public Advocate plenary guardian – Munchausen's by Proxy – Mild intellectual disability – Represented person living with carers since order made – Represented person's wish to return to live with parents – Evidence that represented person had developed and matured – Risk if returned to mother's care – Guardian still needed to make decisions in her best interests.

The proceedings concerned a young woman who had been removed from her parents' care when she was 17 and for whom the Public Advocate had subsequently been appointed guardian. Her parents sought review of the order.

The young woman had been admitted to hospital numerous times and had undergone various surgical procedures; at different times, she had been dangerously ill. The Children's Court of Western Australia found her mother to suffer from Munchausen's by Proxy (MBP), a condition in which one person induces physical or psychological

symptoms in another. On review, the Tribunal found MBP to be the most probable explanation for the young woman's condition. It found that, despite evidence that she had developed and matured since the order was made, she remained vulnerable and was in need of oversight, care and control in the interests of her own health and safety. The Tribunal accepted that the young woman wished to return to live with her parents. However, it found that, in the absence of a guardian who would regulate and supervise contact with her mother, there was a risk that she would again become seriously ill; the risk was sufficiently real that she remained in need of a guardian to decide where she should live and with whom she should have contact. The Tribunal confirmed the appointment of the Public Advocate.

- **AD [2007] WASAT 123** (Barker J, Child M, McCutcheon SSessM) – Guardianship and Administration – Application for consent to sterilisation – GA Act s 63 – 22-year-old woman with intellectual disability and history of behavioural disturbance – Alternate less restrictive means of menstrual management and contraception effective – Sterilisation not in the best interests of the represented person – Consent refused.

The mother of a young woman with an intellectual disability applied for consent to a hysterectomy for her daughter's comfort and safety and for reasons of hygiene. She also maintained that the history of behavioural problems her daughter had experienced since puberty were associated with her menstruation. The father of the young woman and the coordinator of the residential

service where she lived supported the application. The Public Advocate and the young woman's separate representative opposed the application.

Evidence from a psychiatrist, two consultant gynaecologists and the young woman's general practitioner did not support the need for a hysterectomy on either psychiatric grounds or gynaecological ones. The psychiatric treatment the young woman was receiving, including the use of medications, had settled her extreme agitation which her mother believed was associated with her menstruation. The evidence of the gynaecologists and others confirmed that her menstrual cycle was suppressed so that a hysterectomy was not indicated for contraceptive purposes or for menstrual management. The evidence was that, while the young woman would remain dependent on others for all aspects of her care, her menstruation was no longer interfering with her activities or her quality of life.

The Tribunal considered the application had been brought in good faith by the mother who was devoted to her daughter, but was not satisfied that the procedure for sterilisation proposed was in the best interests of the young woman. It declined to consent to the sterilisation.

- **LC and JS [2007] WASAT 127** (Mansveld M) – Guardianship and administration – Application for legal costs from the represented person's estate under section 16(4) of the GA Act – Principle that parties bear their own costs – That principle may be overturned when legal assistance is necessary for the Tribunal to make a determination in the best interests of the represented person – Party's ability to pay is not a relevant

consideration – Deterrence from making future applications not a relevant consideration – Good intentions insufficient reason to make an award of costs – Balance of convenience is not a reason to make an award of costs.

The applicant asked the Tribunal to appoint an administrator for her elderly sister who had suffered a stroke and was no longer able, because of the stroke, to make reasonable judgments about her estate. An application for administration and guardianship was already before the Tribunal. All applicants were concerned that the woman's estate was at risk and that she had executed an enduring power of attorney when she was incapable of doing so. As it emerged, there was no evidence or information presented to support a finding of any misappropriation of the woman's estate.

The applicant sister applied for her legal costs to be paid from the woman's estate. The Tribunal decided that, in all the circumstances, it could not be said that the legal assistance obtained by the sister justified her legal costs being paid from the woman's estate. The Tribunal did not doubt the intentions of the sister, but this was not sufficient to warrant an award of costs. In dismissing the application for costs, the Tribunal took the view that it should not depart in this case from the principle that parties bear their own costs in proceedings.

- **SWITCH NOW PTY LTD T/AS JUST BE [2007] WASAT 134** (Toohey SM) – *Equal Opportunity Act 1995* – Sex discrimination – Application for exemption – Job search website targeting women but available for use by men and women – Measure

designed to achieve equality – Conduct not unlawful – Exemption not necessary.

The applicant sought an exemption from section 20 of the *Equal Opportunity Act 1984* which makes it unlawful to discriminate on the ground of sex in the provision of goods, services or facilities. The exemption was sought so that the applicant could operate a website providing an online job search facility for women.

The Tribunal was satisfied that the conduct of the applicant amounted to a measure intended to achieve equality within the meaning of section 31 of the Act. As such, it was made lawful by the Act and no exemption was required. The Tribunal therefore dismissed the application.

- **RC and LP and AC [2007] WASAT 171** (Dean M) – Administration – Costs – Application

for legal costs to be paid from the estate of the represented person under section 16 (4) of the GA Act – Whether parties should bear their own costs – Whether cost of transcripts should be paid from the estate of the represented person.

The applicant sought an order pursuant to section 16(4) of the GA Act that the legal and related costs he had incurred in making an administration application in respect of his father be paid from the estate of his father. The Tribunal appointed an administrator for the applicant's father but found there was no compelling reason for the costs incurred by the applicant to be paid out of his father's estate. It dismissed the application other than the reimbursement of the cost of transcripts for the hearings which it ordered be paid out of the estate of the applicant's father.

Decisions can be viewed on the Tribunal's website at www.sat.justice.wa.gov.au by selecting the Decisions Database webpage and following the prompts. The HR stream also produces a monthly bulletin with the catchwords and summaries of published decisions and reasons relating to guardianship and administration matters. You can subscribe to this monthly bulletin whilst visiting the website.

Areas for reform

The President and the Public Advocate have established a working party to review the GA Act. Some reforms to be considered go to matters of government policy on which the Tribunal does not generally comment. However, there are a number of procedural provisions in the Act which would benefit from amendment. They include the flexibility to constitute the Tribunal by one, two or three members, clarification of the review provisions, and streamlining of notice provisions.

As already noted, the availability of psychiatrists to sit on reviews of decisions of the Mental Health Review Board, while manageable, continues to be a concern as it can lead to delay in listing matters for hearing.

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VOCATIONAL REGULATION STREAM

The work of the Vocational Regulation stream

Much of the work the Vocational Regulation (VR) 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).

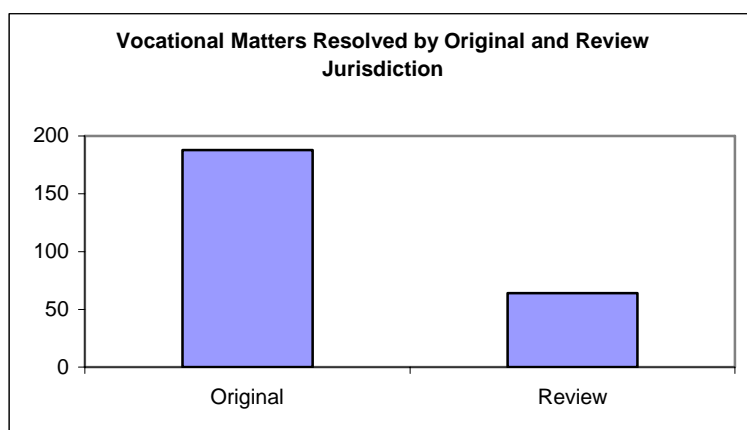


However, a reasonable volume of the work, which was previously dealt with by a court, is in the Tribunal's review jurisdiction.

During the reporting period the VR stream received 231 applications and finalised 252 applications. Of the finalised applications 188 were in the original jurisdiction and 64 in the review jurisdiction.

Graph 6 sets out details of the applications finalised during the reporting year.

Graph 6 – VR applications completed 2006 - 2007



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, 897 matters (legacy matters) were transferred from former adjudicators under section 167 of the SAT Act, 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 2007 there are no VR legacy matters remaining to be determined.

Table 17 – VR 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 VR 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 SAT Act, 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 vocation 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 two to three 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 VR matters. Judge Chaney and Judge Eckert also deal with VR 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 CC stream for a first directions hearing.

Facilitative dispute resolution

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 VR 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 VR 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 VR 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 VR stream proceeds beyond mediation or compulsory conference, it goes to a final hearing. Few matters are determined on the documents.

Because of the requirements of section 11 of the SAT Act, 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 VR 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 VR 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 VR 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*, *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.

Table 18 – Time taken to finalise VR applications

Percentage of Vocational Regulation matters	Number of weeks to finalise
10%	3
20%	6
30%	7
40%	10
50%	13
60%	17
70%	22
80%	35

Of the matters that were finalised in 2006-2007, 180 VR applications (80%), were resolved within 35 weeks.

The benchmark set last year was 27 weeks which means VR matters have overall taken longer to resolve in this reporting period. This is considered to be due to the growing number and complexity of applications to the Tribunal.

Table 19 – New VR applications received and finalised 2006-07

Enabling Act	Number of applic's received	*As approx % of all VR applic's received	Number of applications finalised	*As approx % of all VR applic's finalised
Architects Act 1921	1	<1%	0	---
Builders Registration Act 1939	23	10%	37	15 %
Children and Community Services Act 2004	4	<2%	1	<1%
Chiropractors Registration Board Rules 1996 (given effect to by s18(1)(ha) Chiropractors Act 1964)	2	<1%	1	<1%
Electricity Act 1945	2	<1%	1	<1%
Finance Brokers Control Act 1975	1	<1%	2	<1%
Gas Standards Act 1972	1	<1%	0	<1%
Hairdressers Act 1946	2	<1%	3	< 2%
Land Valuers Licensing Act 1978	1	<1%	0	---
Legal Practice Act 2003	30	13%	49	19%
Licensed Surveyors Act 1909	1	<1%	1	<1%
Medical Act 1894	26	11%	26	10%
Motor Vehicle Dealers Act 1973	2	<1%	3	<2%
Motor Vehicle Drivers Instructors Act 1966	0	---	1	<1%
Nurses Act 1992	6	<3%	4	<2%
Optometrists Act 1940	1	<1%	1	<1%
Painters Registration Act 1961	2	<1%	5	<2%
Pharmacy Act 1964	3	<2%	2	<1%
Physiotherapists Act 1950	1	<1%	1	<1%
Psychologists Registration Act 1976	2	<1%	1	<1%
Real Estate and Business Agents Act 1978	17	7%	15	<6%
Security and Related Activities (Control) Act 1966	84	37%	85	34%
Settlement Agents Act 1981	6	<3%	5	<2%
Trade Measurement Act 2006	1	<1%	0	---
Travel Agents Act 1985 (WA)	2	<1%	2	<1%
Veterinary Surgeons Act 1960	2	<1%	1	<1%
Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000	2	<1%	0	---
Workers Compensation and Injury Management Regulations 1982	1	<1%	2	<1%
Working with Children (Criminal Record Checking) Act 2004	5	<3%	3	<2%
Total	231	100%	252	100%

Decisions of note

- **C and Chief Executive Officer, Department for Community Development [2007] WASAT 116** (Barker J) — The applicant applied for review of a decision preventing him from working with children on the basis of charges for indecently dealing with a child under the age of 13.

The Tribunal gave close consideration to the factors outlined in section 12(8) of the *Working With Children (Criminal Record Checking) Act 2004* and the grounds on which the applicant's conviction was set aside.

The Tribunal ordered that the CEO issue a notice allowing the applicant to work with children.

- **Commissioner of Police and Quaid [2006] WASAT 325** (Barker J, Hawkins M, Scaife SessM) — The Tribunal revoked a number of licences issued to the respondent under the *Security and Related Activities (Control) Act 1996*. The parties reached agreement before the hearing, and the Tribunal analysed its powers to make orders in the terms of the written agreement under the SAT Act and the *Security and Related Activities (Control) Act 1996*.
- **Legal Practitioners Complaints Committee and Pillay [2006] WASAT 309** (Barker J, Parry SM, Stanton SSessM) — The Tribunal found the practitioner guilty of unprofessional conduct by reason of his failure to lodge income tax returns, make provision for payment of income tax and pay income tax. In the course of the decision, the Tribunal discussed the appropriate penalty and the

practitioner's application for non-publication of his name.

- **Lam and Builders' Registration Board of Western Australia [2006] WSAT 227** (Raymond SM, Mittonette SessM, Wellington SessM) — In granting the applicant's request for review of the decision of the Builders' Registration Board not to register the applicant as a builder, the Tribunal addressed the types of experience to be included in considering such applications and the meaning of "building construction".
- **Medical Board of Western Australia and Smith [2006] WASAT 213** (Barker J, Stanton SSessM, Isaachsen SSessM, Quatermass SSessM) — The Tribunal found the practitioner guilty of infamous conduct in a professional respect by reason of her close personal relationship of an intimate or emotional nature with a patient. The Tribunal considered the authorities relating to the definitions of "infamous" and "improper" conduct.

Decisions can be viewed on the Tribunal's website at www.sat.justice.wa.gov.au by selecting the Decisions Database webpage and following the prompts.

VR Decisions of the Supreme Court (including Court of Appeal):

- **Mustac v Medical Board of Western Australia [2007] WASCA 128**: the Court of Appeal reversed the Tribunal's decision in respect of judicial comity in the context of an application by the Medical Board for findings of misconduct.
- **Chan v Nurses Board of Western Australia [2007] WASCA 123**: the Court of Appeal upheld the Tribunal's

finding that a nurse was guilty of misconduct.

- ***Paridis v Settlement Agents Supervisory Board* [2007] WASCA 97**: the Court of Appeal dismissed applications for leave to appeal from both parties and upheld the Tribunal's finding of misconduct by a settlement agent.
- ***Paridis v Settlement Agents Supervisory Board* [2006] WASCA 234**: an interim application for a stay of the Tribunal's findings of misconduct by a settlement agent and orders was granted.



- ***Edward v Legal Practitioners Complaints Committee* [2006] WASCA 194**: the Court of Appeal upheld the Tribunal's decision to make a report to the Supreme Court (full bench) recommending that the legal practitioner be struck off due to misconduct.
- The Tribunal, under s 185(2)(a) of the *Legal Practice Act 2003*, may transmit a report to the Supreme Court (full bench) recommending that the practitioner in question be struck from the Roll of Practitioners. In the reporting period, the Tribunal transmitted four such reports and the Supreme Court (full bench) acted on the recommendations in each case: ***Legal Practitioners Complaints Committee v Walton* [2006] WASC 213**; ***Legal Practitioners Complaints Committee v Stevens* [2006] WASC 314**; ***Legal Practitioners Complaints Committee v Tomlinson* [2006] WASC 211**; and ***Legal Practitioners Complaints Committee v McKerlie* [2007] WASC 119**.

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ADMINISTRATION

Executive Officer and staff



Alexander Watt
Executive Officer

Alex Watt was appointed as the Tribunal's Executive Officer in December 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 Certified Practising Accountants.

On review of the 2006-2007 year, it is satisfying to acknowledge that all of the Tribunal's 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, respondents and members of the public.

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

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 Tribunal's 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 final orders and decisions of the Tribunal.

Engagement with the community

Contact with the community remains a significant priority for the Tribunal and for 2006-2007, 80 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 Mid-West and Great Southern. There were a significant number of forums and seminars run in the metropolitan area, both in the Tribunal and in centres within the broader community.

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.

Parties Survey

In 2005–2006 the Tribunal undertook to survey a sample of parties to proceedings and the results were very positive.

This reporting year we have undertaken a more significant survey which we intend to run on an ongoing basis and predominantly in an electronic format.

The Tribunal tendered and contracted a company to analyse and refine survey questions previously used in the 2005–2006 reporting year. This was then used to create concise and succinct survey questions, which the contractor will analyse and report on. The survey will soon be available electronically for members of the public who utilise the services of the Tribunal.



The Tribunal will be creating a link on its website directly to the survey,

inviting parties who have had matters finalised before the Tribunal to supply feedback via the survey on-line. The Tribunal will also on request send out hard copies for completion.

This will permit us to obtain regular and consistent feedback and to collate the statistical results into a format to more easily assess public perception and customer satisfaction. These results will be published on our website and in summary in the following years' reports.

Some preliminary results of the 2006-2007 parties survey were available just prior to publishing this report. The survey of 2023 randomly

selected parties who attended the Tribunal in 2006-2007 resulted in 470 responses and at the 95% confidence level the error rate is 3.96%.



A preliminary sample of some of these results is available in **Appendix 6**.

Tribunal's jurisdiction

Since July 2006, additional jurisdictions have been conferred, consolidated or modified:

- *Betting Control Act 1954 Amendments.*
- *Medical Radiation Technologists Act 2006.*
- *Optometrists Act.*
- *Osteopaths Act 2005.*
- *Physiotherapists Act 2005.*
- *Podiatrists Act 2005.*
- *Psychologists Act 2005.*
- *Tobacco Products Control Act 2006.*
- *Trade Measurement Act 2006.*
- Unconscionable Conduct – under *Commercial Tenancy (Retail Shops) Agreements Act 1985* - in relation to Retail Tenancies.

Four of these were new enabling Acts:

- *Betting Control Act 1954 Amendments.*
- *Medical Radiation Technologists Act 2006.*
- *Tobacco Products Control Act 2006.*
- *Trade Measurement Act 2006.*

The Tribunal's workload in relation to general inquiries as well as the increase in conferral of jurisdictions has been continuous and significant. The Staff are to be commended on maintaining a professional, courteous and consistent service under these increasing workloads.

Service Support



Manager Service Support

Service Support comprises 24 staff and this branch receives and processes all applications in addition to responding to general enquiries and requests for assistance.

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 Tribunal Wizard or by telephone or by post. The Tribunal Wizard has been designed to help people apply to the Tribunal. Service Support staff also use the Tribunal 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 complement the four Tribunal streams of Human Rights, Commercial and Civil, Development and Resources, and Vocational Regulation.

Each stream is made up of team leaders, supervisors and a number of service officers who can provide assistance to persons or organisations that want to make an application to the Tribunal. In this reporting year, the establishment of substantive staffing levels appropriate to the workloads within each of the streams has been a key activity. An increase in staffing levels within the HR stream has resulted in improved processes to assist unrepresented applicants. The commitment to ensuring full staffing within the section has continued to be a priority activity.

Approximately 20,000 in-person enquiries were assisted by our front counter staff during the year. Of these, approximately 1,660 lodged applications at the counter, 5,980 lodged documents and 12,320 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



Manager Decision Support

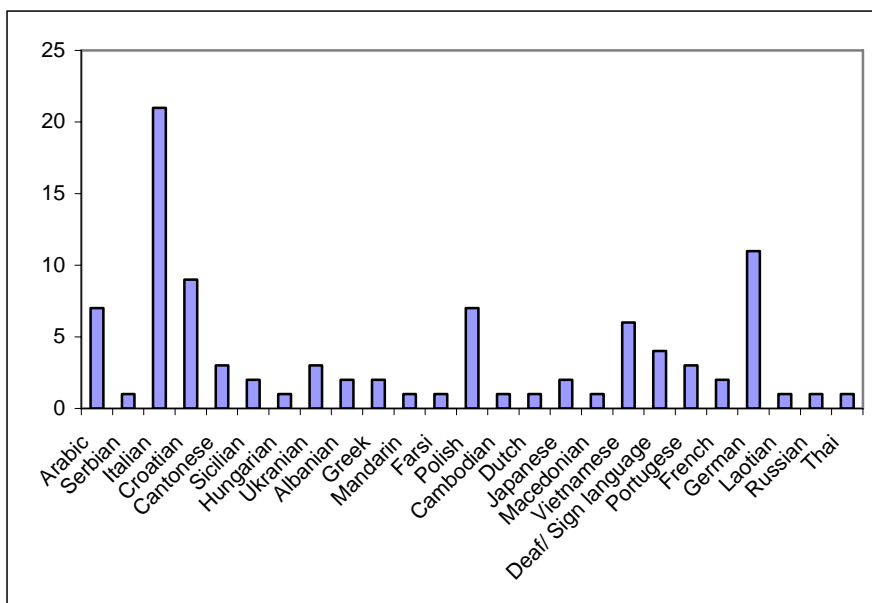
Decision Support is provided through the work of 16 staff who during the year were managed by Mark Charsley. Mark previously worked for the former Guardianship and Administration Board as Manager Customer Services and in the UK had extensive experience in social care, community legal information and alternative dispute resolution.

Decision Support staff prepare and support the Tribunal's hearing processes, making all necessary arrangements prior to, during and after hearings for the matters completed by the Tribunal, with many 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. In the listing of matters the Tribunal staff address all special needs to ensure all parties have the ability to participate in a manner appropriate to their cultural background and that meets any physical needs they have and this commitment continues throughout the hearing process.

In the past year video and teleconference facilities were used often. 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 Tribunal's processes. The Tribunal provides accessible parking for those who have mobility problems.

Graph 7 – Interpreters 2006 - 2007



The diverse cultural background of Western Australian residents is reflected in the Tribunal's use of interpreters over the year; **Graph 7** provides a breakdown of the languages which were requested.

The Tribunal has three 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 feels able to take a full and active role in the process.

Community Relations



Manager Community Relations

Community Relations has the role of maintaining the Tribunal's relationship with the community, professional bodies and stakeholders. During the year this section has been managed by Peter Sermon.

Peter has more than 30 years' experience in the public sector, both State and Commonwealth, and has extensive experience in administration and management.

Community Relations maintains the Tribunal's website, application Wizard and manages the website development to meet the needs of Tribunal users. Community Relations also prepares and produces pamphlets and other publications.

The Community Relations section is the central point of contact for all matters relating to the Tribunal not directly connected to case management of an application.

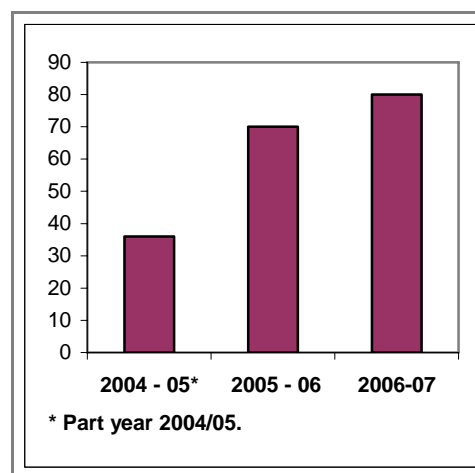
Local papers have carried articles at times during the year addressing various issues handled by the Tribunal and reporting on specific case decisions. This generated feedback and inquires as to the Tribunal's processes and practices and is a productive outreach response mechanism.

Community Relations coordinates outreach, presentations and forums, ensuring they are facilitated in a timely and appropriate manner.

There were 80 seminars or forums held or that members participated in or presented at over the last 12 months.

Please refer to the **Graph 8** below.

Graph 8 – Community relations programmes 2006-07



The Community Relations section also arranges and coordinates various aspects of the appointment and reappointment of sessional members.

The Tribunal advertised for sessional members during the year to meet the need to have a specialised professional membership to meet statutory requirements. Advertisements were placed in the state and interstate papers, as well as professional magazines and periodicals. There were 65 senior sessional members and 31 ordinary members appointed or reappointed for the reporting year, please refer to **Table 22** on the next page for details.

During the year there were a total of 1199 electronic contacts (emails – see **Table 21** below and **Graph 9** on the next page) received by the Tribunal.

The Tribunal has had received feedback from stakeholders in the last 12 months and has made recommendations and requests for enhancements and changes to its website and processes to facilitate improved access to our services.

Table 20 – Community relations electronic contacts

Type of email	No. received
Request for bulletins	35
Matter information	341
Praise	14
Problems	18
Requests for Information	200
Suggestions	18
Complaints	15
Others #	558
TOTAL	1,199

The figures for each type of email are represented as one count. Where there were multiple contacts or responses these are captured in "Others".

Graph 9 – Community relations - emails received 2006 - 2007

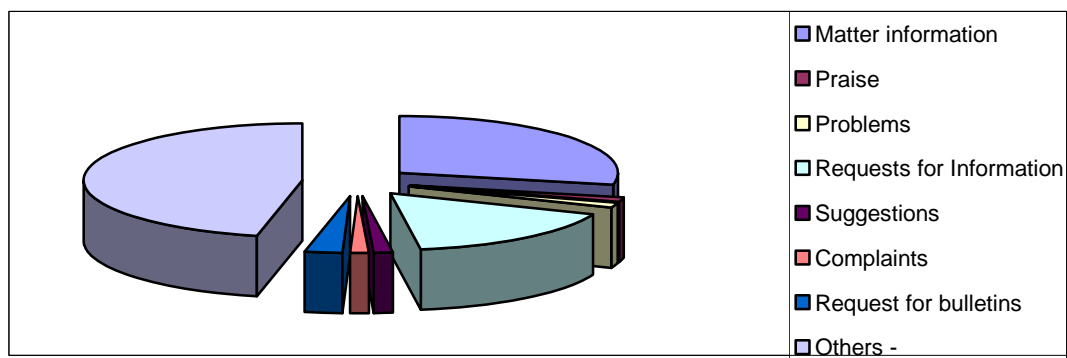


Table 21 – Sessional members appointed during 2006-2007

On 29 August 2006	6 Senior Sessional Members were appointed.
On 2 January 2007	5 Senior Sessional Members were appointed pursuant to s 117(5). 52 Senior Sessional Members were appointed. 31 Ordinary Sessional Members were appointed.
On 13 February 2007	2 Senior Sessional Members were appointed.
TOTAL	96 sessional members

Business Services



**Manager Business
Services**

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

Business Services consists of 11 staff, headed by Michael Jozwicki who is supported by Team Leaders within Records Services and Administration Services, and the Librarian.

Michael's background includes over 22 years' experience in public administration and brings skills in financial, contractual, human resources and information technologies to the Tribunal.

Administration Services comprises four staff and in addition to co-ordinating and reporting on budget activity and driving 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 lead by the Team Leader Records Management, and is supported by a Supervising Records Officer and three support staff.

The library has 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 2006-2007 reporting year were:

- Further development of key performance indicator models for the Tribunal within each stream.
- Baseline funding issues addressed.
- Deployment of the Tribunal sessional members' portal.
- Upgraded teleconferencing and audiovisual facilities in a number of hearing rooms.

Initiatives proposed for Business Services for 2007/08 include:

- Introduction of a fully functional digital recording and transcribing service.
- Developing an asset risk management plan to plan for the future accommodation needs of the Tribunal.
- Implementation and execution of the Tribunal's Retention and Disposal Records Keeping Plan.
- Supporting Tribunal staff with improved training needs analysis and appropriate skills development.
- Developing a Business Continuity Plan, in accordance with the Department of the Attorney General's requirements.

Staffing

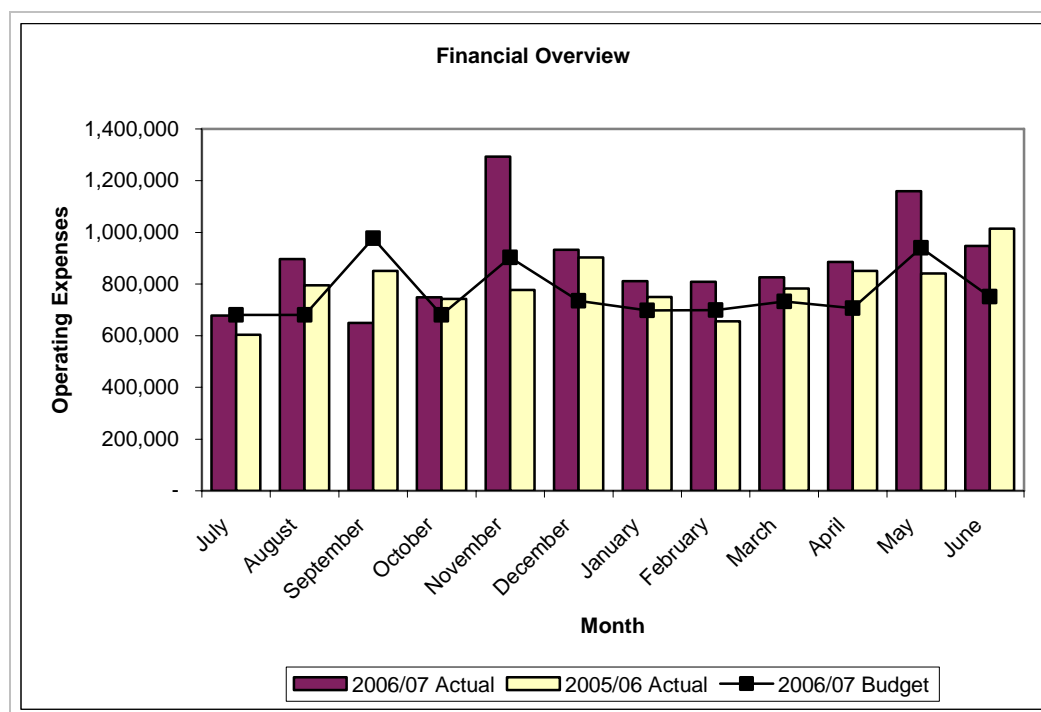
The Tribunal's optimum member and staffing level to meet the current work load is 92 full-time equivalents, however we currently have an average, of 79 member and staff. full-time equivalents.

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

Budget

The budget setting for the Tribunal is the subject of ongoing discussions with the Department of the Attorney General.

Graph 10 – Business Services Financial Summary



Freedom of Information

The Tribunal received five requests under the *Freedom of Information Act 1992* during the reporting year 2006–2007.

Of the four applications received all were for non-personal information.

In four of the applications the outcome was that access was refused.

One application was withdrawn by the applicant.

The average time to process each application in days, from receipt of the application to the notice of decision being issued, was 12 days.

Arrangements with Other Agencies

Arrangements with Chief Magistrate under section 116

Formal arrangements are in place with the Chief Magistrate enabling a magistrate to sit as a member of the Tribunal. This arrangement was initiated by the President and agreed to by the Chief Magistrate in the 2005–2006 reporting year.

Arrangements with Parliamentary Commissioner under section 168

The President and the Parliamentary Commissioner (or Ombudsman) maintain an earlier 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.

Arrangements have also been settled with specific agencies to better serve applicants and respondents to the Tribunal. Agreements have been made with the following agencies:

- State Solicitors Office.
- The Equal Opportunity Commission.
- Department of Land Information.
- The Public Advocate.
- The Public Trustee.
- Office of State Revenue.
- Western Australian Planning Commission.



Levels of compliance by decision-makers

Section 150(2) of the SAT Act 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.

The Tribunal is satisfied, on the basis of review proceedings coming before it, that decision-makers are meeting their obligations.

Trends and special problems

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

Trends

Since the Tribunal's commencement in January 2005 additional jurisdiction has been conferred, consolidated or modified under the:

- *Architects Act 2004*
- *Betting Control Act 1954 Amendments*
- *Child Care Services Act 2007*
- *Children and Community Services Act 2004*
- *Chiropractors Act 2005*
- *Construction Contracts Act 2004*
- *Marketing of Eggs Act* (expired July 2005)
- *Medical Radiation Technologists Act 2006*
- *Occupational Therapists 2005*
- *Optometrists Act 2005*
- *Osteopaths Act 2005*
- *Physiotherapists Act 2005*
- *Planning and Development Act 2005*
- *Podiatrists Act 2005*
- *Psychologists Act 2005*
- *Residential Parks Long Term Stay Bill 2006*
- *Tobacco Products Control Act 2006*
- *Trade Measurement Act 2006*
- Unconscionable Conduct – Retail Shops and Fair Trading in relation to Retail Tenancies under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*
- *Working with Children Act 2004*
- *Water Services Act Regulations*
- *Workers Compensation and Injury Management Regulations 1982*

The work of the Tribunal is projected to increase as a result of further legislative proposals in the areas of:

- Advance Health Care Planning.
- Allied Health professions.
- Aquatic facilities.
- Betting and Racing
- Biosecurity and Agriculture Management.
- Building disputes and other matters.
- Building surveyors.
- Child Care Services.
- Dog control.
- Energy regulation.
- Food.
- Freedom of Information.

- Incorporated Associations.
- Information Privacy.
- Local government.
- Medical professionals.
- Mental Health.
- Official Conduct of Local Government.
- Public Collections.
- Residential Parks Long Term Stay.
- Security and Related Activities.
- Sterilisation of children with intellectual disabilities.
- Swan and Canning River matters.
- Tobacco Control.
- Waste Avoidance and Resource Recovery Bill 2006.

Growth in the number of the GA Act applications is expected to continue at 10% per year for the next four years. When 2005-2006 is compared to the 2003-2004 activity of the former Guardianship and Administration Board, the Tribunal has experienced growth of 38% in the number of applications. It is imperative that Government consider appropriate resources to meet demand shifts in this particular jurisdiction.

For 2007-2008 the Tribunal estimates that it will receive 6,800 applications and this is dependent on the operative date for expected and significant jurisdictional changes notably in Mental Health, Advance Health Care Planning, Residential Parks and Incorporated Associations.

eTribunal

The Tribunal has a vision to be one of Australasia's leading tribunals that adopts innovative technology. In setting strategic goals to meet that vision the SAT has a strong commitment to eTribunal technology.

The Tribunal will always offer services in an accessible manner to parties attending in person and also those parties who may wish to access the Tribunal by the Internet, by telephone or by video.

Other tribunals are now well advanced in their implementation of eTribunal type technology. Tribunals such as Victorian Civil and Administrative Tribunal and the NSW Consumer, Trader and Tenancy Tribunal have online lodgement facilities: the Western Australian Industrial Relations Commission system includes online lodgement, electronic document management and digital hearing rooms. The technology currently available and deployed to the Tribunal by the Department of the Attorney General (DotAG) is not of the same level as those Tribunals mentioned above.

The implementation of an eTribunal would potentially have the most significant impact on efficiency and effectiveness in the Tribunal.

Accommodation

The Tribunal currently utilises 4,032 m² over levels 4, 8, 9 and 10 of 12 St Georges Terrace. The lease for this tenancy commenced 1 August 2003 and expires 31 July 2008. The lease provides for three options to renew each for a term of a further two years.

At commencement the Tribunal's work station accommodation capacity was almost at 100% usage and provided limited opportunity to support room for growth.

Having regard for all of the above DotAG advises that it anticipates that a business case will be prepared to articulate and inform the Tribunal's accommodation requirements into the medium and longer term. This business case will analyse the likely or predicated growth in the Tribunal's work and how this translates in spatial and location requirements, in the first instance out to 2014 and then the strategic term out to 2032.

The President considers Government needs to identify a permanent 'home' for the Tribunal as an outcome of the above business case.

Resources

With the expected growth in the work of the Tribunal, it will be necessary that services are adequately resourced. Investment in eTribunal services will yield future resource savings, however, it may be necessary for adjustment to the Tribunal's accommodation, staffing and technology requirement. In particular the Tribunal needs a permanent 'home'.

APPENDICES

Appendix 1 – Judiciary, full-time members and sessional members

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 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 1993 Justice Barker commenced practice as a barrister at the Independent Bar in Perth.

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.

Prior to his appointment to the Supreme Court of Western Australia, Justice Barker was a member of the Medical Board of Western Australia.

Justice Barker was appointed to the Supreme Court of Western Australia in August 2002.

Justice Barker 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 (now State Solicitor's 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 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.

Full-time senior members

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 a former Chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) and for a number of years was a national councillor and national Vice-President of the Institute.

Clive was appointed as the inaugural senior member of the Commercial and Civil Stream of the Tribunal in January 2005. Together with the judicial members of the Tribunal he has responsibility for the management of the Commercial and Civil Stream and in addition for vocational regulation matters falling under the *Builders' Registration Act 1939*, *Painters' Registration Act 1961* and the *Security and Related Activities (Control) Act 1996*.

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 the 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 to 2003. 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. David is the principal author of SAT's *Standard orders made at directions hearings*, Practice Notes 2 (review proceedings), 3 (original proceedings) and 4 (Presidential review in planning matters) and the pamphlets *Information about Class 2 planning applications* and *A guide for experts giving evidence in the State Administrative Tribunal*. David is also a co-author of the chapter 'Conducting proceedings in the State Administrative Tribunal' in the *WA Lawyers' Practice Manual* (2007, LBC).

Jill Toohey **Human Rights**

Jill Toohey was admitted to legal practice in Perth in 1981 and has worked as a solicitor in private practice and in community legal centres. She has been on the management committees of a number of community legal centres and other non-government organisations in WA and NSW. She was a Commissioner of the Legal Aid Commission (WA) from 1987-1993. She was a full-time member of the Refugee Review Tribunal in Sydney from 1993 to 1998 and, from 1998 to 2002, she was the Registrar of the Refugee Review Tribunal. She has worked as Registrar of the Commonwealth Administrative Appeals Tribunal and is an accredited mediator.

Murray Allen

Senior Member & President of the Mental Health Review Board

The Tribunal reviews (i.e. 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 ordinary members

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 Victoria, 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, and from 1993 until 2004 he worked in the office of the Australian Government Solicitor practising in the areas of administrative law, migration, taxation appeals, bankruptcy and general litigation. Tim is an inaugural member of the Tribunal in the Commercial and Civil stream. In that capacity he sits on matters including strata titles, commercial tenancies, building dispute reviews and applications under the *Road Traffic Act* and the *Firearms Act*. He also participates in the Tribunal's work in the Vocational Regulation stream with particular emphasis on the security agents industry.

Felicity Child

Felicity Child has qualifications in 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.

Before her appointment to the Tribunal, Felicity was employed by Legal Aid WA. Prior to that she had worked for over 10 years with a number of community legal centres in Western Australia and as a tutor at Curtin University in social work and welfare practice. Felicity is a trained mediator and works mainly in the Human Rights stream of the Tribunal.

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.

Marie was appointed as an inaugural member of the Development and Resources stream of the Tribunal in January 2005. In that capacity, she is mainly involved with applications concerning development, subdivision, local government notices and local government approvals. Marie is LEADR-trained and conducts mediations and compulsory conferences, primarily on matters relating to town planning.

Donna Dean

Donna Dean holds Bachelor of Arts and Bachelor of Social Work degrees from the University of Western Australia and is a LEADR-trained mediator. 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 WA. In 1997, Donna joined the New South Wales Office of the Protective Commissioner (OPC) where she worked for several years. The OPC protects and administers the estates of people unable to make financial decisions for themselves. In 2004 Donna worked for the NSW Independent Commission Against Corruption before returning to Perth in January 2005 to take up her appointment as an inaugural member of the Tribunal. Donna sits mainly in the Human Rights stream of the Tribunal.

Bertus De Villiers

Bertus de Villiers (BA Law, LL.B, LL.D) is admitted as a 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.

Jennifer Hawkins

Jennifer Hawkins joined the Tribunal as a member in July 2006 in the Commercial and Civil stream. She was admitted to practice in Western Australia in 1986 and prior to joining the Tribunal was a partner in one of Perth's largest independent law firms. She undertook her articles and early years of legal practice as a solicitor with then State Crown Law Department. Her experience also includes being employed as a Registrar of the former Workers' Compensation Board. She has spent nearly 12 years of her career in private practice with a wide range of commercial and insurance litigation experience. Throughout her career she has also engaged in alternative dispute resolution and has undertaken several LEADR mediation workshops.

Jennifer conducts directions and hearings in respect to the vast array of legislation within the Commercial and Civil stream jurisdiction. This includes matters concerning strata titles, commercial tenancies, building disputes, retirement villages, firearms and road traffic licences. She also hears a range of vocational matters, with particular emphasis on security officers and crowd controllers. She is also involved in conducting mediations across a variety of streams within the Tribunal.

Jim Jordan

Jim Jordan first worked as a planning consultant in Queensland and Victoria and from 1979 to 2003 was with the Minister for Planning's Town Planning Appeal Committee, Perth. In 2003 Jim became a member of the Town Planning Appeal Tribunal and then worked with Jackson McDonald. Jim has a BA (UWA), Master Urban Studies (U of Qld), LLB (U of London) and a Professional Certificate in Arbitration and Mediation. Since joining the State Administrative Tribunal in June 2005, Jim has worked mostly in the Development and Resources stream conducting hearings and mediations.

He is an accredited mediator with the Institute of Arbitrators and Mediators Australia and a Certified Practising Planner, Planning Institute of Australia.

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. Since 2006 Peter McNab has sat in both the Development and Resources and Commercial and Civil streams of the Tribunal.

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. Since 2005 Maurice Spillane has sat in both the Development and Resources and Commercial and Civil streams of the Tribunal.

Appendix 1 - Sessional members

State Administrative Tribunal senior sessional members and ordinary sessional members appointed under section 117(5), as at 30 June 2007.

Sessional members – senior

Member	Areas of Work/Expertise
John Adderley	Retired Town Planner
Richard Affleck	Executive Director, Construction Company
Michael Anderson	Chartered Accountant
Hans W Beyer	Finance Broker
Gillian Braddock SC	Legal Practitioner
Kenneth Bradley	Accountant, Former Public Trustee
Dr Roger Clarnette	Medical Practitioner
Dr Simon Carlin	Chiropractor
Prof Joan Cole	Physiotherapist
Jeffrey Colley	Finance Broker
Patrick De Villiers	City Planning Consultant
Lesley Doherty	Hairdresser
Margaret Duckworth	Occupational Therapist
Chris Edmonds SC	Legal Practitioner
Ross Easton	Architect
Antony Ednie-Brown	Consultant Architect
Dr Dale Evans	Medical Practitioner
Dr Louise Farrell	Medical Practitioner
Prof Kingsley Faulkner	Medical Practitioner
Laurence Foley	Podiatrist
Dr Stuart Gairns	Periodontist
Alexander Gardner	Legal Practitioner, University Academic (Law)
Neville Garrity	Pharmacist
Susan Gillett	Social Worker, Mediator
Lloyd Graham	Retired Town Planner
Dr Guy Hamilton	Retired Medical Practitioner
Catherine (Katie) Hill	Occupational Therapist
Brian Hunt	Consultant Planner
Dr Eric Isaachsen	Medical Practitioner
John James	Psychologist
Steven Jongenelis	Psychologist
Margaret Jordan	Legal Practitioner
Dr Max Kamien AM CitWA	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
Prof George Lipton	Professor, Psychiatrist
Dr Richard Lugg	Environmental Health Consultant
Timothy Mather	Veterinary Surgeon
Jeffrey Mazzini	Finance Broker
Phillip McAllister	Architect
Dr Alan McCutcheon	Medical Practitioner
Kevan McGill	Engineer

Member	Areas of Work/Expertise
Dr Mark McKenna	Medical Practitioner
Neil McKerracher QC	Legal Practitioner
Phillip Melling	Medical Practitioner
Jeannine Millstead	Occupational Therapist
Dr Barry Mendelawitz	Retired Medical Practitioner
Rebecca Moore	Architect
Diana Newman	Accountant
Michael Odes QC	Legal Practitioner
Val O'Toole	Social Worker
Dr Anne Passmore	Occupational Therapist, University Lecturer
Dr John Penman	Psychiatrist
Patrick Pinder	Architect, Town Planner
Robert Priest	Land Valuer
Dr Pam Quatermass	Medical Practitioner
Jenny Smithson	Town Planner
Josephine Stanton	Consultant in Health & Welfare
Dr Daniel Stepniak	Legal Practitioner,
Anthony Vigano	Veterinary Surgeon
Hon Robert Viol	Legal Practitioner, Retired District Court Judge
Brigadier A Gerry Warner	Australian Defence Force (Retired)
Mark Wiklund	Physiotherapist
Dr Peter Winterton	Medical Practitioner
Darianne Zambotti	Occupational Therapist

Sessional members – ordinary

Member	Areas of Work/Expertise
Keith Bales	Retired Legal Practitioner
Harold Burkett	Painter and Decorator
Ross Campbell	Electrical Fitter, Security Agent
Peter Cook	Real Estate Agent
Anthony Coulson	Travel Agent
Peter Curry	Mediator, Agricultural Scientist
Graham Devenish	Dental Prosthetist
Paul Druitt	Real Estate Agent
Mary Elgar	Travel Agent, Nurse
Phil Faigen	Architect, Registered Builder, Arbitrator
Dr Robert Fitzgerald	Psychologist
Caroline Forster	Real Estate Agent
Patricia Fowler	Nurse
John Harper	Licensed Security Consultant
Barbara Holland	Educational and Vocational Consultant
Assoc Prof Bronwyn Jones	University Academic (Nursing)
Kenneth Jones	Nurse
Mary Kroeber AM	Nurse
Rodney Lane	Accountant
Karen Lang	Legal Practitioner
Dimitrios (James) Limnios	Real Estate Agent
Linley Lord	University Academic (Business)
Alexander MacNaghten	Real Estate Agent, Land Valuer
Anthony Macri	Accountant

Member	Areas of Work/Expertise
Jim McKiernan	Senator (Retired)
Edward McKinnon	Surveyor
Peter Mittonette	Registered Builder
Darren Mouchemore	Building Surveyor, Registered Builder
Charles Mulvey	University Academic (Economics)
Jane Toomer	Settlement Agent
Anthony Townsend	Retired Motor Vehicle Dealer
Paul Wellington	Architect, Legal Practitioner, Arbitrator
Janette Wheare	Retired Nurse
Christina Winsor	Settlement Agent
Guy Wright	Anthropologist, Mediator

Appendix 2 – Members' Presentations, Seminars and Forums

Date	Member	Community Relations Details
06/07/2006 - 07/07/2006	All full-time members	Kunamarri Conference.
25/07/2006	Justice Barker	Presided over Deans' List Advocacy Competition of law students sponsored by Corrs Chambers Westgarth, Perth.
25/07/2006	David Parry	Presented 'Planning, Review Proceedings in the Tribunal' at the Planning Institute of Australia State Conference in Kalgoorlie.
04/08/2006	Clive Raymond, Tim Carey, Bertus De Villiers, Jennifer Hawkins, Peter McNab, Maurice Spillane	Commercial and Civil Stream Planning Forum.
06/08/2006	Justice Barker, Jill Toohey, Maurice Spillane, Felicity Child, Murray Allen	Attended the Third International Conference on Therapeutic Jurisprudence, Perth.
08/08/2006	Judge Chaney, Judge Eckert	Attended the Law Society – Reception for Judiciary.
08/08/2006	Judge Eckert	Presented to the Human Rights stream (Guardianship) Forum at the State Administrative Tribunal.
09/08/2006	Clive Raymond	Attended the Community Titles Advisory Committee Meeting.
11/08/2006 – 13/08/2006	Judge Chaney	Presented at the Young Lawyers Committee advocacy weekend.
16/08/2006	Judge Chaney	Presentation on closing addresses at WA Bar Association.
17/08/2006	Judge Chaney, David Parry, Marie Connor, Jim Jordan, Peter McNab	Attended and presented at the Development and Resources stream Consultation Forum on expert evidence including concurrent evidence of experts at the State Administrative Tribunal.
18/08/2006	Judge Chaney	Attended the WA Bar Association – Bar and Bench Dinner WA.
19/08/2006	Judge Chaney	Attended the Supreme Court in relation to women articulated clerks meeting members of judiciary.
22/08/2006	Judge Eckert	Attended at the WA Law Society for the 2006 Plain English Drafting Competition.
24/08/2006	Judge Chaney, David Parry, Marie Connor, Jim Jordan, Peter McNab	Attended and presented at the Development and Resources stream Consultation Forum on expert evidence including concurrent evidence of experts at the State Administrative Tribunal.

Date	Member	Community Relations Details
26/08/2006	Judge Eckert, Jill Toohey, Jack Mansveld, Donna Dean, Felicity Child, Murray Allan	Attended Curtin University to attend the Mental Health and Human Rights Conference: The impact of care, treatment and detention on the rights of people with a mental illness, Perth.
28/08/2006	David Parry	Presentation to the Western Australian Local Government Association (WALGA) Peel Region in Mandurah on 'Planning Review Proceedings in the Tribunal'.
29/08/2006	Judge Chaney, Clive Raymond, Bertus De Villiers, Tim Carey, Jennifer Hawkins, Maurice Spillane	Attended the Landgate induction.
05/09/2006	Clive Raymond	Presentation to the Property Council of Western Australia.
06/09/2006	Judge Chaney	Chaired the Law Society forum on 'Development of use in the law of land use' and 'Areas of environmental and planning law'.
06/09/2006	Judge Eckert	Presentation to MLC on separation of powers and the role of the judiciary in Government.
06/09/2006	Jill Toohey, Donna Dean, Jack Mansveld, Felicity Child	Attended the Mental Health and Human Rights Conference, Perth.
12/09/2006 – 16/09/2006	Judge Chaney, David Parry	Attended the Australian Conference of Planning and Environmental Courts and Tribunals Kingfisher Bay, Fraser Island, Qld. Judge Chaney chaired a session on fauna and David Parry made a presentation on the work and procedures of the Tribunal's Development and Resources stream.
15/09/2006 – 17/09/2006	Judge Eckert, Jill Toohey	Attended the AIJA Annual Conference in Adelaide.
19/09/2006	Judge Eckert	Attended the Supreme Court in relation to women articulated clerks meeting members of judiciary.
21/09/2006	Judge Chaney, David Parry	Adjudicated State Final of the Schools Conflict Resolution and Mediation (SCRAM) competition at Edith Cowan University.
28/09/2006	Clive Raymond	Attended the Strata Titles Institute's Annual General Meeting.

Date	Member	Community Relations Details
28/09/2006	Justice Barker	Presented an overview of the Tribunal to Members of Parliament House, Perth.
04/10/2006	Maurice Spillane	Lectured at the University of Western Australia to fourth year law students on: Professional (Health Care) disciplinary proceedings, the respective roles of professional Boards and the Tribunal, the nature of disciplinary proceedings, and the role of lawyers in representing professional in disciplinary proceedings.
05/10/2006	Justice Barker	Briefed members of Parliament on the structure, function and activities at the Tribunal.
06/10/2006	Judge Eckert, Jill Toohey	Attended the meeting of Heads of Equal Opportunity Tribunals in Sydney.
12/10/2006	Judge Eckert	Presentation at the State Administrative Tribunal by Professor Cameron Stewart for the Education Committee on proposed health care planning legislation and NSW similar legislation.
20/10/2006	Judge Chaney	Attended the Seminar on sentencing held at the Supreme Court. Professor Arie Freiberg spoke on topical issues to Judges.
21/10/2006	Judge Chaney	Attended the Education Committee presentation held at the Tribunal. Professor Cameron Stewart discussed guardianship and administration and relevant legislation.
23/10/2006	Justice Barker, Judge Chaney, David Parry	Presented a seminar in Bunbury for representatives from nine local governments in the south-west of the State in relation to the work of the Tribunal in general and of the Development and Resources stream in particular. Forty-five council officers and councillors attended the two-and-a-half hour seminar.
24/10/2006	Judge Eckert, Jill Toohey	Attended Human Rights Forum at Parliament House, Canberra.
25/10/2006 – 26/10/2006	Judge Eckert, Jill Toohey	Attended Australian Guardianship and Administration Committee meeting in Canberra.

Date	Member	Community Relations Details
26/10/2006	Judge Chaney	Addressed the Local Government Managers Conference at The Esplanade Hotel in Fremantle as part of a panel discussion on the Tribunal.
27/10/2006	Justice Barker, Judge Eckert	Attended the launch of the report on Aboriginal Customary Laws at Zamia Café, Kings Park.
01/11/2006	Jill Toohey	Presentation to Disability Services Commission seminar about guardianship and administration issues.
02/11/2006	Judge Chaney	Participated as a Judge of the Australian Young Lawyers 'National Golden Gavel Competition'.
06/11/2006	Murray Allen	Attended the Heads of Mental Health and Registrars Meeting, National Meeting of Presidents, Darwin.
15/11/2006	Judge Eckert	Presented a talk to the Women Lawyers Association of WA.
17/11/2006	Judge Chaney	Addressed the Heritage Council on 'The way the Tribunal deals with heritage issues'.
29/11/2006 – 01/12/2006	Justice Barker	Attended and presented at the Council of Australasian Tribunals Leadership Conference, Rotorua New Zealand.
07/12/2006	Clive Raymond	Attended Builders' Registration Board Web Site Launch.
13/12/2006	Clive Raymond	Attended Community Titles Advisory Committee Meeting.
13/12/2006	Judge Chaney, David Parry, Marie Connor, Jim Jordan, Peter McNab, Maurice Spillane	Attended and presented at the Development and Resources stream full day seminar on stream topics.
20/01/2007 – 24/01/2007	Justice Barker	Attended the Supreme Court and Federal Court Judges Conference, Perth.
02/02/2007	Judge Chaney, David Parry, Marie Connor, Jim Jordan, Peter McNab, Maurice Spillane	Attended and presented at the induction and training seminar for newly appointed sessional members in the Development and Resources stream (full day).
06/02/2007	Judge Chaney, Clive Raymond, Jennifer Hawkins	Forum on Commercial Tenancies. Judge Chaney presented a talk in relation to the work of the Tribunal in general and of the Commercial and Civil stream in particular to section 13 of the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> at the Tribunal. Fifty-two people attended the forum.

Date	Member	Community Relations Details
12/02/2007	Judge Chaney, Judge Eckert	Attended the lecture on Justice and Religion held at St George's Cathedral.
16/02/2007	Bertus De Villiers	Attended the 2007 Constitutional Law Conference and Dinner at Art Gallery and Parliament House, Sydney.
23/02/2007	Judge Eckert	Attended the Linda Cotton Memorial Fund reception at the University of Western Australia.
26/02/2007	Judge Chaney, David Parry	Presented a seminar in Geraldton for representatives from six local governments in the mid-west of the State in relation to the work of the Tribunal in general and of the Development and Resources stream in particular. Twenty-one council officers and councillors attended the two-and-a-half hour seminar.
06/03/2007	Judge Eckert	Presented a talk to Methodist Ladies College on the topic of law.
14/03/2007	Clive Raymond	Attended the Community Titles Advisory Committee Meeting.
14/03/2007 – 17/03/2007	Jennifer Hawkins	Attended the LEADR Mediation workshop.
21/03/2007	Judge Chaney	Attended the District Court of Western Australia for a seminar on DNA.
21/03/2007 – 24/03/2007	Judge Eckert, Jill Toohey, Felicity Child, Donna Dean, Jack Mansveld	Attended the Australian Guardianship and Administration Committee National Conference in Melbourne. Jill Toohey presented a paper on procedural fairness.
28/03/2007	Judge Chaney	Attended the District Court of Western Australia for a seminar on Drug Court.
31/03/2007	Judge Chaney, Judge Eckert	Attended the Bellhouse Café for Judges' Annual Dinner.
01/05/2007	Judge Chaney	Attended the Supreme Court in relation to women articulated clerks meeting members of judiciary.
02/05/2007 – 04/05/2007	Justice Barker, Marie Connor, Jim Jordan	2007 Planning Institute of Australia National Congress Sight Lines: the Big Picture conference in Perth. Justice Barker delivered a keynote paper on the urban planning of Perth.
06/05/2007 – 08/05/2007	Jill Toohey	Attended the Council of Canadian Administrative Tribunals' 4 th International Conference, Vancouver, Canada.

Date	Member	Community Relations Details
07/05/2007	David Parry, Marie Connor	Attended the Law Society of Western Australia/LEADR Seminar on Mediation (Law Week). Member Marie Connor made a presentation on the use of mediation in the Tribunal Development and Resources stream.
09/05/2007	Clive Raymond	Attended the Community Titles Advisory Committee Meeting.
10/05/2007	Judge Eckert	Attended and presented at the Lexis Nexis Property Law and Conveyancing Essentials WA Conference. Judge Eckert delivered a talk on 'Practice and Procedure in the State Administrative Tribunal with an Emphasis on the Review Process'.
30/05/2007	Justice Barker	Presented a paper to WA Bar Readers Course on the 'Jurisdiction of the Tribunal'.
31/05/2007	Jim Jordan	Addressed post-graduate students at the University of WA in town planning on planning review proceedings in the Tribunal Development and Resources stream.
06/06/2007	Judge Eckert	Attended the Heads of Tribunal meeting in Melbourne.
06/06/2007 – 08/06/2007	Murray Allen	Attended and presented at the World Psychiatric Association. Murray Allen presented on 'Coercive Treatment in Psychiatry – a comprehensive view', Dresden, Germany.
07/06/2007 – 08/06/2007	Justice Barker, Judge Chaney, Judge Eckert, David Parry, Clive Raymond, Marie Connor, Jim Jordan, Peter McNab, Jennifer Hawkins, Bertus De Villiers	Attended and presented at the 10th Annual Australian Institute of Judicial Administration Tribunals Conference, Melbourne. Justice Barker chaired session on on-line learning and made a presentation on eTribunals. Judge Chaney made a presentation on awards of costs. David Parry made a presentation on lawyers in tribunal proceedings. Clive Raymond made a presentation on decisions on the documents.
12/06/2007	Justice Barker	Presented a paper on the 'Disciplinary functions of the Tribunal' to Nurses Board of Western Australia Senior Nursing Staff Seminar at Princess Margaret Hospital, Subiaco.

Date	Member	Community Relations Details
13/06/2007	Jill Toohey, Jack Mansveld, Felicity Child, Donna Dean	Mental Health Agencies Forum. Jill Toohey, Jack Mansveld, Felicity Child and Donna Dean presented the forum in relation to the work of the Tribunal in general and of the Human Rights stream in particular to Mental Health Agencies. Thirty mental health workers attended the forum.
20/06/2007	Clive Raymond	Attended the Annual General Meeting of Institute of Arbitrators and Mediators.
25/06/2007 – 30/06/2007	Murray Allen	Attended International Academy of Law and Mental Health conference held in Padua, Italy.
28/06/2007	Judge Chaney	Attended the Esplanade Hotel, Fremantle for National District Court Judges Conference.
29/06/2007	Judge Eckert	Attended the Esplanade Hotel, Fremantle for National District Court Judges Conference.
30/06/2007	Jill Toohey	Presentation to Hills Community Support Group -Families Futures Planning seminar in relation to the work of the Tribunal in general and of the Human Rights stream, and in particular to guardianship and administration issues.
	Jennifer Hawkins	Attended the LEADR Workshop Mediation Training.

Appendix 3 – Enabling Acts with the total number of applications made

Table showing number of new applications received by enabling Act and provision.

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
Commercial & Civil	Animal Welfare Act 2002	74(1)(b)	-	0	1
		74(2)	-	0	1
	Births, Deaths and Marriages Registration Act 1988	67(1)	-	0	1
	Builders Registration Act 1939	41(1)	-	0	54
	Business Names Act 1962	19(3)	-	0	1
	Caravan Parks and Camping Grounds Act 1995	27(1)	1	2	1
	Commercial Tenancy (Retail Shops) Agreements Act 1985	6(1)(b)	-	2	2
		6A(1)(b)	-	1	0
		11(5)	1	3	4
		12(1)(b)	-	3	2
		12A(4)	-	1	-
		13(3)(a)	-	2	2
		13(7)	794	1457	1663
		13(7b)	8	8	17
		14	3	4	2
		16(1)	16	34	40
		27(3)(b)	-	1	2
	Community Services Act 1972	17C(1)(a)	-	1	0
	Construction Contracts Act 2004	46(1)	-	3	2
	Consumer Credit (Western Australia) Act 1996	36(6)	1	-	-
		68(1)	1	3	3
		70(1)	-	1	1
		72(1)(a)	1	-	-
		83(1)	-	1	2
		88(1)	3	1	0
		92	5	23	30
		93(1)	3	44	12
		93(2)	-	6	0
		101(1)	1	-	-
		102(1)	1	-	-
		107(1)	1	-	-
	Country Towns Sewerage Act 1948	62(2)	-	1	0
	Credit Act 1984	104(3)	1	-	-
	Dangerous Goods (Transport) Act 1998	27	-	1	0
		31(c)	-	2	1
	Dog Act 1976	17(1)	-	2	0
		26(5)(a)	1	0	1
		26(5)(b)	5	2	1
		33F(2)(b)(ii)	-	0	1

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
		33F(6)(a)	-	1	1
		33F(6)(b)	1	1	0
		33F(6)(b)(ii)	-	2	0
		33G(2)(d)(ii)	-	0	3
		33G(2)(d)	-	1	0
	Firearms Act 1973	22(2)	20	20	25
	First Home Owner Grant Act 2000	31(1)	1	4	3
	Health Act 1911	137(ii)	-	2	1
		36(1)	5	12	7
	Local Government (Miscellaneous Provisions) Act 1960	295(3)(d)	-	1	0
		374(2)(a)	8	6	22
		374A(3)	1	0	1
		377(5)	1	-	-
		380(3)	-	1	0
		389	-	1	0
		399(5)	-	0	2
		401(3)	76	128	39
		401A(6)	-	3	7
		403(6)	1	2	1
		408(3)	1	4	1
		409(3)	1	-	-
		417 (3)	-	1	0
	Marketing of Potatoes Act 1946	19A	-	0	1
	Retirement Villages Act 1992	56(1)(a)	-	1	0
		56(1)(b)	2	1	1
		57(1)	-	1	0
		58(1)	-	0	1
		59(1)	-	0	1
		62(1)	-	0	1
		63(1)	-	1	0
		9(6)	-	1	0
	Road Traffic Act 1974	25(1)	-	2	3
		48(4)	10	36	58
	Soil and Land Conservation	34(1)	-	10	0
		39(1)	1	2	0
	Strata Titles Act 1985	100(1)	-	4	1
		101	-	0	2
		102(1)(e)	-	1	0
		102(1)(f)	1	1	1
		103C(1)	-	0	3
		103D(1)	-	1	1
		103E(1)	-	1	1
		103F(1)	4	3	5
		103F(4)	-	1	0
		103G(1)	1	2	3
		103H(1)	-	1	0
		103I(1)	-	1	2
		103N(1)	-	1	0

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
		103P(1)	-	1	0
		27(3)(a)	-	1	0
		27(3)(b)	-	1	0
		39A(4)(c)(ii)	-	0	1
		82	3	0	1
		83(1)	47	98	95
		85	8	3	5
		88	-	0	1
		89	-	0	1
		90	-	6	3
		91	1	1	4
		92	3	1	0
		93(1)	-	1	0
		94(1)	2	2	0
		95(1)	-	2	1
		97(1)	1	2	2
		99(1)	-	1	2
		99A(1)	-	2	1
		Sched 3, CI 12(10)(a)	1	-	-
		Sched 3, CI 13A(5)	1	-	-
	Swan River Trust Act 1988	68(2)	-	2	0
	Taxation Administration Act 2003	38(4)	-	0	2
		40(1)	30	41	9
		22(2)	5	-	-
	Taxi Act 1994	23(4)	-	0	2
		30(3)	-	0	1
	Transport Co-ordination Act 1966	57(3)	1	-	-
Human Rights	Equal Opportunity Act 1984	135(1)	1	2	3
		85	-	4	1
		90(2)	8	16	10
		93(1)(a)	2	4	5
		93(1)(b)	15	64	48
		93(1)(c)	1	-	-
	Guardianship and Administration Act 1990	104A(1)	3	12	8
		106(1)	11	36	29
		106(5)	2	1	0
		108(3)(b)	-	1	2
		109(1)(a)	-	5	10
		109(1)(b)	2	3	7
		109(1)(c)	3	3	15
		109(2)(a)	1	2	2
		109(2)(b)	-	3	3
		112(4)	17	48	41
		17A(1)	8	15	11

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
		40(1) - Type 1	448	891	933
		40(1) - Type 2	264	583	582
		47(1)	1	0	1
		49(1)(a)	-	0	2
		59(1)	-	0	1
		71A	-	1	1
		74(1)	7	12	13
		80(6a)	-	1	0
		82(1)	1	1	2
		84 - Type 1	180	410	433
		84 - Type 2	37	95	153
		84(1) - Type 1	-	1	0
		85(2) - Type 1	8	1	19
		85(2) - Type 2	3	9	5
		86(1) - Type 1	115	226	198
		86(1) - Type 2	28	42	43
		87(1) - Type 1	23	36	68
		87(1) - Type 2	3	4	10
		Sch 5 Cl 3	-	0	1
		95(2)	1	-	-
	Mental Health Act 1996	148A(1)	18	7	10
		148A(2)	1	2	0
		148E	1	-	-
Development & Resources	East Perth Redevelopment Act 1991	45(1)	-	1	1
	Fish Resources Management Act 1994	66	-	1	0
		149(1)	7	3	1
	Fishing and Related Industries Compensation (Marine Reserves) Act 1997	8(2)	1	-	-
	Hope Valley-Wattleup Redevelopment Act 2000	29(1)	2	-	-
	Jetties Act 1926	7A(1)(a)	-	2	8
		7A(1)(b)	-	1	0
	Land Administration Act 1997	220(c)	1	3	3
		224(4)	1	-	-
		222(1)	-	2	6
	Local Government Act 1995	2.27(6)	1	1	1
		3.25(5)	6	3	5
		6.77	3	4	2
		6.82(1)	1	-	-
		9.7(1)(a)	1	3	16
		9.7(1)(b)	1	1	1
		9.7(2)	-	1	5

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
	Metropolitan Region Town Planning Scheme Act 1959	35F(1)(b)	1	1	0
	Planning and Development Act 2005	Review of decision	-	2	22
		170(5)	-	0	3
		188(2)(b)	-	0	1
		244(3)	-	0	8
		250(1)	-	0	24
		253(3)	-	1	9
		249(1)	-	6	20
		251(1)	-	8	39
		251(2)	-	2	23
		251(3)	-	1	6
		251(4)	-	0	1
		252(1)	-	29	216
		252(2)	-	5	22
		255(1)	-	4	16
	Rights in Water and Irrigation Act 1914	26GG(1)(a)	-	1	1
		26GG(1)(c)	-	0	2
		26GG(1)(d)	-	0	1
		26GG(1)(f)	-	1	0
		26GH(1)	-	0	2
	Town Planning and Development Act 1928 (repealed)	10AA	12	20	0
		18(2a)	3	-	-
		26(1)(a)(i)	51	45	0
		26(1)(a)(ii)	19	26	0
		26(1)(a)(iii)	4	3	0
		26(1)(ab)	3	2	0
		26(1)(ad)	2	2	0
		52(1)	-	1	0
		66(3)	-	3	0
		7B(6)(a)	2	2	0
		7B(8)(b)	3	-	-
		8A(1)	93	169	0
		Town Planning Schemes cl 27ASch 1	6	1	0
			1	2	0
	Taxation Administration Act 2003	38(5)	-	0	1
		40(1)	-	0	6
	Valuation of Land Act 1978	33(2)	8	2	2
		36(1)	-	1	0
	Western Australian Planning Commission Act 1985	25(2)	1	-	-
Vocational Regulation	Architects Act 1921	22A(3)	-	1	0
		40(2)(c)	-	0	1
	Builders Registration Act 1939	12D	1	10	9
		13(1)	1	2	3

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
		13(1ba)(b)	1	-	-
		13(2)	9	10	2
		14(1)	5	19	9
		41(1)	25	54	0
	Children and Community Services Act 2004	224(2)	-	0	1
		225(1)	-	0	1
		94	-	0	2
	Credit (Administration) Act 1984	24(1)	1	-	-
	Chiropractors Registration Board Rules 1996 (given effect to by s 18(1)(ha) Chiropractors Act 1964)	rule 12(1)	-	0	2
	Debt Collectors Licensing Act 1964	11(1)	1	1	0
	Dental Act 1939	30(2)	-	1	0
	Electricity Act 1945	31(1)	-	1	1
		47(1)	-	0	1
	Finance Brokers Control Act 1975	23(1)	1	-	-
		82	-	3	1
	Gas Standards Act 1972	13A(11)(c)	-	1	1
	Hairdressers Registration Act 1946	16A(1)	-	1	2
	Land Valuers Licensing Act 1978	27	-	3	1
	Legal Practice Act 2003	149(1)(b)	-	1	0
		180(1)	15	46	29
		20(9)	-	1	0
		202	-	1	0
		44(a)	-	1	0
		44(c)	1	0	1
	Licensed Surveyors Act 1909	20B	-	2	1
	Medical Act 1894	12BB(1)(a)	1	3	2
		13(1)(a)	8	7	6
		13(1)(b)	1	0	1
		13(1)(c)	4	5	11
		13(1)(d)	-	1	1
		13(1)(e)	-	0	3
		13(2)	1	0	1
		13(9ba)	-	1	1
	Motor Vehicle Dealers Act 1973	20(1)(a)(i)	2	2	1
		20(1)(b)(i)	1	1	0
		10(2)(a)	-	1	0
		22(1)	-	0	1
	Nurses Act 1992	43(2a)	-	1	1
		63(1)(b)	2	3	1
		64(2)(g)	1	1	0
		78	2	1	0
		59B(4)	1	-	-
		59C(1)	1	0	4
	Optometrists Act 1940	26(1)	-	1	1

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07
	Painters Registration Act 1961	16(1)	-	3	0
		16B(1)	33	-	-
		18(1)	3	4	2
	Pharmacy Act 1964	32(2)	-	0	3
	Physiotherapists Act 1950	Regulation 21	2	0	1
	Psychologists Registration Act 1976	39(1a)	-	2	1
		44	-	1	1
	Real Estate and Business Agents Act 1978	102(1)(a)	8	3	6
		102(1)(b)	1	1	5
		23(1)	3	3	3
		93(1)	-	1	3
	Security and Related Activities (Control) Act 1966	67(1)	24	41	55
		67(3b)(a)	13	9	5
		72(1)	8	27	24
	Settlement Agents Act 1981	23(1)	2	0	1
		83	5	4	5
	Trade Measurement Act 2006	Section 81(c)	-	0	1
	Travel Agents Act 1985 (WA)	23(1)	1	0	2
	Veterinary Surgeons Act 1960	23(12)	1	-	-
		23(2a)	2	1	2
	Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000, given effect to by s 61 Water Services Licensing Act 1995	Regulation 19(2a) & 29	-	0	2
		Regulation 100(1)(b) & 100(2)	-	1	-
	Workers Compensation and Injury Management Regulations 1982	Regulation 41(a) Review	-	1	1
	Working With Children (Criminal Record Checking) Act 2004	Section 26(2)(a)	-	0	5
SAT	State Administrative Tribunal Act 2004	Section 44(3)	-	0	1
TOTAL			2723	5232	5552

Appendix 4 – Enabling Acts

Act	Original	Review	Stream
Aboriginal Heritage Act 1972	x		Development and Resources
Adoption Regulations 1995 given effect to by Adoption Act 1994		x	Human Rights
Aerial Spraying Control Act 1966		x	Commercial and Civil
Agricultural Produce (Chemical Residues) Act 1983		x	Commercial and Civil
Agricultural Produce Commission Act 1988		x	Commercial and Civil
Agriculture and Related Resources Protection Act 1976		x	Development and Resources
Animal Welfare Act 2002		x	Commercial and Civil
Architects Act 2004	x	x	Vocational
Armadale Redevelopment Act 2001		x	Development and Resources
Associations Incorporation Act 1987		x	Commercial and Civil
Betting Control Act 1954		x	Commercial and Civil
Biological Control Act 1986		x	Development and Resources
Births, Deaths and Marriages Registration Act 1998		x	Commercial and Civil
Builder's Registration Act 1939	x	x	Commercial and Civil
Business Names Act 1962		x	Commercial and Civil
Caravan Parks and Camping Grounds Act 1995		x	Development and Resources
Caravan Parks and Camping Grounds Regulations 1997 (given effect to by s 28 Caravan Parks and Camping Grounds Act 1995)		x	Development and Resources
Cemeteries Act 1986		x	Commercial and Civil
Chattel Securities Act 1987		x	Commercial and Civil
Chicken Meat Industry Act 1977		x	Commercial and Civil
Children and Community Services Act 2004	x	x	Human Rights
Children and Community Services Act 2004 (Licensing Child Care)		x	Commercial and Civil
Chiropractors Act 1964		x	Vocational
Chiropractors Registration Board Rules 1996 (given effect to by s 18(1)(ha) Chiropractors Act 1964)		x	Vocational
Commercial Tenancy (Retail Shops) Agreements Act 1985	x		Commercial and Civil
Competition Policy Reform (Western Australia) Act 1996			Commercial and Civil
Construction Contracts Act 2004	x	x	Commercial and Civil
Consumer Credit (Western Australia) Code, given effect to by s 5 Consumer Credit (Western Australia) Act 1996	x		Commercial and Civil

Act	Original	Review	Stream
Control of Vehicles (Off-road Areas) Act 1978		x	Commercial and Civil
Co-operative and Provident Societies Act 1903		x	Commercial and Civil
Country Areas Water Supply Act 1947		x	Development and Resources
Country Towns Sewerage Act 1948		x	Development and Resources
Credit (Administration) Act 1984	x	x	Commercial and Civil
Credit Act 1984	x		Commercial and Civil
Cremation Act 1929		x	Commercial and Civil
Dangerous Goods (Transport) Act 1998		x	Commercial and Civil
Debt Collectors Licensing Act 1964	x	x	Vocational
Dental Act 1939	x	x	Vocational
Dental Prosthetists Act 1985	x	x	Vocational
Dog Act 1976	x	x	Commercial and Civil
East Perth Redevelopment Act 1991		x	Development and Resources
East Perth Redevelopment Regulations 1992 (given effect to by s 57 East Perth Redevelopment Act 1991)		x	Development and Resources
Electricity (Licensing) Regulations 1991 (given effect by s 32(3)(faa) Electricity Act 1945)		x	Vocational
Employment Agents Act 1976	x	x	Vocational
Energy Coordination Act 1994		x	Development and Resources
Equal Opportunity Act 1984	x		Human Rights
Explosives and Dangerous Goods Act 1961		x	Commercial and Civil
Fair Trading Act 1987	x		Commercial and Civil
Finance Brokers Control Act 1975	x	x	Commercial and Civil
Fire and Emergency Services Authority of Western Australia Act 1998		x	Commercial and Civil
Fire Brigades Act 1942		x	Commercial and Civil
Firearms Act 1973		x	Commercial and Civil
First Home Owner Grant Act 2000		x	Commercial and Civil
Fish Resources Management Act 1994		x	Development and Resources
Fisheries Adjustment Schemes Act 1987	x	x	Development and Resources
Fishing and Related Industries Compensation (Marine Reserves) Act 1997	x	x	Development and Resources
Gas Standards Act 1972	x	x	Development and Resources
Gender Reassignment Act 2000		x	Human Rights
Guardianship and Administration Act 1990	x	x	Human Rights
Hairdressers Registration Act 1946	x	x	Vocational

Act	Original	Review	Stream
Health Act 1911	x	x	Commercial and Civil
Heritage of Western Australia Act 1990	x	x	Development and Resources
Hire Purchase Act 1959		x	Commercial and Civil
Hope Valley-Wattleup Redevelopment Act 2000		x	Development and Resources
Hospitals and Health Services Act 1927		x	Commercial and Civil
Housing Societies Act 1976		x	Commercial and Civil
Human Reproductive Technology Act 1991	x	x	Vocational
Industrial Relations Acts 1979		x	Human Rights
Jetties Act 1926		x	Development and Resources
Land Administration Act 1997	x	x	Development and Resources
Land Drainage Act 1925		x	Development and Resources
Land Valuers Licensing Act 1978	x	x	Vocational
Legal Contribution Trust Act 1967		x	Commercial and Civil
Legal Practice Act 2003	x	x	Vocational
Licensed Surveyors Act 1909	x	x	Vocational
Litter Act 1979		x	Development and Resources
Local Government (Miscellaneous Provisions) Act 1960	x	x	Commercial and Civil
Local Government Act 1995	x	x	Development and Resources
Maritime Archaeology Act 1973			Development and Resources
Marketing of Potatoes Act 1946	x	x	Commercial and Civil
Medical Act 1894	x	x	Vocational
Medical Radiation Technologists Act 2006	x	x	Vocational
Mental Health Act 1996	x	x	Human Rights
Metropolitan Water Authority Act 1982		x	Development and Resources
Metropolitan Water Supply, Sewerage and Drainage Act 1909		x	Development and Resources
Midland Redevelopment Act 1999		x	Development and Resources
Motor Vehicle Dealers Act 1973	x	x	Vocational
Motor Vehicle Drivers Instructors Act 1963		x	Vocational
Nurses Act 1992	x	x	Vocational
Occupational Therapists Registration Act 1980	x	x	Vocational
Optometrists Act 2005	x	x	Vocational
Osteopaths Act 2005	x	x	Vocational
Painters' Registration Act 1961	x	x	Vocational
Pawnbrokers and Second-hand Dealers Act 1994	x	x	Commercial and Civil
Pearling Act 1990		x	Development

Act	Original	Review	Stream
			and Resources
Perth Parking Management Act 1999		x	Commercial and Civil
Petroleum (Submerged Lands) Act 1982	x	x	Commercial and Civil
Petroleum Act 1967	x	x	Commercial and Civil
Petroleum Pipelines Act 1969	x		Commercial and Civil
Petroleum Retailers Rights and Liabilities Act 1982		x	Commercial and Civil
Pharmacy Act 1964	x	x	Vocational
Physiotherapists Act 2005	x	x	Vocational
Planning and Development Act 2005	x	x	Development and Resources
Plant Diseases Act 1914		x	Development and Resources
Plant Pests and Diseases (Eradication Funds) Act 1974. Note: This Act expired on the 31 October 2003, see s 18(1).	x		Development and Resources
Podiatrists Act 2005	x		Vocational
Poisons Act 1964		x	Commercial and Civil
Professional Combat Sports Act 1987		x	Vocational
Psychologists Act 2005	x	x	Vocational
Public Order in Streets Act 1984		x	Commercial and Civil
Radiation Safety Act 1975		x	Commercial and Civil
Rail Safety Act 1975		x	Commercial and Civil
Real Estate and Business Agents Act 1978	x	x	Vocational
Residential Parks (Long Stay Tenants) Act 2005	x	x	Commercial and Civil
Retirement Villages Act 1992	x		Commercial and Civil
Retirement Villages Regulations 1992 (given effect to by Retirement Villages Act 1992)	x		Commercial and Civil
Rights in Water and Irrigation Act 1914		x	Development and Resources
Road Traffic Act 1974		x	Commercial and Civil
Royal Agricultural Society Act 1926		x	Commercial and Civil
Security and Related Activities (Control) Act 1996	x	x	Vocational
Settlement Agents Act 1981	x	x	Vocational
Soil and Land Conservation Act 1945		x	Development and Resources
State Superannuation Act 2000		x	Development and Resources
Strata Titles Act 1985	x	x	Commercial and Civil
Subiaco Redevelopment Act 1994		x	Development and Resources
Swan River Trust Act 1988		x	Development and Resources

Act	Original	Review	Stream
Taxation Administration Act 2003	x	x	Commercial and Civil
Taxi Act 1994		x	Commercial and Civil
Tobacco Products Control Act 2006	x	x	Commercial and Civil
Trade Measurement Act 2006		x	Vocational
Transport (Country Taxi-car) Amendment Regulations 2003 (given effect to by Transport Co-ordination Act 1966)		x	Commercial and Civil
Transport Co-ordination Act 1966		x	Commercial and Civil
Travel Agents Act 1985	x	x	Vocational
Valuation of Land Act 1978		x	Development and Resources
Veterinary Chemical Control and Animal Feeding Stuffs Act 1976		x	Development and Resources
Veterinary Surgeons Act 1960	x	x	Vocational
W.A Marine (Certificates of Competency and Safety Manning) Regulations 1983, given effect to by s 10(f) and (g) of the Western Australia Marine Act 1982.		x	Vocational
Water Agencies (Powers) Act 1984	x		Development and Resources
Water Boards Act 1904		x	Development and Resources
Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000, given effect to by s 61 Water Services Licensing Act 1995	x	x	Vocational
Water Services Licensing Act 1995		x	Development and Resources
Waterways Conservation Act 1976		x	Development and Resources
Western Australian Meat Industry Authority Act 1976		x	Commercial and Civil
Workers' Compensation and Injury Management Regulations 1982		x	Vocational
Working with Children (Criminal Record Checking) Act 2004		x	Vocational

Appendix 5 – Rules Committee membership

The Rules Committee was established under section 172 of the SAT Act.

Members at 30 June 2007 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).

Appendix 6 – Parties Survey 2006-2007 – Preliminary results*

Question - reference:	% Response
The efficiency of SAT staff (good to excellent).	82%
Help from staff (polite and professional).	82%
The information provided by staff (accurate and up to date).	80%
The information and SAT documents sent in a timely manner.	80%
SAT letters and notices were easy to follow.	79%
The telephone manner of staff (polite and professional).	77%
SAT application forms were easy to follow.	70%
Calls were transferred to correct person.	69%
Waiting time when telephoning SAT (good to excellent).	68%
For those in which access to disability services were applicable (good to excellent).	64%
Respondents who found the waiting time when visiting SAT offices (good to excellent).	62%
Respondents who found the facilities in the waiting room good or average.	64%
Time taken in the processing of the application from lodgement to completion (good or average).	62%
Respondents who found the website easy to navigate.	76%
Respondents who had obtained their application form through the SAT website.	67%
Respondents who attended a hearing at SAT.	86%
Respondents who had attended more than one hearing.	34%
Respondents who thought that the courtesy of the SAT member was either excellent or good.	90%
Respondents who felt that the knowledge of the SAT member was excellent or good.	84%
Respondents who found that the layout of the hearing room was either excellent or good.	78%

- These results reflected 470 completed surveys out of a possible 2043.
- Of 2023 surveys sent out or completed online, 470 responses were returned completed, and at the 95% confidence level the error rate is 3.96%.