



State
Administrative
Tribunal

Western Australia

Annual Report 2008



Judicial and full-time non-judicial members 2008



SAT

State
Administrative
Tribunal

Western Australia

Hon Jim McGinty MLA
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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 2008.

Yours sincerely

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

The Hon Justice M L Barker
President

12 September 2008

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PRESIDENT'S REPORT – THE LAST 12 MONTHS IN REVIEW



As President of the State Administrative Tribunal (Tribunal), I am required by s 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 s 150(3).

This is my fourth report under s 150. It covers the period from 1 July 2007 to 30 June 2008. Because my initial report dealt with the first six months of the Tribunal's operations after its commencement on 1 January 2005, this is the third report to deal with a full 12 month period of operation. It means we are beginning to see some useful trends in relation to the activities of the Tribunal.

During the reporting period, the Standing Committee on Legislation of the Legislative Council of the Western Australian Parliament commenced an inquiry into the jurisdiction and operation of the Tribunal as required by s 173 of the SAT Act. Unfortunately the inquiry was not completed in that period and, as at the date of this report, it remains uncompleted. It is unfortunate that the Standing Committee on Legislation was unable to complete its inquiry and report to Parliament before now as its findings and advice will no doubt be of interest and helpful to the future operations of the Tribunal.

From the Tribunal's perspective, however, I am able to continue to report, as I have done in the first three annual reports, that overall the Tribunal has performed very well in the past 12 months in terms of meeting its primary objectives set out in s 9 of the SAT Act. The Tribunal continues 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
- In a way that minimises the costs to the parties.

The Tribunal also continues to use the experience of its members, both full-time and sessional, to good effect.

The Tribunal remains mindful of its s 9 objectives at all times and continues to reassess, at regular intervals, the appropriateness of its practices, procedures and resources to the achievement of these objectives.

During its first three and a half years of operation, the Tribunal has been established, its operation consolidated and significant steps taken to ensure that, in accordance with its vision, the Tribunal operates as one of the leading tribunals of its kind in Australia and New Zealand.

In the past 12 months, in particular, significant steps have been taken to ensure the continuing education, training and professional development of full-time members and sessional members of the Tribunal, as well as the Tribunal's staff.

As at 30 June 2008, the full-time members of the Tribunal continued to be 17. There were no changes in the full-time membership of the Tribunal during the reporting period. As at 30 June 2008 there were 105 sessional members of the Tribunal, an increase of one member during the past 12 months, with some resignations and some new appointments. Additional sessional members were appointed mainly to ensure that the Tribunal had appropriately experienced members in all vocational regulation areas.

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 of 30 June 2007, the Tribunal exercised jurisdiction under some 143 enabling Acts. As of 30 June 2008, the Tribunal exercised jurisdiction under some 145 enabling Acts, an increase of two over the past 12 months.

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

- *Betting Control Act 1954*;
- *Biosecurity and Agricultural Management Act 2007*^{*1};
- *Child Care Services Act 2007*^{*};
- *Children and Community Services Act 2004*;
- *Chiropractors Act 2005*^{*};
- *Country Areas Water Supply Act 1947*;
- *Dangerous Goods Safety Act 2004*^{*};
- *Energy Coordination Act 1994*;
- *Gas Standards Act 1972*;
- *Local Government (Miscellaneous Provisions) Act 1960*;
- *Local Government Act 1995*;
- *Metropolitan Water Authority Act 1982*;
- *Metropolitan Water Supply, Sewerage and Drainage Act 1909*;
- *Nurses And Midwives Act 2006*^{*};
- *Occupational Therapists Act 2005*;
- *Residential Parks (Long Stay Tenants) Act 2005*^{*};
- *Rights in Water and Irrigation Act 1914*;
- *Road Traffic (Authorisation to Drive) Regulations 2008* (given effect by *Road Traffic Act 1974*)^{*};
- *State Superannuation Act 2000*;
- *Swan and Canning River Management Act 2005*^{*};
- *Taxi Act 1994*;
- *Water Agencies (Powers) Act 1984*;
- *Water and Rivers Commission Act 1995*;
- *Water Supply, Sewerage and Drainage Act 1912*; and

- *Waterways Conservation Act 1976.*

* New enabling Acts, although some repealed former enabling Acts.

*¹ Yet to be proclaimed

As observed in earlier reports, the conferral of new jurisdiction necessarily means additional work for the Tribunal and has implications for the on-going funding of the Tribunal. I continue to consider that a funding formula should be established within government, so that conferrals of jurisdiction on the Tribunal are always accompanied by appropriate funding, to ensure that the Tribunal has the necessary members and resources to complete its new work without detriment to its performance in existing areas of work.



During the reporting period, the Tribunal received 5,674 new applications compared with 5,552 during the previous reporting period. This represents an increase of 2% over the previous 12 month period.

The Tribunal received 5,674 applications and determined 5,802 applications in the reporting period. This means the Tribunal cut well into the work on hand as at 30 June 2007. The fact that the Tribunal has been able to decide more applications than it received during the year is a good indication of the efficiency of the Tribunal.

The steady increase in the number of applications to the Tribunal over the first three and a half years of its operation is a fair indication that the work of the Tribunal will continue steadily to increase in the years ahead. Additionally, the Tribunal can be expected to increase significantly in its overall size with the transfer of new jurisdictions in residential tenancy dispute resolution from the Magistrates Court, and building disputes resolution from the Building Disputes Tribunal. The conferral of these new dispute resolution functions carries with it serious implications, which need to be worked through sooner rather than later, for the future accommodation, membership, staffing and resourcing of the Tribunal.

When the Tribunal commenced, matters that had not been determined by prior adjudicators were transferred to the Tribunal. There were 897 such legacy matters in the first instance. As at 30 June 2007, only four legacy matters remained to be determined. As at 30 June 2008, there is only one legacy matter outstanding. The reason for this legacy matter remaining undetermined is due to factors external to the Tribunal - in this case, an environmental assessment of a development project by the Minister for Environment under the *Environmental Protection Act 1986*.

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* (GA Act) with 2,822 applications.

As noted in previous reports, this is not surprising given the increasing population in Western Australia, the changing demographic with an aging 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 second largest number of applications made to the Tribunal during the reporting period was under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (Retail Shops Act) with 1,554 applications.

Over the period of the establishment and consolidation of the Tribunal, the practices and procedures have been tested and refined in order to meet the s 9 objectives. The practices reported on in previous years continue, with appropriate refinements, to prove effective in the Tribunal.

From the start the Tribunal has emphasised the importance of facilitative dispute resolution, including mediation, in its decision-making. A statistical account of the successful use of these techniques is contained in the later stream reports. This year, additionally, I have caused a separate section on facilitative dispute resolution, including mediation, to be included in this report. It tells a fascinating story about the successful use of these techniques in the Tribunal.

The survey of parties involved in the Tribunal's formal mediation processes outlined in this later section provides an excellent guide to the acceptance of mediation as a process by parties to proceedings.

Save in the 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.

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

- Receive and register the application on the day it is lodged by a party;
- Send notices of a first directions hearing to all 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 that directions hearing either by attending in person or by telephone or videoconference;
- Encourage the parties to participate in mediation, in appropriate cases, which may remove the need for a final hearing;
- Otherwise ensure that a proceeding is programmed for a final hearing so that all necessary documents stating the parties' cases are prepared and filed before the hearing; and
- Consider whether, if the matter is not resolved in mediation, a final hearing is required or the application can be determined on the documents, or a combination of both.

Performance details and a more detailed discussion of factors bearing on performance are contained in the later stream reports. Overall, the performance of the Tribunal was impressive and the performance benchmarks set last year remain in place for the forthcoming year.

The Tribunal has previously introduced concurrent expert evidence procedures, which were reported on in the previous two annual reports. The taking of expert evidence concurrently continues to work very successfully and to be well received by expert witnesses. It continues to assist good decision-making by the Tribunal, shorten hearings and reduce costs for parties.

The Tribunal continues 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, the parties continue to be legally represented. In some significant guardianship and administration proceedings, parties are also increasingly legally represented.

Nonetheless, the Tribunal continues to design, assess and reassess all of its practices and procedures on the basis that most parties will be self-represented or represented by persons other than lawyers.

In earlier annual reports I have commented on the need to improve the administrative staffing resources of the Tribunal. I am pleased to note that in recent times the Department of the Attorney General has moved to review and improve the administrative resources available to the Tribunal and the systems they use. Steps have also been taken to restructure the administrative support system. More about these developments is mentioned in the later section dealing with administration.

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, making of applications, practices and procedures and decision-making can be found on the website. However, the Tribunal has also produced a number of useful pamphlets, which are listed in **Appendix 5**.

The SAT Wizard continues to be extremely well-used by applicants. The Wizard contains all the enabling Acts and relevant provisions under which proceedings can be commenced in the Tribunal. It enables an applicant to prepare an application on-line before printing it off 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 on-line onto its computer system. Financial resources of government are required, however, to achieve this outcome in a timely manner. Thus far they have been lacking right across the courts and tribunals sector. For some reason, governments often seem to share a stereotypical view that courts and tribunals are, and should remain, relics of the age of Queen Victoria. It is time for that view to be replaced with an understanding that the service offered to the public will be immeasurably improved by the implementation of an eJustice plan.

I should emphasise in particular that, if the residential tenancies jurisdiction is transferred from the Magistrates Court to the Tribunal, the on-line lodgement will be critical to the Tribunal's successful operation in this new area.

The Tribunal continues to adopt decision-making practices which enable decisions to be given as quickly as possible. In appropriate cases decisions are given orally at the conclusion of a hearing or soon after. In other, usually more complex matters, the Tribunal may reserve its decision which is then delivered later, usually within a 90 day period.

All written reasons for a final decision, and in some cases on important preliminary issues, as well as final orders made by the Tribunal in areas that are not confidential, are published on the Tribunal's 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 website at www.austlii.edu.au. In these ways, the community gains direct access to all significant Tribunal decisions and final orders. This ensures both access to relevant information and public accountability.

The Tribunal continues to engage in a strong community relations program, as set out in **Appendix 2**. The Tribunal remains committed to disseminating and gathering community information and feedback to improve its performance.

During the reporting period, the Tribunal conducted a further party survey which provided encouraging feedback on the fairness of practices and procedures adopted in the Tribunal. This is referred to in **Appendix 7**.

During the reporting period a number of amendments were made to the SAT Act and a number of enabling Acts in accordance with the recommendations for reform earlier made to the Attorney General at his invitation. These will be carried into effect through the *Acts Amendment (Justice) Act 2008* when proclaimed.

In my last report I indicated that an important recommendation had been made during the previous reporting period that the functions of the Mental Health Review Board be conferred on the Tribunal. This recommendation awaits action. It is understood that a new Mental Health Act will carry this recommendation into effect. However, the Bill for this new legislation has not yet been introduced into Parliament. It is anticipated this will occur during the next reporting period.

The Tribunal continues to be actively involved in the activities of the Council of Australasian Tribunals (COAT). The Western Australian chapter of COAT has been established and continues to meet periodically. As President, I remain a member of the National Executive of COAT. The development of COAT remains important to the growing professionalism of tribunals through Australia and New Zealand. In time, it can be expected that COAT will help to influence the useful harmonisation of many administrative laws and tribunal practices throughout Australia and New Zealand.

It is interesting to note that during the reporting year the Queensland government announced that it intends to establish a Queensland Civil and Administrative Tribunal (QCAT) modelled closely on this Tribunal and the Victorian Civil and Administrative Tribunal (VCAT) generalist tribunal model. The ACT has also moved to establish an

ACT Case and Administrative Tribunal (ACAT). This points to the growing uniformity and professionalism of tribunals throughout Australia and New Zealand. VCAT, QCAT and ACAT will provide good benchmarks for this Tribunal in the years ahead, as will this Tribunal for those tribunals.

The vision for the Tribunal remains that it should 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 Western Australia. I consider that the performance of the Tribunal over the past three and a half years has made that vision a reality.

I must continue to emphasise, however, that unless the Tribunal is adequately resourced in the future to become an eTribunal, with sufficient accommodation and well qualified members and staff, its capacity to maintain its excellent performance will in time be compromised and its ability to meet its s 9 objectives undermined.

After three and a half years of operation, the Tribunal is about to move into a new phase of its operation. It is no longer a fledgling organisation but a mature organisation that grows with confidence as each year passes. The initial complement of full-time members of the Tribunal, both judicial and non-judicial, were appointed for a five year period. The periods of appointment of most will come to an end at the end of the 2009 calendar year. During 2009 expressions of interest from persons seeking appointment to the non-judicial positions, when they fall vacant, will be sought. A competitive selection process will be undertaken. Recommendations for appointment will then be made by the President of the Tribunal, to the Attorney General for consideration by government.

As the Tribunal moves into this new phase some general observations may be made. First, during the first three and a half years of operation of the Tribunal the dedication and commitment of all members of the Tribunal, judicial and non-judicial, full-time and sessional, as well as the staff of the Tribunal, particularly through the Executive Officer, Acting Executive Officers and senior staff, have made possible the realisation of the objectives of the Tribunal set out in s 9 of the SAT Act.

Secondly, when the Tribunal was established I emphasised that the Tribunal was exactly that - a 'tribunal' and not a 'court'. I also emphasised that the Tribunal performs its functions as part of the overall system of public administration in Western Australia. A tribunal like the State Administrative Tribunal is in the nature of an 'inquisitorial' tribunal. This is because it is bound to make administrative decisions. It is able to inform itself as it thinks fit. It does not apply the rules of evidence, but is obliged to act fairly at all times. The Tribunal has held fast to this understanding of its basic nature and function.

Thirdly, the Tribunal has, during the past three and a half years, maintained an unwavering commitment to the realisation of its statutory objectives: in essence, to make reliable decisions quickly, keeping costs of the parties to a minimum; and using the experience of its members to good effect. The minute a tribunal like this Tribunal ceases to have a full or proper regard to such statutory objectives it will fail to meet the expectations of the people who use its services. It should never become complacent about its operation. It must strive to improve its performance from year to year.

Fourthly, I consider that during the first three and a half years of its operations the Tribunal has substantially achieved its promise and has improved from year to year. The Tribunal is a dynamic organisation. The members of the Tribunal, both full-time and sessional, have displayed a tremendous enthusiasm and commitment both to the objectives and the daily work of the Tribunal and, in that way, to the people of the State whom they serve. At times parties to proceedings are not happy with the outcomes of proceedings, or the way the procedures of the Tribunal have affected them. However, the party surveys show that parties respect the fact that members and staff of the Tribunal work hard to provide a high quality system of administrative justice.

Fifthly, I firmly believe that, as the Tribunal moves into its next phase, it is extremely well placed to continue to meet the high expectations created for the Tribunal when it was established by the Parliament in 2004.

Finally, I would like to record my appreciation of the dedication of my Deputy Presidents Judge John Chaney SC and Judge Judy Eckert, the Tribunal's initial Executive Officer Mr Alex Watt and the Tribunal's current Acting Executive Officer, Mr Alistair Borg. Their leadership, and plain hard work, has been a significant reason for the Tribunal's success to this point. I have in particular been grateful for the personal support and encouragement, and loyalty of Judge John Chaney SC and Judge Judy Eckert.

It perhaps goes without saying that, as President, I take particular pride in the way the Tribunal has developed in its first three and a half years of operation. I consider the Tribunal, to be the 'very model' of a modern generalist tribunal.

The sections of this Report that follow provide more detail of the work of the Tribunal during the reporting period, and deal with a number of specific matters I am required to report on under s 150 of the SAT Act.

STRUCTURE, OBJECTIVES AND PERFORMANCE OF THE STATE ADMINISTRATIVE TRIBUNAL 2007-08

Structure

The Tribunal is established under the following legislation:

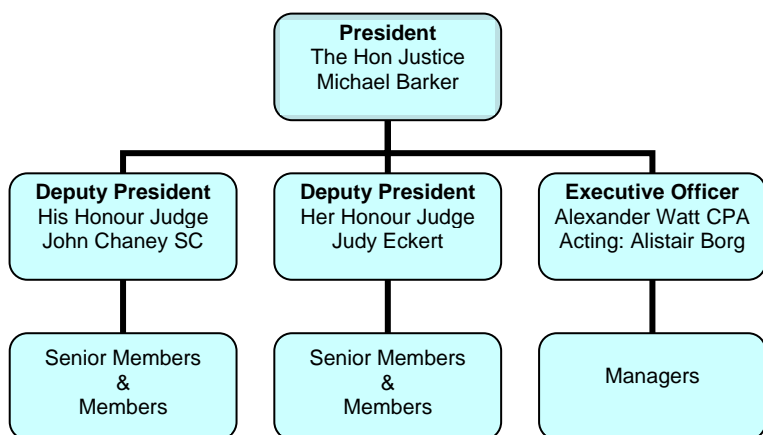
- *State Administrative Tribunal Act 2004* (SAT Act);
- *State Administrative Tribunal Regulations 2004* (SAT Regulations); and
- *State Administrative Tribunal Rules 2004* (Rules).

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 145 enabling Acts with over 910 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.



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

Under s 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 the SAT Act or an enabling Act being rendered more effective.

Under s 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 s 170 of the SAT Act, the Rules Committee (see **Appendix 6** 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 in order to give effect to the purposes of the SAT Act.

Vision, objectives and values

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.

The objectives of the Tribunal set out in s 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.

In meeting these objectives, 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.

The Tribunal's core values are:

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

Behaviours in the Tribunal are guided by:

- Members' Code of Conduct;
- Staff Code of Conduct;
- Continuing professional development;
- Commitment to diversity;
- Providing all 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:

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 provided 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.

The development of the Tribunal has reformed the system of tribunals by consolidating and integrating 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.

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 the making of administrative decisions.

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

Developing accessible policies, practices and procedures that enable

citizens to access and use the Tribunal is of fundamental importance.

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

With significant growth in the Human Rights jurisdictions, notably in *Guardianship and Administration Act 1990* matters, a commitment to innovation and accessibility through technology will assist the work of the Tribunal.

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 has not been fully realised, yet the eTribunal remains a central pillar of our business aspirations to give the community continuous access to high quality Tribunal services.

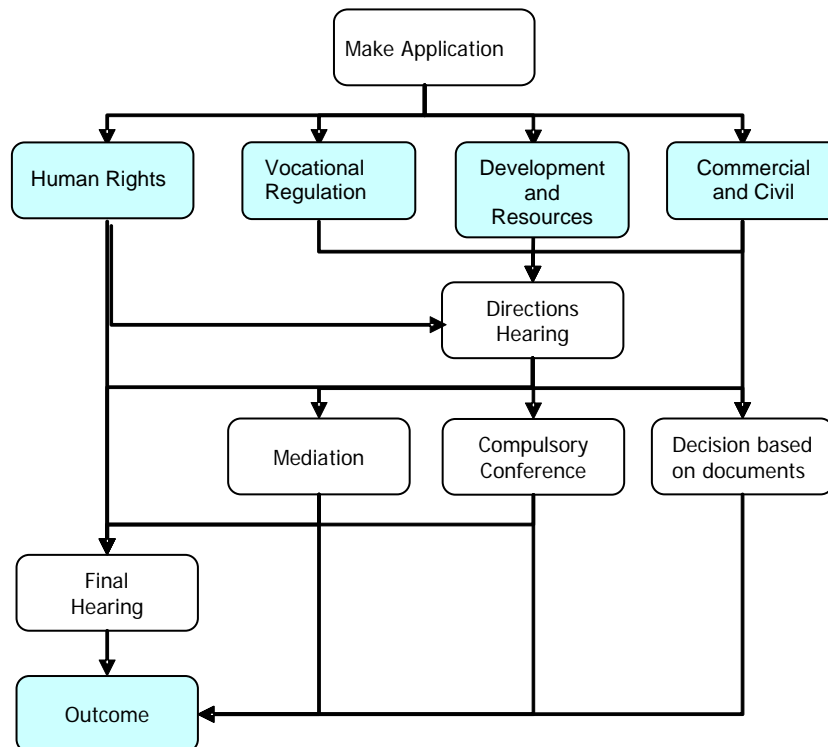
The Tribunal is committed to building and maintaining relationships with all stakeholders who have a primary interest in the delivery of the Tribunal's services, whilst promoting and maintaining its independence.

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.

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.

Application process

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



Tribunal streams

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.

Commercial and Civil stream

This stream deals with strata title and retirement village disputes, commercial tenancy and credit reviews, state revenue decisions and other commercial and personal matters. It accounts for 2,031, or 36% of all applications. In the year to 30 June 2008, the average time from lodgement to completion of an application was 36 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. It accounts for 466, or 8% of all applications. In the year to 30 June 2008, the average time from lodgement to completion of an application was 169 days.

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. It accounts for 2,919, or 51% of all applications. In the year to 30 June 2008, the average time from lodgement to completion of an application was 53 days.

Vocational Regulation stream

This stream hears complaints concerning occupational misconduct and reviews decisions concerning occupational registration. It accounts for 253, or 5% of all applications. In the year to 30 June 2008, the average time from lodgement to completion of an application was 123 days.

Graph 1 – Applications received by stream



Performance

In the reporting period 5,674 new applications were lodged with the Tribunal and 5,802 were finalised.

Table 1 – Year at a glance

Applications	2004-05^{#1}	2005-06	2006-07	2007-08
Applications lodged	2,723	5,232	5,552	5,674
Matters finalised ^{#2}	2,686	5,406	5,876	5,802
Snapshot by Act				
<i>Commercial Tenancy (Retail Shops) Agreement Act 1970</i>	822	1,516	1,734	1,554
<i>Consumer Credit (WA) Act 1996</i>	17	79	48	71
<i>Local Government (Miscellaneous Provisions) Act 1960</i>	89	147	73	80
<i>Strata Titles Act 1985</i>	73	139	136	112
<i>Taxation Administration Act 2003</i>	30	41	18	29
<i>Planning and Development Act 2005</i>	n/a	60	410	415
<i>Town Planning and Development Act 1920 (Repealed)</i>	199	276	n/a	n/a
<i>Equal Opportunity Act 1984</i>	27	90	67	84
<i>Guardianship and Administration Act 1990</i>	1,166	2,441	2,593	2,822
<i>Builder's Registration Act 1939</i>	42	95	77	73
<i>Legal Practice Act 2003</i>	16	50	30	35
<i>Security and Related Activities (Control) Act 1996</i>	45	76	84	91
Our People				
Judicial members	3	3	3	3
Full-time members	13	13	14	14
Tribunal employees ^{#3}	59	63	68	68
Total sessional members	117	128	104	105

Note:

#1 The Tribunal commenced operations on 1 January 2005. Therefore figures for 2004-05 are for a 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.

Benchmark performance

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 making an application.

In those jurisdictions in which the Tribunal most frequently makes decisions, the following table provides percentage benchmarks for matters completed by stream with an indication of the number of weeks taken and compares this performance for the years 2005–06, 2006–07 and 2007–08.

The stream reports that follow discuss the benchmark performance in each stream in more detail.

Table 2 – Benchmark performance indicators

Commercial and Civil										
		2005-06			2006-07			2007-08		
		30%	50%	80%	30%	50%	80%	30%	50%	80%
Strata Titles	Weeks	9	16	29	5	10	25	4	9	18
Subdivision / Local Govt (Misc Provisions)	Weeks	3	9	26	7	12	31	8	15	31
Consumer Credit	Weeks	<4	<4	12	3	5	8	2	3	8
Review of Building Disputes Tribunal decisions	Weeks	10	18	29	9	17	35	11	16	45
Commercial Tenancy *	Weeks	6	15	29	9	16	34	5	7	27
Road Traffic	Weeks	7	10	13	3	6	14	5	7	13
Firearms	Weeks	13	19	22	10	14	24	5	11	22
Overall Performance	Weeks				6	10	24	5	9	24
Development and Resources										
		2005-06			2006-07			2007-08		
		30%	50%	80%	30%	50%	80%	30%	50%	80%
Development	Weeks	12	20	30	14	19	32	12	18	32
Subdivision	Weeks	15	23	31	16	25	49	8	13	29
Local Govt notices	Weeks	12	18	49	19	42	63	3	12	20
Compensation for compulsory acquisition	Weeks	6	25	28		12		14	19	45
Local Govt approvals	Weeks	18	27	44	5	10	16	9	16	28
Rating	Weeks		26			36	36		23	26
Fisheries	Weeks	26		28					7	7
Overall Performance	Weeks				14	19	36	11	18	34
Human Rights										
		2005-06			2006-07			2007-08		
		30%	50%	80%	30%	50%	80%	30%	50%	80%
Mental Health	Weeks	9	10	24	4	5	7	2	3	5
Equal Opportunity	Weeks	12	19	28	13	21	34	14	20	51
Guardianship and Administration	Weeks	6	7	10	5	6	8	5	6	8
Overall Performance	Weeks				5	7	9	5	6	8
Vocational Regulation										
		2005-06			2006-07			2007-08		
		30%	50%	80%	30%	50%	80%	30%	50%	80%
Vocational Acts	Weeks	9	13	27	7	13	35	7	10	25

* These figures exclude the Retail Shops Act s13(7) applications.

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COMMERCIAL AND CIVIL STREAM

The work of the Commercial and Civil stream

The Commercial and Civil (CC stream) is vested with both an original and review jurisdiction. In the exercise of its original jurisdiction, most of the work of the CC stream arises under the *Strata Titles Act 1985*, the *Commercial Tenancy (Retail Shops) Agreements Act 1985* and the *Consumer Credit (Western Australia) Act 1996*. Prior to 2005, the Strata Titles Referee and the Commercial Tribunal had jurisdiction in respect of this legislation.

The CC stream's review jurisdiction is vested under some 50 enabling Acts, with the most 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*.

Applications received and finalised

During the reporting year, the CC stream received 2,031 applications and in the same period finalised 2,043. **Table 3** sets out details of the applications received and the applications finalised during the reporting year.

Table 3 – CC applications received and finalised 2005-06, 2006-07 and 2007-08

Subject of application	No of applications received			No of applications finalised		
	05/06	06/07	07/08	05/06	06/07	07/08
Animal Welfare Act 2002	0	2	0	0	2	1
Associations Incorporation Act 1987	0	0	2	0	0	0
Betting Control Act 1954	0	0	1	0	0	1
Births, Deaths and Marriages Registration Act 1989	0	1	0	0	0	1
Builders' Registration Act 1939 - s 41	54	54	52	42	62	54
Business Names Act 1962	0	1	0	0	1	0
Caravan Parks and Camping Grounds Act 1995	2	1	0	0	3	0
Commercial Tenancy (Retail Shops) Agreements Act 1985 – s 13*	1,502	1,682	1,493	1,503	1,696	1,494
Commercial Tenancy (Retail Shops) Agreements Act 1985 – Other*	49	52	61	42	63	71
Community Services Act 1972 (repealed)	1	0	0	1	0	0
Construction Contracts Act 2004	3	2	6	3	2	4
Consumer Credit (Western Australia) Act 1996	79	48	71	84	54	66
Country Towns Sewerage Act 1948	1	0	0	0	1	0
Credit Act 1984	0	0	2	0	0	3
Dangerous Goods (Transport) Act 1998 (repealed) **	3	1	0	3	0	1
Dog Act 1976	9	7	11	5	10	7
Explosives and Dangerous Goods Act 1961 (repealed) **	0	0	1	0	0	1
Firearms Act 1973	20	25	28	28	25	26
First Home Owner Grant Act 2000	4	3	3	5	1	4
Health Act 1911	13	8	5	10	11	5
Local Government (Miscellaneous Provisions) Act 1960	146	73	80	150	81	93
Marketing of Potatoes Act 1946	0	1	1	0	1	0
Petroleum (Submerged Lands) Act 1982	0	0	1	0	0	1
Residential Parks (Long Stay Tenants) Act 2006	0	0	12			12
Retirement Villages Act 1992	5	4	5	5	4	4
Road Traffic Act 1974	38	61	67	38	49	69
Soil and Land Conservation Act 1945***	12	0	0	4	13	0
Strata Titles Act 1985	136	136	112	135	153	109
Swan River Trust Act 1988***	2	0	0	2	0	0
Taxation Administration Act 2004	41	11	17	45	9	14
Taxi Act 1994	0	3	0	5	1	2
Transport Co-ordination Act 1966	0	0	0	0	0	0
Total	2,120	2,176	2,031	2,110	2,242	2,043

* As to Commercial Tenancy applications: s 13 applications are determined on the 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 *Dangerous Goods (Transport) Act 1998* and *Explosives and Dangerous Goods Act 1961* have now been replaced by the *Dangerous Goods Safety Act 2004*.

*** Responsibility for applications under the *Soil and Land Conservation Act 1945* and *Swan River Trust Act 1988* has been transferred to the Development and Resources stream.

The statistics reflect an overall drop in the number of applications received by the CC stream compared with the previous year. This drop is mainly attributable to 189 fewer applications being lodged under s 13 of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. Because those applications are dealt with on the papers and do not entail any formal hearing, they are dealt with quickly and take up very little of the Tribunal's time relative to other matters. Excluding s 13(7) matters, the number of applications increased from 494 to 538, an increase of 9% over the previous year. The number of applications finalised during the reporting year increased to 549 compared to 546 in the previous year.

Facilitative dispute resolution

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.

As discussed below, 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 s 32 of the *State Administrative Tribunal Act 2004* (SAT Act) to take measures that are reasonably practicable to ensure that the parties understand the nature of the assertions made and the legal implications 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.

Members have found that the directions hearing process has become an increasingly useful means by which to ensure that the parties have a proper understanding of each other's position. As reflected in **Table 4** there has been an increase in the number of matters resolved as a result of facilitation by members through the directions hearing process, while the number of matters referred to and resolved by formal mediation is fairly constant in the reporting year when compared with the previous year.

Table 4 – CC facilitated outcomes

No of Applications	2006 -07	2007 -08
Referred to mediation	114	110
Resolved in mediation	84	78
Resolved at directions	158	176
Total resolved by facilitation	242	254
Total of all matters resolved	546	549

The combined result of members' efforts during directions hearings and in the conduct of mediations is that 254 matters were resolved without the need for a final hearing through facilitative action in the Tribunal. During the reporting year 71% of the total referred to mediation were successfully resolved by that process. Further 46% of the total number of applications finalised during the reporting year were resolved as a result of facilitative action by the Tribunal.

Applications resolved by final hearing or determination on the documents

During the reporting year, the CC stream finalised 213 matters by way of a final hearing or final determination on the documents. An emphasis has been placed on providing oral reasons for decision immediately after the final hearing, or as soon as possible thereafter. It is of benefit to the parties for the result to be known without delay, and the findings made are often better understood when the matter is fresh in the minds of the parties. During the reporting year, 155 oral decisions were delivered as against 48 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 5** sets out details of these related decisions made by the CC stream during the reporting year.

Table 5 – CC related decisions

Subject of decision	No of decisions		
	2005 -06	2006 -07	2007 -08
Costs	23	6	15
Interim (Injunction)	21	26	14
Orders	13	9	9
Stay applications	11	12	12
Grant of leave to review	5	7	8
Preliminary issues	3	4	0
Joinder of parties	1	20	13
Invitation to decision-maker to reconsider			
Total	77	84	71

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 proved to be useful in some areas, such as in relation to firearm applications, or proceedings under the Local Government legislation, when circumstances which have arisen

subsequent to the original decision are likely to result in the decision-maker voluntarily changing its decision. In other areas, such as Building Dispute Tribunal reviews, the power to invite the decision-maker to reconsider has proved less effective, with one of the parties often challenging the reconsidered decision. Consequently, fewer matters are now referred back to the Building Disputes Tribunal, and that has resulted in a reduction in the number of this category of decision being made.

Costs orders

The statistics reflect that the number of cost applications increased in the reporting period. However, six of those applications, in which costs were awarded, were directly related proceedings and were heard together effectively as a single matter. In respect of the remaining nine applications, costs were awarded in three matters. It remains rare for costs to be awarded in proceedings in the CC stream.

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 Titles Referee. By the end of the 2006-07 year, all but one matter had been completed. The last outstanding matter was finalised during the reporting year.

Directions hearings and case management

All members of the CC stream participate in a process of rotation through the four directions lists conducted each week.

The directions hearings are convened within two weeks if possible, but no later than three weeks, of filing of the application. Only in special circumstances will a directions hearing be set down more than three weeks after 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 resulted in a developed system of case management. 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 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 hearing. An assessment will be made also as to the most appropriate process by which to finally resolve the matter.

The Tribunal's experience is that oral hearings are more satisfactory generally, but where appropriate, matters will be determined on the documents.

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

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 then served on the parties. The CC stream was concerned that this process gave rise to natural justice concerns. Accordingly, the Tribunal devised a new 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 informality 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 s 27 of the SAT Act, consideration may be given to new material in the course of a de novo hearing.

Benchmark performance

Table 6 sets out the performance benchmarks to which the CC stream committed as set out in the 2005-06 annual report.

Table 6 – CC performance benchmarks of number of weeks taken to finalise CC applications

Percentage of applications	No of weeks within which percentage of applications is to be finalised
30%	10 weeks
50%	16 weeks
80%	28 weeks

Table 7 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 7 – Number of weeks taken to finalise CC applications 2005-06, 2006-07 and 2007-08

Percentage of applications	Strata Titles			Local Govt (Misc) Provisions			Consumer Credit		
	Weeks			Weeks			Weeks		
	05/06	06/07	07/08	05/06	06/07	07/08	05/06	06/07	07/08
10%	3	2	2	1	2	1	2	2	2
20%	5	4	2	2	3	3	3	2	2
30%	9	5	4	3	7	8	<4	3	2
40%	13	7	5	5	9	12	<4	3	2
50%	16	10	9	9	12	15	<4	5	3
60%	20	13	11	12	17	19	5	6	4
70%	24	20	14	19	21	24	9	7	6
80%	29	25	18	26	31	31	12	8	8
90%	40	40	23	37	49	31	20	13	10
100%	60	107	101	66	95	131	43	192	32

Percentage of applications	Building Disputes Tribunal			Commercial Tenancy			Road Traffic		
	Weeks			Weeks			Weeks		
	05/06	06/07	07/08	05/06	06/07	07/08	05/06	06/07	07/08
10%	4	2	2	4	2	2	3	2	2
20%	6	6	6	5	3	4	6	2	3
30%	10	9	11	6	9	5	7	3	5
40%	14	12	13	12	11	7	8	4	6
50%	18	17	16	15	16	7	10	6	7
60%	21	23	21	19	23	10	11	8	8
70%	26	28	29	24	25	14	12	10	10
80%	29	35	45	29	34	27	13	14	13
90%	33	57	54	32	97	91	16	24	21
100%	44	169	132	50	132	103	36	58	39

Percentage of applications	Firearms		
	Weeks		
	05/06	06/07	07/08
10%	<8	2	2
20%	10	7	4
30%	13	10	5
40%	18	13	7
50%	19	14	11
60%	20	16	12
70%	21	19	19
80%	22	24	22
90%	36	48	27
100%	50	118	31

Table 8 sets out for convenience the average weeks taken in each category of matter to achieve each of the three benchmark stages, being 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, taking into account the applicable number of those matters and the average number of weeks to complete them at each benchmark stage.

Table 8 – Performance benchmarks of number of weeks taken to finalise CC applications 2007-08

Benchmark Category	30%	50%	80%
Builders Registration	11	16	45
Commercial Tenancy*	5	7	27
Consumer Credit	2	3	8
Firearms	5	11	22
Local Govt (Misc) Provisions	8	15	31
Road Traffic	5	7	13
Strata Titles	4	9	18
Weighted Average	5	10	23
Benchmark	10	16	28

* These figures exclude the *Commercial Tenancy (Retail Shops) Agreements Act 1985* s 13(7) applications which would distort the results because of the number of applications (see **Table 3**) nearly all of which are completed in less than 4 weeks.

The overall benchmark has been bettered during the reporting year and also reflects an improvement over the weighted average for the 2005-06 year which was 6, 10 and 24 weeks at the 30%, 50% and 80% stages, respectively.

In all categories, the time taken to complete the 80% stage was equal to, or better than, that achieved in the previous year, except in the case of review of decisions of the Building Disputes Tribunal under the *Builders Registration Act 1939*. Applications under the Local Government legislation took slightly longer to complete at the

30% and 50% stages than in the previous year, being 7 and 12 weeks respectively as compared to 8 and 15 weeks in the reporting year.

As reported in the 2006-07 annual report, local government matters are taking longer to complete as a result of procedures which have been adopted for the convenience of the parties. This procedure, which is controlled through the directions hearing process, enables the parties, under guidance of the Tribunal, to obtain expert engineering or building consultants' reports to establish compliance with building codes or other requirements, without

being subject to the time constraints imposed by a fixed hearing date. In the building climate which prevailed during most of the reporting year, the time to procure expert reports could not be accurately forecast. Consequently, there have been delays. Steps will be taken in the ensuing year to limit the time as much as possible for any necessary steps in order to achieve the benchmark in this category.

In relation to Building Disputes Tribunal reviews, the time taken to reach the 30% stage compared to the previous year has stretched from 9 weeks to 11 weeks, whereas the time to reach the 50% stage has contracted by one week. The delay at the 30% stage is likely to be attributable to delays in the provision of transcripts and reasons for decision by the Building Disputes Tribunal generally. It appears that the chairpersons presiding over hearings of the Building Disputes Tribunal are making an effort to provide reasons for decision as soon as possible. Quite frequently the Registrar of the Building Disputes Tribunal will write to advise when some delay is anticipated, and that is of considerable assistance to the Tribunal in allocating dates for directions hearings. Nevertheless, there are some matters in which considerable delay continues to be experienced.

An analysis of matters completed between the benchmark 28 weeks for completion of 80% of matters and the 45 weeks actually taken, reflects that delay in provision of reasons for decisions and transcripts of evidence is a contributing factor to the delay in completing Building Disputes Tribunal reviews. The most significant cause appears to be the Tribunal's use of s 31 of the SAT Act to invite the Building Disputes Tribunal to reconsider a decision. That inevitably means that no matter how efficiently the Building Disputes Tribunal might deal with the

matter, some time will pass before further reasons for decision are provided. As reported above, experience has shown that usually referral back does not resolve the matter. Usually one of the parties will wish to challenge any revised decision. For that reason, the Tribunal will be inclined in future to make a final determination on any issue of principle, and then refer the matter back to the Building Disputes Tribunal with directions relating to any issues which the Building Disputes Tribunal must determine. There will, of course, be cases when this procedure cannot be followed and when a full hearing on all issues must be conducted by the Tribunal. It is expected that the avoidance of referrals under s 31, together with a conscious tightening up of the timeframe for completion of necessary steps will lead to an improvement in the completion time. But in all cases, the time to completion will also depend on the timely provision of reasons for decision and transcripts of evidence from the Building Disputes Tribunal.



During the last reporting year, it was identified that attention needed to be given to commercial tenancy applications which were showing a tendency to move away from the benchmark, with time taken to complete being 9, 16 and 34 weeks at the 30%, 50% and 80% stages respectively.

During the reporting year, members have made a conscious effort to keep parties to a tighter timetable and that has resulted in a significantly better performance, well below the benchmark at each stage, as reflected in **Table 8**. The time-frame within which strata matters are being finalised has also improved each year. The completion of 80% of all matters within 18 weeks during the reporting year is an excellent result.

As **Table 3** reflects, the source of the CC stream's work comes from a wide range of enabling Acts. Because there may be very few applications made under some legislation, the performance benchmarks are based on the areas in which there is a higher volume of applications. Nevertheless, in comparing the time taken to complete all applications, there has been a 20% improvement in the reporting year compared to the previous year. The time taken to complete all applications in the 2005-06 year was an average of 40 days as compared to 32 days in the year under review. Those applications include the s 13(7) retail shops applications, but as there is no change in the procedure and time taken to complete those applications, that is a neutral factor, and the improvement is in the areas of jurisdiction in which CC members are fully engaged.

The overall performance of the CC stream reflects the successful manner in which outcomes have been facilitated through the directions hearing process and through mediation. While the delivery of oral decisions has contributed to the performance of the CC stream, the number of oral decisions has not increased compared to the previous year and is therefore not a factor in the improved performance during the reporting year.

Publications

During the reporting year, a pamphlet was prepared to assist parties in understanding the Tribunal's procedures in dealing with applications to review decisions of the Building Disputes Tribunal.

The pamphlet is written in plain english and provides a clear explanation of the applicable procedures and the criteria upon which leave is granted. It also explains clearly the procedures followed in a review hearing, if leave has been granted, or if the leave application and the review are to be heard together. The pamphlet has been printed and a supply of copies has been provided to the Building Disputes Tribunal for provision to parties making inquiry about review rights. Copies will also be provided to parties making such inquiries of the Tribunal, or when requests are received for the applicable application forms.

Areas for reform

As reported in the annual report for the previous year, the Attorney General has consented to amendments to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* to enable the Tribunal to entertain equitable claims and defences in commercial tenancy disputes. At the close of the previous reporting year, Parliamentary Counsel had been instructed to address the necessary changes. Those changes were incorporated in the *Acts Amendment (Justice) Act 2008* which was given royal assent on 31 March 2008 but which provides that the relevant sections, pertaining to the commercial tenancy legislation, as well as other sections, will come into effect on a date to be proclaimed, and that has yet to occur.

Proposed amendments to the *Strata Titles Act 1985*, as referred to in the

annual report for the previous year, have not been carried into effect, although, as previously reported, instructions have been given to Parliamentary Counsel. It is unfortunate that specific amendments which were recommended appear to have been caught up in wider ranging amendments proposed through the Community Titles Advisory Committee.

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.

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 law, administrative law, environmental law, 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.

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.



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

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*, the review of decisions under the Local Government legislation and for rental reviews under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. A sessional member also determines applications made under s 13 of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. The opportunity has also been taken during the reporting year to use sessional members in relation to building and engineering issues concerning a strata title development. 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*.



Professional development of members

During the year, members of the CC stream participated in a number of professional development sessions the details of which appear in **Appendix 2**.

SAT Decisions of interest

The following reflect some of the more significant decisions made by the CC stream during the reporting year:

Formstar Holdings Pty Ltd and Top Notch Roofing Pty Ltd [2007] WASAT 208 (McNab M). In this matter, the Tribunal reviewed the law relating to whether premises were used wholly or predominantly for the carrying on of a business involving the sale of goods by retail, in order to determine whether an automotive service workshop is a retail shop under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. The Tribunal concluded that the principal issue was the true characterisation of the business, and that regard had to be had to, amongst other things, the most conspicuous or effective portion of the use to which the premises were put. The Tribunal concluded that the predominant and true use of the premises was for the servicing of motor vehicles. To the extent that the supply of spare parts could be characterised as a retail sale, that was as a consequence of the service function offered by the applicant. The Tribunal held that the premises did not constitute a retail shop under the legislation.

KBE Contracting Pty Ltd and Mawer [2007] WASAT 210 (Raymond SM and Hawkins M). Leave having been granted on limited grounds, the Tribunal reviewed a decision of the Building Disputes Tribunal. The decision is of note insofar as the Tribunal held that, because it stood in the same position in the appellate

hierarchy as that previously occupied by the District Court, the Tribunal was not bound by previous decisions of the District Court in relation to decisions of the Building Disputes Tribunal made under the *Home Building Contracts Act 1991* or the *Building Registration Act 1939*. The Tribunal concluded that an earlier decision of the District Court in which it held that the Building Disputes Tribunal did not have power to award damages for stress and convenience was clearly wrong. The Building Disputes Tribunal had erred because it was bound to follow the earlier decision of the District Court and had failed to do so. However, as the Tribunal had found that the District Court's decision was wrong, the review was dismissed in respect of this issue.

***Berry-Porter and Commissioner of Police* [2007] WASAT 212** (Hawkins M). The Tribunal had to determine whether the genuine need requirement for the grant of a handgun licence had been met. The applicant contended that he had a genuine need because the handgun was required to humanely destroy wild dogs, and was more suitable than a rifle, having regard to the nature of the terrain in which the work was conducted. The Tribunal concluded that in the context of the legislation, the *Firearms Regulations 1974* precluded a genuine need being established if a handgun is required for destroying stock or vermin, and that that need not be the sole purpose of the use of the handgun. The Tribunal was also not satisfied that the difficulty of carrying a rifle in remote areas was, of itself, sufficient to establish a genuine reason for a handgun licence. The decision of the Commission was affirmed.

***Rainbow Pty Ltd and Hawkins* [2007] WASAT 216** (Raymond SM and Hawkins M). The Tribunal found that s 34A of the *Builders Registration Act*

1939 which required that a complaint or application made to the Building Disputes Tribunal shall be accompanied by a prescribed fee did not affect the validity of the application if not accompanied by the prescribed fee.

***Westcourt Ltd and French* [2007] WASAT 220** (Raymond SM and McNab M). The Tribunal held that the Building Disputes Tribunal had erred in not taking into consideration a calderbank offer when considering an application for costs. However, after taking the calderbank offer into account, the Tribunal came to the same conclusion as the Building Disputes Tribunal that no costs be awarded in the circumstances of the case, and the application for review was dismissed.

***Maraldi and City of Rockingham* [2007] WASAT 225** (McNab M). Review was sought of a decision by the local authority to grant a building licence subject to a condition that the applicant consent to a notification being registered on the title of the land pursuant to s 70A of the *Transfer of Land Act 1893*. The Tribunal concluded that the attempt to achieve, indirectly, a land use buffer (or amelioration of future land use conflict) involving a neighbouring property by way of a notation on title had little, if any, connection with the statutory building regulation scheme and the matters governed by it. The application for review was allowed and substituted with a decision not to impose the condition in question.

***Foley and Registrar of Births Deaths and Marriages* [2007] WASAT 300** (Chaney J, DP). The applicant, a historian, applied for unrestricted access to portions of the Register of Births, Deaths and Marriages. The Tribunal held that the subject matter of the review was the exercise of the discretion under s 54 of the *Births*

Deaths and Marriages Registration Act 1998 and that the Tribunal had no jurisdiction to review a decision by the Director of State Records concerning access to archives under the *State Records Act 2000*. Further, where the *Births Deaths and Marriages Registration Act 1998* provides a particular regime in relation to access, governed by underlying principles of the preservation of privacy and the avoidance of disclosure of sensitive information, those access provisions take precedence. The application was accordingly dismissed.

Origin Energy Power Limited and Commissioner of State Revenue [2007] WASAT 302 (Barker J, P). The applicant had acquired all the shares in a company that held a 50% interest in a joint venture which owned and operated a co-generation plant which produced electricity and steam. The Commissioner of State Revenue imposed stamp duty on the sale of the shares on the ground that 80% or more of the property to which the company was entitled was land within Western Australia. A 100% penalty tax was also imposed. The Tribunal concluded that the co-generation plant was a fixture, but that it did not confer an equitable interest in the land on the company. Consequently, the value of the land was not to be included in the calculation of the value of the property owned by the company. The Tribunal also found that the licence under which the joint venture constructed and operated the co-generation plant was indeed a licence, and did not constitute a sublease and therefore an interest in the land for the purposes of s 76(1) of the *Stamp Act 1921*. Accordingly, the value of the land was not to be included in the calculation of the value of the property owned by the company. The application was therefore allowed and the decision of the Commissioner was set aside.

Silent Vector Pty Ltd t/as Sizer Builders and Squarcini [2008] WASAT 39 (Raymond SM, Pinder SSessM). The Tribunal found that an adjudicator appointed under the *Construction Contracts Act 2004* had erred insofar as he had dismissed the entire application because parts of it had been included in a previous payment claim in respect of which a payment dispute, as defined under the legislation, had arisen more than 28 days prior to the making of the adjudication application. The Tribunal also concluded that the adjudicator had erred in dismissing the application on the grounds of complexity. The Tribunal highlighted the risk of an applicant applying for adjudication without carefully formulating its claims and cross-referencing to the relevant documentation. At the same time, the Tribunal cautioned that adjudicators should not too readily conclude that a claim should be dismissed on the grounds of complexity.

Aintree Holdings Pty Ltd and Commissioner of State Revenue [2008] WASAT 62 (Barker J, P). The Tribunal dismissed an application to review a decision of the Commissioner of State Revenue to assess payments made to consultants as wages subject to payroll tax under the *Payroll Tax Assessment Act 1971* and the *Payroll Assessment Act 2002*. The Tribunal set out the criteria to be applied in determining whether or not a person was engaged as an independent contractor or as an employee. On a proper analysis of the facts and an application of the stated criteria, the Tribunal concluded that the persons employed by the applicants were not consultants, but employees.

Interim Advance Corporation Pty Ltd and Commissioner for Consumer Protection [2008] WASAT 81 (Carey M, Macri SSessM, Colley SSessM).

The applicant applied for the review of a decision refusing the applicant a credit provider's licence under the *Credit (Administration) Act 1984*. The Tribunal concluded that individually and in aggregate, various findings reflecting adversely on the credit of the director in Court proceedings and before the Finance Brokers Supervisory Board, led to the conclusion that the applicant's director would not be a fit and proper person to hold a credit provider's licence if he were applying for it. In particular, the Tribunal found that the provisions of the *Spent Convictions Act 1998* did not prevent the Tribunal from taking into account the Magistrate's findings on credit in those proceedings.

Gill and Wildnight Pty Ltd [2008] WASAT 84 (de Villiers M). In this matter, a number of questions arising under a retail shop lease required determination. The Tribunal found that an alteration made to an operating statement did not provide sufficient detail of any material change in the total lettable area as required by s 12(1a)(b) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. Consequently, an area formerly let as a bakery was not part of the common area and was to be treated as part of the lettable area for the purposes of calculating the proportion of operating expenses payable by the tenant. The Tribunal also determined that certain costs claimed to be for the repair of air conditioning units were to be treated as capital expenses for the replacement of the units which were damaged in a fire. The Tribunal found that a written operating statement for the accounting period 2004-05 provided to the applicants by the respondent complied with s 12(1a)(c) of the legislation, although an itemised account was only given of 10 months of the accounting period. Consequently, the applicants were only required to contribute to

those itemised expenditures and were entitled to be refunded any contribution they may have made that could not be substantiated by an itemised account.

Moroney and Murray River North Pty Ltd [2008] WASAT 111 (de Villiers M). This was an application for the review of a decision of an adjudicator under the *Construction Contracts Act 2004* following the provision of further reasons for decision by the adjudicator provided under s 31 of the SAT Act. The Tribunal found that the adjudicator had erred in a number of respects. The adjudicator had failed to apply the implied terms incorporated by operation of the *Construction Contracts Act 2004*, in particular, in relation to the time within which a payment claim was payable, which led the adjudicator to find that the payment dispute had arisen at an earlier date than was, in fact, the case. The implied terms required a notice of dispute to be given in writing but the adjudicator had acted on an oral advice of dispute. As a result the adjudicator had wrongly found that the application for adjudication was commenced later than the prescribed 28 day period allowed from the date on which the payment dispute arose. The adjudicator had also erred in failing to consider all of the grounds set out under s 31(2)(a) of the *Construction Contracts Act 2004*. The Tribunal considered each of the other grounds and concluded that none required the application to be dismissed. Finally, the Tribunal rejected an argument by the respondent that because the proceedings in the Tribunal had become protracted and complex, the application should be dismissed. The decision under review was accordingly set aside and a decision substituted that no grounds existed under s 31(2)(a) of the *Construction Contracts Act 2004* for dismissal of the application. The matter was referred

back to the adjudicator for a determination of the merits.

Dawson and City of Fremantle [2008] WASAT 125 (McNab M). In this matter, the Tribunal set aside a decision by the local authority to issue a demolition order under s 409A of the *Local Government (Miscellaneous Provisions) Act 1960*. In the course of the decision, the Tribunal referred to various authorities in other jurisdictions as a guide to the criteria which should be applied to the exercise of a discretion in relation to reviewing a decision to issue a demolition order. Having regard to those principles and the accepted principle of proportionality, the Tribunal concluded that the public interest would not be furthered by demolition.

Pearce and Germain [2007] WASAT 291 (S) (Chaney J, DP). The Tribunal examined the principles which apply in relation to the costs of proceedings under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*. In doing so, the Tribunal disagreed with aspects of the approach taken to applications for costs under that Act in some earlier decisions of the Tribunal.

The Tribunal held that where it is necessary for a party to a retail shop lease to take proceedings in the Tribunal to vindicate its clear contractual entitlements, and to incur costs in doing so, it will often not be unreasonable for an award of costs to be made. Further, this was also so where costs are incurred in defending an obviously unmeritorious claim. Where, however, there is a genuine dispute between the parties to a lease, their respective rights are unclear and one or both seek determination of their rights in the Tribunal, the starting point remains that each party should expect to pay their own costs. That should be so unless there are circumstances such as where a party has conducted itself

unreasonably or inappropriately, particularly where that conduct gives rise to unnecessary costs being incurred by the other party.

The Tribunal considered the significance and effect of a clause, in the lease the subject of the dispute, which required payment by a lessee of costs and expenses of the lessor resulting from a default under the lease. In the particular circumstances of this case, the Tribunal considered that the existence of that clause was a relevant factor to be taken into account in exercising a discretion in relation to costs. The Tribunal also considered claims that the lessees had acted unreasonably or inappropriately in the conduct of the proceedings, but considered that the lessees' conduct did not provide a basis for an order for costs being made against the lessees.

Having regard to the provisions in the lease, the Tribunal made an order that the lessees pay so much of the lessor's costs as related to the lessees' breach of the lease.

All of the decisions published by the CC stream 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.

Appeals to Supreme Court (including Court of Appeal) in CC matters

Commissioner of State Revenue v Pinesales Pty Ltd [2007] WASCA 142. The appeal was dismissed by the Court of Appeal which agreed with the Tribunal's findings that no 'matter' within the meaning of s 20 of the *Stamp Act 1921* in an original contract between Pinesales Pty Ltd and the other party thereto would be carried into effect. Further, that Pinesales Pty Ltd had not received or would not receive any benefit in respect of the

matter included in the original contract, and that the reason that the matter included in the original contract had not been, and would not be, carried into effect was not merely to enable a replacement transaction to be entered into.

***Benstead v Clarke* [2007] WASC 219.**

The Supreme Court dismissed the appeal. The appeal raised whether or not the Tribunal had erred in its findings as to the construction and effect of a resolution passed by a strata company. Leave to appeal was refused in respect of the construction issue because that did not constitute a question of law, and in any event, on the basis that the Court held that the ground lacked sufficient merit. The Court concluded that the resolution had been properly construed.

***Radford v The Owners of Miami Apartments, Kings Park Strata Plan 45236* [2007] WASC 250.**

The Supreme Court dismissed this appeal. The appeal raised whether or not the Tribunal had power to set aside particular bylaws based on matters of a contractual or equitable character, having regard to s 93(3)(b) of the *Strata Titles Act 1985*. This provision enabled such an order to be made if a bylaw was not made in accordance with the legislation, the regulations or any other requirement that ought to have been observed. A further issue raised was whether or not only a proprietor at the date of the vote or decision to make the bylaw could seek relief. The Court concluded that matters of a contractual or equitable nature could be taken into account contrary to the decision of the Tribunal. However, there was no contractual or equitable matter which had any application. The Court further agreed with the Tribunal that only a proprietor at the time of the vote or decision to pass the bylaws could apply for relief.

***Abbey Beach Resort Management Ltd v Water Corporation Ltd* [2007] WASC 268.** The Supreme Court dismissed the appeal and concluded that the Tribunal was not in error in finding that certain strata units were not used as residential land within the meaning of the *Water Agencies (Charges) Bylaws 1987*, and similarly that the units were properly classified as 'country Commercial/Industrial property'.

***Frost v Shire of Kalamunda* [2007] WASC 322.**

The Supreme Court dismissed the appeal affirming the order by the Tribunal to cause a dangerous dog to be destroyed. The Court rejected argument that the appellant had been denied procedural fairness.

***Westpac Custodian Nominees Ltd v Commissioner of State Revenue* [2008] WASCA 18.**

The Court of Appeal upheld the appeal. The Court concluded that the Tribunal had erred in finding that shares in a listed company that were 'stapled' with units in a listed trust were to be regarded as not constituting unlisted securities for the purposes of the *Stamp Act 1921*, and were accordingly not assessable to duty upon their conveyance.

***Commissioner of State Revenue v Artistic Pty Ltd* [2008] WASCA 24.**

The Court of Appeal dismissed the appeal. The Court rejected contentions that the Tribunal had erred by refusing an order for the production of all general ledger accounts pertaining to the relevant companies for a specific period. Further, the Court of Appeal held that the Tribunal had not denied the appellant natural justice by denying him the opportunity of presenting his case properly. The Court found that the course taken by the Tribunal was entirely consistent with its main objectives.

***Commissioner of State Revenue v Serana Pty Ltd* [2008] WASCA 82.**

The Court of Appeal dismissed the appeal. The Court rejected the Commissioner's contentions and upheld the decision of the Tribunal that

only nominal duty was assessable under the *Stamp Act 1921* in circumstances in which the deed did not transfer a beneficial interest in the trust property.

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, local government non-planning approvals, fisheries, water, rating, land valuation, land tax, soil and land conservation, compensation for compulsory acquisition of land and related matters under 43 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 finalised

In 2007-08, the DR stream received 466 applications (eight fewer than in the previous reporting year) and finalised 490 applications (9 more than in the previous reporting year). As in previous reporting years, in 2007-08 the DR stream finalised a greater number of applications than the number of applications that were received. The



number of applications received and finalised in 2007-08 shows that the significant increase of almost 30% in the workload of the stream between 2005-06 and 2006-07 has been sustained. As in previous reporting years, the vast majority of the work of the stream involved the review of decisions of State and local government authorities in relation to town planning (development and subdivision) applications, which accounted for 83% of applications received and

81% of applications finalised. The next largest categories of work involved review of local government decisions to give notices to land owners and developers, which accounted for 6% of applications received and 5% of applications finalised, and land tax matters, which accounted for 3% of applications received and 2% of applications finalised. All other categories of work accounted for 2% or less of applications received and finalised.

Table 9 sets out details of the DR applications received and the DR applications finalised during the reporting year in comparison to the previous two reporting years.

Table 9 – DR applications received and finalised 2005-06, 2006-07 and 2007-08

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	No. rec'd 07-08	% rec'd 07-08	No. fin'd 07-08	% fin'd 07-08
Development	220	60%	199	53%	302	64%	295	61%	278	60%	292	60%
Subdivision	94	26%	108	29%	82	17%	90	19%	108	23%	106	22%
Local government notices	25	7%	26	7%	21	4%	35	7%	27	6%	24	5%
Compensation for compulsory acquisition of land	5	1%	5	1%	10	2%	2	<0.5%	4	1%	9	2%
Local government non-planning approvals	5	1%	5	1%	22	5%	21	4%	7	2%	9	2%
Rating	4	<1%	8	2%	2	<0.5%	2	<0.5%	4	1%	3	1%
Fisheries	3	<1%	12	3%	1	<0.5%	1	<0.5%	4	1%	2	<0.5%
Land valuation	3	<1%	4	1%	2	<0.5%	5	1%	6	1%	6	2%
Review by President of determination of non-legally qualified member in planning matter	3	<1%	4	1%	8	2%	8	2%	7	2%	8	2%
Water	2	<1%	1	<1%	6	1%	4	<1%	6	1%	9	2%
Land tax	1	<1%	2	<1%	6	1%	6	1%	12	3%	10	2%
Disqualification of local government councillor	1	<1%	1	<1%	1	<0.5%	0	---	0	---	1	<0.5%
Review or rejection of application by Executive Officer	1	<1%	1	<1%	0	---	0	---	0	---	0	---
Review of order of Minister for Planning that local government pay another local government's costs	0	---	1	<1%	0	---	0	---	0	---	0	---
Ministerial referral of representations for report and recommendations	0	---	2	<1%	0	---	1	<0.5%	2	<0.5%	0	---
Jetty	0	---	0	---	8	2%	4	<1%	0	---	8	2%
Soil and land conservation	0	---	0	---	0	---	4	<1%	0	---	0	---
Local government requirement as to specifications for roads or waterways	0	---	0	---	3	<1%	3	<1%	0	---	0	---
Aboriginal heritage	0	---	0	---	0	---	0	---	1	<0.5%	1	<0.5%
Whether land injuriously affected	0	---	0	---	0	---	0	---	1	<0.5%	1	<0.5%
Total	367	100%	379	100%	474	100%	481	100%	466	100%	490	100%

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 documents, with a consequent win/loss Tribunal-imposed decision. Facilitative dispute resolution principally involves active case management, mediations and compulsory conferences. Active case management includes the identification and determination of preliminary issues that could obviate the need for a full hearing or determination on documents and the identification of appropriate cases in which to invite an original decision-maker to reconsider its decision under s 31 of the *State Administrative Tribunal Act 2004* (SAT Act).

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. During the reporting year, the DR stream experienced even greater success in facilitative dispute resolution than in previous reporting years. Whereas during the previous

two reporting years up to 64% of applications in the DR stream were resolved through facilitative dispute resolution, in 2007-08 this percentage increased to approximately 75% across the stream, and to 76% in relation to town planning and local government notice applications which together make up almost 90% of the work of the stream.

Senior Member David Parry explained the processes of facilitative dispute resolution in an article entitled 'A cultural change – The use of facilitative dispute resolution in the State Administrative Tribunal of Western Australia', which was published in the November 2007 issue of *Brief* (Vol. 34 No. 10 p 23).

Table 10 compares the performance of the DR stream in relation to the proportion of town planning and local government notice applications that required a final hearing or determination on documents in the reporting year with its performance in the previous two reporting years and with the performance of the former Town Planning Appeal Tribunal (TPAT) during its final 12 months of operation in 2004.

Table 10 – Town planning and local government notice applications resolved by final hearing or determination on documents in DR stream 2005-06, 2006-07 and 2007-08 and in TPAT in 2004

Type of application	No. (%) TPAT applications resolved by final hearing 2004	No. (%) DR applications resolved by final hearing or on documents 2005-06	No. (%) DR applications resolved by final hearing or on documents 2006-07	No. (%) DR applications resolved by final hearing or on documents 2007-08
Development	145 (68%)	80 (40%)	109 (37%)	74 (25%)
Subdivision	32 (32%)	27 (25%)	27 (32%)	27 (25%)
Local government notices	8 (67%)	6 (23%)	8 (23%)	1 (4%)
Total	185 (57%)	113 (34%)	144 (34%)	102 (24%)

Table 10 reflects the significant and increasing success of the DR stream in facilitative dispute resolution in comparison with its performance in the two previous reporting years and in comparison with performance of the former adjudicator. While the number of development, subdivision and local government notice applications that were finalised increased marginally between 2006-07 and 2007-08, proportionately about 28% less of these applications required a final hearing or determination on documents in the reporting year than in the previous reporting year. In comparison with the former adjudicator, proportionately almost 60% less applications required a final hearing or determination on documents in the DR stream. The most significant improvement in comparison with the former adjudicator was in relation to development applications where proportionately about 63% less applications required a final hearing or determination on documents in the DR stream than was the case before the former adjudicator.

Applications resolved by final hearings or determination on the documents

During the reporting year, the DR stream resolved 123 applications by final hearing or determination on documents (approximately 25% of all applications finalised). During the previous reporting year, the DR stream resolved 174 applications by final hearing or determination on documents (approximately 36% of all applications finalised).

The proportion of applications that required finalisation by hearing or determination on documents therefore decreased from 36% to 25% between 2006-07 and 2007-08.

This reduction was the consequence of the increase in DR applications finalised through facilitative dispute resolution (active case management, mediations and compulsory conferences) from about 64% to about 75%.

Table 11 sets out details of the applications resolved by final hearing or determination on documents during the reporting year in comparison to the two previous reporting years. It also indicates what percentage of the number of applications in each category was determined on documents without the need for an oral hearing.

Table 11 – DR applications resolved by final hearing or determination on documents 2005-06, 2006-07 and 2007-08

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. 07-08	% 07-08	No. on docs 07-08	% on docs 07-08
Development	80	57%	17	21%	109	63%	30	28%	74	60%	29	39%
Subdivision	27	19%	8	30%	27	16%	6	22%	27	22%	5	19%
Fisheries	8	6%	1	12.5%	0	---	0	---	0	---	0	---
Local government notices	6	4%	5	83%	8	5%	3	37.5%	1	<1%	0	---
Rating	5	4%	0	---	1	<1%	1	100%	0	---	0	---
Land valuation	4	3%	0	---	3	2%	1	33%	5	4%	0	---
Review by President of determination of non-legally qualified member in planning matters	4	3%	4	100%	8	5%	8	100%	8	6%	8	100%
Land tax	2	1%	0	---	6	4%	3	50%	1	<1%	1	100%
Ministerial referral of representations for report and recommendations	2	1%	0	---	1	<1%	0	---	0	---	0	---
Local government non-planning approvals	1	<1%	1	100%	4	2%	0	---	3	2%	2	67%
Water	1	<1%	0	---	0	---	0	---	0	---	0	---
Compensation for compulsory acquisition	0	---	0	---	2	1%	0	---	1	<1%	0	---
Soil and land conservation	0	---	0	---	4	2%	0	---	0	---	0	---
Jetty	0	---	0	---	1	<1%	0	---	1	<1%	0	---
Disqualification of local government councillor	0	---	0	---	0	---	0	---	1	<1%	1	100%
Whether land injuriously affected	0	---	0	---	0	---	0	---	1	<1%	0	---
Total	140	100%	36	26%	174	100%	52	30%	123	100%	46	37%

Written reasons were produced for 123 of the 124 applications resolved by final hearing or determination on documents during the reporting year. In eight cases (seven 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 one case involving development, oral reasons were given for the decision at the conclusion of the hearing and written reasons were not subsequently produced.

Written reasons for non-final decisions

In addition, during the reporting year, the DR stream published 31 written reasons for decision which were not final decisions. Five development applications and one fisheries application were finally determined by being dismissed in direct consequence of a preliminary decision. One referral of representations by the Minister for Planning and Infrastructure to the Tribunal for report and recommendations was also finalised in

consequence of a preliminary decision. As this finalisation was not recorded in the ICMS computer system during the reporting year, it is not reflected in **Table 9**. It will be included as a finalised application in the equivalent table in the 2008-09 annual report.

Table 12 sets out details of non-final written decisions published by the DR stream during the reporting year in comparison to the two previous reporting years. It also indicates what percentage of the number of decisions in each category was determined on documents without the need for an oral hearing. **Table 12** does not include non-final decisions for which only oral reasons were given.

Table 12 – Written reasons for DR non-final decisions 2005-06, 2006-07 and 2007-08

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. 07-08	% all written 07-08	No. on docs 07-08	% on docs 07-08
Preliminary issue – town planning	5	3%	5	100%	11	6%	10	91%	15	10%	13	87%
Costs	4	3%	1	25%	4	2%	3	75%	4	3%	4	100%
Joinder/leave to make submissions/ intervention	3	2%	1	33%	2	1%	1	50%	6	4%	1	17%
Extension of time to commence proceedings	3	2%	0	---	0	---	0	---	1	<1%	1	100%
Preliminary issue – soil and land conservation	1	<1%	0	---	0	---	0	---	0	---	0	---
Leave to amend plans	1	<1%	1	100%	1	<1%	0	---	0	---	0	---
Exclusion of documents	1	<1%	1	100%	1	<1%	0	---	0	---	0	---
Preliminary issue - jetty	0	---	0	---	1	<1%	1	100%	0	---	0	---
Interlocutory injunction	0	---	0	---	1	<1%	1	100%	0	---	0	---
Assessment of costs	0	---	0	---	0	---	0	---	1	<1%	1	100%
Preliminary issue – fisheries	0	---	0	---	0	---	0	---	1	<1%	1	100%
Stay pending Supreme Court proceedings or appeal	0	---	0	---	0	---	0	---	2	1%	2	100%
Preliminary issue – Ministerial referral of representations for report and recommendations	0	---	0	---	0	---	0	---	1	<1%	1	100%
Total	18	11%	9	50%	21	11%	16	76%	31	20%	24	77%

Tables 11 and 12 show the following changes between the reporting year and the previous two reporting years:

- The number of applications that required a final hearing or determination on documents fell by 51 from 174 to 123 between 2006-07 and 2007-08, although the numbers of applications received and finalised were similar, reflecting success in facilitative dispute resolution (active case management, mediations and compulsory conferences; see above), and identification and determination of preliminary issues that obviate the need for a final hearing or determination on documents.
- The number of non-final written decisions increased by 10 (48%) including four (36%) additional preliminary issues in town planning applications.
- The proportion of all written decisions which involved a determination entirely on documents without the need for an oral hearing increased from approximately 28% (2005-06) to 35% (2006-07) to 45% (2007-08).

- The proportion of all final decisions which resulted from a determination on documents without the need for an oral hearing increased from approximately 26% (2005-06) to 30% (2006-07) to 37% (2007-08).
- The proportion of all final decisions which resulted from a determination on documents without the need for an oral hearing increased in development applications from approximately 21% (2005-06) to 28% (2006-07) to 39% (2007-08) and fell in subdivision applications from approximately 30% (2005-06) to 22% (2006-07) to 19% (2007-08).

Legacy matters

As at 30 June 2008, there was one outstanding legacy matter, which involves a subdivision application that cannot be finalised because the proposal is still the subject of environmental assessment under the *Environmental Protection Act 1986* (WA) – see Areas for reform below.

Directions hearings

All applications in the DR stream are listed for an initial directions hearing before a member within two to three weeks of filing and are then 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 involve 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

Mediations and compulsory conferences are used extensively and successfully in the DR stream to resolve applications and to identify and narrow contested issues.

As noted earlier, in the reporting year, approximately 75% of all applications in the DR stream and approximately 76% of applications in the core areas of town planning and local government notices were resolved through facilitative dispute resolution, principally involving active case management, mediations and compulsory conferences, without the need for a final hearing or determination on documents.

During the reporting year, the DR stream continued the practice in appropriate cases of inviting the Mayor or President of the relevant local government authority to attend or to nominate one or more councillors

and/or the chief executive officer of the local government to attend the mediation. The Tribunal has found that participation by councillors in mediation can be very useful in articulating concerns and formulating solutions in relation to planning applications and in facilitating effective communications.

During the reporting year, the DR stream conducted many on site mediations, including in regional locations.

Final hearings and determinations on the documents

Planning applications involving developments with a value of less than \$250,000 or \$500,000 in the case of a single house and 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* (WA) s 238(3) and s 238(4).

In the 2005-06 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. This suggestion was adopted by the Parliament during the reporting year by the enactment of Part 18 of the *Acts Amendment (Justice) Act 2008* which is expected to commence on 30 September 2008.

Land tax applications must be determined by a panel including a judicial member or a legally-qualified senior member. Certain land compensation applications must be determined by a panel comprising a judicial member or a legally-qualified

senior member and an assessor appointed by each party – see Areas for reform below.

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.



Member Jim Jordan conducting a site view during a regional hearing

Hearings routinely take place in regional locations, usually in the local court house or, with the consent of the applicant, at the Shire office.

As noted earlier, the DR stream has had to increasingly rely on sessional members in order to meet its workload in a timely manner. The proportion of all town planning (development and subdivision) final hearings/determinations on documents conducted by sessional members increased from approximately 22% (2005-06) to 40% (2006-07) to 50% (2007-08). The proportion of all town planning final hearings/ determinations on documents conducted by or involving sessional members on panels increased from approximately 22% (2005-06) to 51% (2006-07) to 60% (2007-08).

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 usually give evidence concurrently at the hearing. In previous annual reports for the Tribunal it was noted that experience indicated that the practice of expert conferral and concurrent evidence significantly reduces the length of hearings and greatly assists members to make the correct and preferable decision. During the reporting year, of the 77 oral hearings conducted in the DR stream, 56 (73%) were completed in one day or

less, 13 (17%) were completed in two days or less, four (5%) were completed in three days or less, one (1%) took four days, two (3%) took place concurrently over six days and one (1%) took seven days.

See also an article by Senior Member David Parry "Maximum value with minimum cost – Developments in the use of expert evidence in the State Administrative Tribunal of Western Australia" February 2008 issue of *Brief* (Vol. 35 No. 1 p 125).

Benchmark performance

Performance benchmarks for the finalisation of applications in the DR stream were established and published in the Tribunal's 2005-06 annual report.

Table 13 sets out the number of weeks taken to finalise applications in the DR stream overall and in specific areas in 2005-06, 2006-07 and 2007-08 in comparison to the benchmarks.

Table 13 – Number of weeks taken to finalise DR applications 2005-06, 2006-07 and 2007-08 in comparison to benchmarks

Benchmark		DR stream			Development			Subdivision			Local government notices			Local government non-planning approvals			Other		
% apps	Wks	05-06	06-07	07-08	05-06	06-07	07-08	05-06	06-07	07-08	05-06	06-07	07-08	05-06	06-07	07-08	05-06	06-07	07-08
30%	12	14	14	11	12	14	12	15	16	8	12	19	3	18	5	9	17	10	14
50%	20	22	21	17	20	19	18	23	24	13	18	42	12	27	10	16	26	16	19
80%	30/ 45*	31/ 49	34/ 63	32/ 20	30	31	32	31	46	29	49	63	20	44	16	28	28	32	45

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

Table 13 indicates that:

- The benchmarks were substantially achieved or bettered in the reporting year across the work of the DR stream.
- In the reporting year, the DR stream substantially reduced the time taken to finalise applications in comparison with the previous reporting year.
- In the DR stream as a whole in the reporting year, 30% of applications were finalised in one week less than the benchmark, 50% of applications were finalised in three weeks less than the benchmark and 80% of

applications were finalised in two weeks more than the benchmark.

- In the DR stream as a whole in the reporting year, 30% of applications were finalised in three weeks less than the previous year, 50% of applications were finalised in four weeks less than in the previous year and 80% of applications were finalised in two weeks more than in the previous year.
- In development matters, 30% of applications were finalised within the benchmark, 50% of applications were finalised in two weeks less than the benchmark and 80% of applications were finalised in two weeks more than the benchmark. In subdivision, local government notices and local government non-planning application matters, the results were generally substantially better than the benchmarks. In other matters the benchmarks were exceeded for 30% and 80% of applications. However, these figures related to a small number of complex land compensation and land valuation matters, and a small number of jetty matters that were delayed because of related Supreme Court proceedings.
- In development matters, 30% of applications were finalised in two weeks less than the previous year, 50% of applications were finalised in one week less than in the previous year and 80% of applications were finalised in two weeks more than in the previous year. In two specific areas in which there were a substantial number of applications, namely subdivisions and local government notices, the improvements in the speed of finalisations were dramatic - by 8 weeks (30%), 11 weeks (50%) and 17 weeks (80%) for subdivision applications and by 16 weeks (30%), 30 weeks (50%) and 43 weeks (80%)

for local government notice applications.

Community relations

Appendix 2 to this report details the public presentations made by members of the DR stream during the year.

They include a series of information sessions principally for State and local government authorities whose decisions are subject to review in the stream dealing with:

- In March 2008, three metropolitan local government information sessions were held at the Tribunal's premises in Perth. These sessions were attended by over 100 local government councillors and council officers from 22 metropolitan local governments.
- In May 2008, local government information sessions were presented by video link for councillors and officers from local governments in the Avon-Midland, Kalgoorlie-Boulder and Great Southern regions. Also in May 2008, Senior Member Parry presented a local government and community information session at Broome Shire Council while in Broome to conduct a hearing.



Member Jim Jordan addressing a metropolitan local government information session

- In June 2008, an information session was held for State authorities at the Tribunal's premises in Perth. This session was attended by over 30 officers from nine State Government Departments and authorities.
- Local government information sessions are planned for councillors and council officers from local governments in other regions of the State.

Publications

During the reporting year, the Tribunal published a pamphlet entitled '*Section 31 invitation by SAT for decision-maker to reconsider its decision*' principally to assist parties in the DR stream in which the Tribunal frequently invites an original decision-maker to reconsider its decision under s 31 of the SAT Act.

The DR stream has continued to produce a monthly *DR Decisions Bulletin* containing summaries of all written reasons for decisions in the stream. The Bulletin is posted on the Tribunal's website and is emailed free of charge to anyone who subscribes through info@sat.justice.wa.gov.au. There are currently 438 email subscribers to the Bulletin.

The Tribunal also publishes on the website a consolidated *DR Decisions Summary* of all written reasons for DR decisions made since the establishment of the Tribunal. The Decisions Summary is updated every six months.

During the reporting year, the Tribunal also compiled and published on the website a *Summary of WA Town Planning Decisions 1975 - 2004* listing all 829 written decisions of the predecessors of the DR stream, namely the Town Planning Court of WA (1975 - 1979), the WA Town Planning Appeals

Tribunal (1980 - 2002) and the Town Planning Appeal Tribunal of WA (2003 - 2004).

The *Summary of WA Town Planning Decisions 1975 - 2004* is an important historical resource and complements the *DR Decisions Summary*.

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 town planning, environmental and local government administrative and judicial review matters.

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 was a lawyer with experience in local government and planning law, are allocated equally to the DR and CC streams.

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



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



**Member
Maurice Spillane**

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 50% (50 out of 101) of all town planning (development and subdivision) applications that required a final hearing or final determination on the documents. In 2006-07, sessional members, sitting on their own, determined approximately 40% (55 out of 136) of these applications and in 2005-06 they determined approximately 22% (24 out of 107) of these applications.

In addition, during the reporting year, sessional members sat as part of a panel, with one or two full-time members or with a full-time member and another sessional member, in another 11 town planning and four land valuation final hearings.

In total, during the reporting year, sessional members were involved in approximately 60% (61 out of 101) of town planning final hearings or final determinations on documents. In 2006-07, sessional members were involved in approximately 51% (69 out of 136) of these applications and in 2005-06 they were involved in approximately 22% (24 out of 107) of these applications.

Sessional members have also been increasingly involved in conducting mediations. These statistics reflect the increasing dependence of the DR stream on the use of sessional members owing to the significant increase in workload of almost 30% which occurred between 2005-06 and 2006-07 and which was sustained in 2007-08. As noted earlier, the DR stream had significant and increasing success in facilitative dispute resolution in the reporting year. As discussed above, the performance of the DR stream has improved notably during the reporting year in terms of the time taken to finalise town planning applications and generally across the work of the stream; and has substantially met or bettered the performance targets set when the workload of the stream was significantly lower. These results would not have been possible without heavy reliance on sessional members.

Need for appointment of additional full-time members

It was suggested in the 2006-07 annual report for the Tribunal that, owing to the significant increase in the workload of

the DR stream, it will become necessary to consider the appointment of further full-time members to the Tribunal for allocation principally to the DR stream (p 45; see also President's report p 1). It was suggested that the additional full-time members should ideally comprise a town planner and an architect. This need remains.

Professional development of members

During the year members of the DR stream participated in a number of professional development sessions the details of which appear in **Appendix 2**.

Staff training and education

During the reporting year, Senior Member David Parry continued to conduct and organise periodic staff training and education for Tribunal staff working in the DR area.

In July 2007, Senior Member Parry presented a seminar on the SAT Act and DR enabling Acts for Tribunal staff. In September 2007, Mr Vince McMullin of the Department for Planning and Infrastructure made a presentation to staff on the structure and work of the WA Planning Commission. In November 2007, Ms Catherine Ide, Mr Michael Hardy and Mr Craig Slarke, lawyers practicing extensively in the DR stream, made a presentation to staff on practical issues in conducting Tribunal proceedings.

In 2008, Senior Member Parry devised and developed a lunchtime seminar program for all Tribunal staff entitled SAT Basics. The following seminars were presented in this series during the reporting year:

- Overview of SAT including SAT legislation and enabling Acts by Senior Member Parry (17 March 2008);

- Communicating with parties by Senior Member Jill Toohey (5 May 2008); and
- Overview of SAT practice notes and standard orders by Senior Member Parry and Member Tim Carey.



Senior Member David Parry presenting staff education seminar on Overview of SAT including SAT legislation and enabling Acts

SAT Decisions of interest

In 2007–08, 36 DR decisions were reported in the State Reports of Western Australia (LBC), which is an increase of 18 over 2006–07. One DR decision was also reported in 2007-08 in the Local Government and Environmental Reports of Australia (LBC).

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

Oceaneer Fisheries Pty Ltd and Hon Jon Ford MLC, Minister for Fisheries [2007] WASAT 184 (Barker J, P). In 1994, the Minister for Fisheries determined the Shark Bay Snapper Management Plan 1994. Oceaneer Fisheries Pty Ltd held a licence to fish on certain conditions and in accordance with the 1994 Management Plan. Under that authorisation, Oceaneer was entitled to a unit value of 66 kilograms of weight. In 2006 and 2007, the Minister amended the 1994 Management Plan by reducing the

capacity of the Fishery as originally described in the 1994 Management Plan. The effect of the amendments to the Management Plan on the unit value of Oceaneer's authorisation was to reduce the unit value to 58 kilograms of weight.

The Tribunal held, however, that a decision of the Minister under the *Fish Resources Management Act 1994* to make or amend a management plan is not subject to review by the Tribunal under s 149. The Tribunal found that s 149 only conveys a right to an affected person to seek review of a decision made by the CEO under the *Fish Resources Management Act 1994* to give a notice varying any conditions of or adding new conditions to an authorisation, which was different from that of the Minister to amend a term of the 1994 Management Plan. The Tribunal said the overall regulatory operation of the *Fish Resources Management Act 1994* is such that the Minister is responsible, following appropriate consultation with expert persons, the industry and individual persons; to specify the primary management rules for fisheries in Western Australia. The Minister's decision-making at this policy level is not subject to review by the Tribunal.

However, decisions made by the CEO of the Department of Fisheries under express provisions of the *Fish Resources Management Act 1994*, in implementation of management plans and the like, are subject to review where those decisions are of a type referred to in s 147(1)(a)-(e).

The Tribunal dismissed the application for review because the Tribunal did not have the jurisdiction or power to entertain the application to review the Minister's decision to amend the 1994 Management Plan.

Robertson and Valuer General [2007] WASAT 213 (Parry SM and Liggins SSessM). The owner of 13 adjoining lots with individual Certificates of Title and public road access, but used as a single grazing property, sought review of a valuation of the unimproved value of the lots.

The Tribunal determined that criticism of the stated discount rate for 13 lots in a policy of the Valuer General as "arbitrary" is not fair or reasonable. The Tribunal also determined that an alternative method advanced by the owner, which involved a calculation of a profit and risk factor based on a single sale of a single lot two and a half years after the relevant valuation date which was subsequently subdivided into four lots, was not an appropriate method to either test the discount rate nominated in the policy or to calculate an alternative discount rate. The Tribunal also determined that the profit and risk factor inherent within the nominated discount rate in the policy was adequate in the circumstances of the case to cover work that is likely to have been undertaken following a hypothetical purchase of the property for the purposes of resale of the individual lots. In consequence, the Tribunal found that there was no proper basis to depart from the Valuer General's policy in general or the nominated discount rate for 13 lots to determine a single group value in particular. The application for review was dismissed.

Shire of Waroona and Fitzpatrick [2007] WASAT 219 (Chaney J, DP). Mr Paul Fitzpatrick was a Councillor of the Shire of Waroona since 2001, and between 2003 and 2005 was Shire President. Between February 2007 and April 2007, Mr Fitzpatrick was absent from three consecutive council meetings. On each occasion he

tendered his apologies prior to the meeting. His absences were caused by either unforeseen circumstances arising or business commitments overseas.

The Tribunal reviewed the provisions of the *Local Government Act 1995*, and the circumstances of this case, and determined that it had no discretion but to declare that Mr Fitzpatrick is disqualified. While recognising the underlying object of the disqualification provisions of the Act, the Tribunal noted that, in the circumstances of this case, the outcome caused considerable inconvenience to the Shire and was harsh on Mr Fitzpatrick.

Galloway & Associates and City of Melville [2007] WASAT 238 (McNab M). This review concerned a 2006 decision by the respondent City of Melville to, in effect, reverse an approval that it had earlier given to Galloway and Associates in 2003 for the continued display of an advertising sign on commercial premises in Canning Highway, Ardross.

The Tribunal said that planning case law indicated that it was unlikely that a particular advertising message had been fixed for all time. In any event, the advertisement in substance had not materially altered. The Tribunal looked at both approvals and the context of the regulatory regime. It found that the mixing up by the City of two separate, although related, regulatory regimes, one for land use and development and the other for regulating signs (under a Local Law), was unsatisfactory. In any event, the 2003 approval once given could not be recalled.

The application was upheld. The Tribunal set aside the 2006 decision and confirmed the effect of the previous approval.

Miller and City of Stirling [2007] WASAT 247 (Parry SM). A preliminary issue was identified in two proceedings that involved similar circumstances as to whether a proposed aged persons' housing development is capable of approval having regard to housing density requirements.

The Tribunal determined that the applicants did not have an accrued right to have the applications determined on review on the basis of the deleted special provision. Although the applicants had a right to seek review of the deemed refusal of their applications at the time when the provision was deleted, they did not exercise that right. While it was unnecessary to express a concluded view, the Tribunal also observed that it may well be the case that even if the applicants had exercised the right to seek review of the deemed refusal, the review would be determined on the basis of the law as it stands at the time of the determination, that is excluding the deleted provision. The Tribunal also determined that the applicants did not have an exercisable right or power to have the applications determined, and the responsible authority did not have an exercisable power to determine the applications, on the basis of the deleted special provision. Rather, the applicants had a right to have the applications determined, and the responsible authority had the power to determine the applications, on the basis of the law as it exists from time to time. The law no longer includes the special provision.

The Tribunal, therefore, determined that the special provision does not continue to apply in the determination of the proceedings and the development applications are not capable of approval having regard to the housing density provisions.

Arnold and Town of Claremont [2007] WASAT 284 (Parry SM). Mr and Mrs Arnold applied for development approval for the construction of a 1.8 metre high by 16 metre long colorbond boundary fence behind the principal façade of their house and the principal façade of the house on the adjoining block, and between the external side walls of these houses.

The Tribunal determined that development approval is not required for the proposed boundary fencing under the local planning scheme.

The decision of the Town to refuse development approval was set aside and a decision was substituted that development approval is not required for the proposed fence.

Dawson and City of Fremantle [2008] WASAT 125 (McNab M). In this matter the Tribunal was principally concerned with reviewing a decision by the City of Fremantle to issue a demolition order in respect of some unfinished alterations to a residential building. The question was whether the order was justified in the circumstances.

Delays were described by the Tribunal as unfortunate. They included such matters as responding to neighbours' complaints, various regulatory delays and various misunderstandings on the applicants' part. The Tribunal agreed that errors had been made, but found that, nevertheless, the transactions were made in good faith. The Tribunal discussed the relevant test for the exercise of the discretion with respect to demolition orders and concluded that, on balance, the applicants' partly built additional structures should not be demolished. In particular, the Tribunal held that such an end would be, in the circumstances, 'achieved at a grossly disproportionate cost which would be fully borne by the applicants'. The

application for review on the demolition order was allowed and the demolition order was set aside.

ING Development Australia Pty Ltd and Western Australian Planning Commission [2008] WASAT 104 (Chaney J, DP). The City of Fremantle and the Fremantle Society each sought leave to intervene in proceedings concerning a commercial development on reserved land at the Port of Fremantle. Alternatively, they sought leave to make submissions under s 242 of the *Planning and Development Act 2005*. The Tribunal examined the requirements that need to be established for a grant of leave to intervene or leave to make submissions. It examined the particular interest which each of the applicants for intervention identified. The Tribunal concluded that neither had established an interest which would support an order for intervention. The Tribunal determined that the City of Fremantle had a sufficient interest to support that grant of leave to make submissions under s 242 of the *Planning and Development Act 2005*, but considered that the Fremantle Society had not established a sufficient interest for that purpose.

Vision Surveys and Western Australian Planning Commission [2008] WASAT 110 (Jordan M). The applicant lodged two applications for review of respective refusals by the Western Australian Planning Commission to approve subdivision applications for Lot 54 and Lot 55 Coode Street, Bedford.

The Tribunal found that these proposals provided an opportunity to create lots consistent with the density coding, to retain the use of two existing houses and to provide an access leg to the rear lots consistent with policy

standards. The Tribunal was satisfied that appropriate agreements for reciprocal rights of access and related easements would provide a workable means of access for the rear lots. The Tribunal found that the form of subdivision proposed for each lot, with the access arrangement to be agreed between the owners, to be consistent with orderly and proper planning. The applications for review were allowed, with conditions including a requirement that agreements be entered into to ensure reciprocal rights of access over the adjoining access legs.

Collins and Western Australian Planning Commission [2008] WASAT 112 (Connor M). Mr and Mrs Collins applied to the Tribunal for review of the decision of Western Australian Planning Commission refusing subdivision approval to realign the boundaries of Lot 4 and Lot 11 Badgin Road, Narraloggan to create two freehold lots of 67 hectares and 1,039 hectares.

On the merits of the application and in consideration of the matter listed in *Development Control Policy DC 3.4 - Subdivision of Rural Land* (February 2008), the Tribunal was satisfied that the proposed subdivision is consistent with the intent of the policy and that proposal would not result in the loss of agricultural land as a resource. The application for review was allowed and approval granted subject to one condition.

SIA Architects and Town of Claremont [2008] WASAT 148 (Parry SM). This decision concerned a preliminary issue as to whether a proposed mixed use development, comprising showroom, commercial office and residential uses, is compliant with a local planning scheme provision that states that 'where an application is received for a development that is for a

use other than a "Dwelling Self-Contained" and the land the subject of that application abuts land that has a zoning or use of "Residential", Council shall not approve of that development unless' it has nominated setbacks to the residential land.

The Tribunal determined that, on the proper interpretation of the provision, in substance, three applications have been received for developments, although by means of a single development application and in the same building. The developments involve three different and distinct uses, one of which is a Dwelling Self-Contained and two are not. The part of the development proposal that is for Dwelling Self-Contained does not require the setbacks nominated in the provision. The part of the development proposal that is for non-residential uses requires the nominated setbacks, and is compliant with those setbacks. The Tribunal determined that the development application is compliant with the provision.

As the Council refused the development application on an incorrect understanding of the effect of the provision, the Tribunal invited the Council to reconsider its decision.

Appeals to Supreme Court (including Court of Appeal) in DR matters

Adbooth Pty Ltd v City of Perth [2007] WASC 218 - The Supreme Court refused the application for leave to appeal. This matter is currently on appeal to Court of Appeal.

Shire of Derby-West Kimberley v Yungngora Association Inc [2007] WASCA 233 - The Court of Appeal allowed an appeal by the Shire from the Tribunal's decision to grant to the

Yungngora Association an exemption from the obligation to pay rates in respect of certain land on the ground that the land was used exclusively for charitable purposes. The Court of Appeal found that the Tribunal fell into error by focusing on the benefits the pastoral enterprise enabled the Association to provide to the members

of the community, rather than on the use to which the land was actually put.

All written reasons for DR 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.



Areas for reform

The work of the DR stream has highlighted the following areas for reform:

- In each of the previous two annual reports of the Tribunal it was suggested that s 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.
- Similarly, it is suggested that consideration should be given to amending s 69 of the *Heritage of Western Australia Act 1990*, which enables the Minister, the Heritage Council and any other person to bring proceedings for an injunction to restrain a breach of a conservation order in the Supreme Court or in the District Court, to confer concurrent jurisdiction on the Tribunal constituted by or including a judicial member. It is to be noted that the Tribunal already has broad heritage compliance jurisdiction under sections 30, 60, 73(4), 73(7) and 76 of the *Heritage of Western Australia Act 1990*. It is also to be noted that other Australian jurisdictions confer exclusive or concurrent civil enforcement jurisdiction in

planning, heritage and related matters on the equivalent court or tribunal to the DR stream of the Tribunal: see *Planning and Environment Act 1987* (Vic) s 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).

- In each of the previous two annual reports of the Tribunal it was noted that the DR stream has been constrained in its ability to achieve the objective stated in s 9(a) of the SAT Act, to act as speedily as is practicable, by the referral by original decision-makers of proposals, which are the subject of review proceedings 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. 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*** [2006] WASAT 83 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 s 41 of the *Environmental Protection Act 1986* to permit the Tribunal to finally determine proceedings involving a referred proposal, but to preclude the implementation of the proposal until the Minister is satisfied that there is no reason why a proposal in respect of which a statement has been published under s 45(5)(b) of the *Environmental Protection Act 1986* should not be implemented.
- It is suggested that jurisdiction should be conferred on the Tribunal constituted by or including a judicial member to make declarations of right in relation to any right, obligation or duty imposed by or under planning, heritage and related laws. Section 91 of the SAT Act enables a judicial member to make a declaration concerning any matter in a proceeding instead of or in addition to any other order the Tribunal makes in the proceeding. However, this power is only exercisable when an enabling Act confers jurisdiction on the Tribunal. Where there is no enabling Act that confers jurisdiction on the Tribunal, citizens have no choice but to commence proceedings in the Supreme Court for a declaration. Supreme Court proceedings typically take longer and are more costly to conduct than the Tribunal proceedings. The Supreme Court is also generally not as familiar with planning, heritage and related laws and considerations as are the judicial members of the Tribunal.
- Section 226(1) of the *Land Administration Act 1997* states that, except as otherwise provided in that section, when the Tribunal is dealing with a claim for compensation for the compulsory acquisition of land under Part 10 of that Act, the Tribunal is to be constituted to include assessors nominated by the parties.

Although s 226(2) of the *Land Administration Act 1997* enables the claimant and the acquiring authority to avoid the need for appointment of assessors by agreeing in writing to the Tribunal being constituted solely by a judicial member or a legally-qualified senior member, it is suggested that the appointment of assessors by parties in proceedings for compensation under the *Land Administration Act*

1997 should be abolished. The appointment of assessors, at least in relation to the Tribunal's proceedings, is outdated, inappropriate and problematic. Subject to the provisions of the relevant enabling Act (see SAT Act s 5), s 11(1) of the SAT Act authorises the President to specify who is to constitute the Tribunal for any hearing. In land compensation proceedings under the *Planning and Development Act 2005* and in land valuation proceedings under the *Valuation of Land Act 1978*, the President is able to constitute the Tribunal appropriately with members with the required legal and valuation qualifications and experience. It is therefore unnecessary to appoint assessors to provide the Tribunal with relevant knowledge and experience to determine land compensation proceedings. The same constitutional rules should apply to all compensation proceedings.

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HUMAN RIGHTS STREAM

The work of the Human Rights stream

Applications under the *Guardianship and Administration Act 1990* (GA Act) comprised 97% of the work of the HR stream and 50% of all applications dealt with by the Tribunal in 2007-08.

The stream's other main area of work is referrals by the Commissioner for Equal Opportunity of complaints of discrimination under the *Equal Opportunity Act 1984* (EO Act).

The stream reviews decisions of single members under s 17A of 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*.

Applications received and finalised

The work of the stream increased in all jurisdictions during the year. Applications overall increased by 9.3% and finalisations by 4.5%.

Table 14 – HR applications received and finalised 2007-08

Act	Applications received	As % of all HR applications received	Applications finalised	As % of all HR applications finalised
GA Act	2,822	97%	2,896	97%
EO Act	84	2.7%	81	2.6%
Mental Health Act 1996	11	< 1%	10	< 1%
Children and Community Services Act 2006	2	< 1%	5	< 1%
Total	2,919		2,992	

Benchmark performance in guardianship and administration applications

In guardianship and administration matters there was an 8.8% increase in applications and a 3.2% increase in finalisations during the year.

Applications under the GA Act now comprise 50% of all applications dealt with by the Tribunal and include applications to appoint a guardian or administrator, reviews of orders, and applications relating to enduring powers of attorney (EPAs).

The steady increase in applications is expected to continue as the population ages. Projections by the Australian Bureau of Statistics are that the percentage of the Australian population over the age of 65 will increase from its current level of 1.3% to 23.7% of the population by 2036 at which time those over 80 will comprise nearly 8% of the population.

The aging population will be reflected in increasing applications under all sections of the GA Act. Amendments providing for advanced health care directives and enduring powers of guardianship passed through Parliament during the year and, once proclaimed, will generate additional applications.

Applications relating to EPAs, particularly for intervention, have steadily increased over the past three years from 16 applications in 2005-06 to 41 applications in 2007-08. Total applications concerning EPAs have increased from 65 in 2005-06 to 99 in the current year.

There has been a noticeable increase in applications involving complex legal and factual issues; the reasons for this are not clear. Legal representation has become more common, although the vast majority of parties continue to represent themselves. In recent times there has been a noticeable increase in requests for urgent hearings.

These factors combine to make efficient processing of applications essential and the Tribunal has been looking at ways of achieving this, including streamlined processes for dealing with reviews and for referrals to the Public Advocate.

Table 15 – GA Act applications received and finalised 2007- 08

Type of application	Number of applications received	Number of applications finalised
Section 40 - appointment of guardian	676	716
Section 40 - appointment of administrator	917	911
Section 17A - review by Full Tribunal	9	9
Section 84 - periodic review by Tribunal	653	691
Section 85 - mandatory review	29	30
Sections 86, 87 - application by party for review	364	377
Section 112(4) - application to inspect documents	51	48
Section 104A - recognise EPA made in another jurisdiction	15	13
Section 106 - declaration of incapacity; EPA in force	43	40
Section 109 - intervention in EPA	41	41
Section 74 - administrator seeking directions	17	15
Other	7	5
TOTAL	2,822	2,896

Applications under the GA Act are generally listed for hearing as soon as they are received. The benchmark is to finalise 80% of applications within eight weeks of lodgement. For the period under review, the percentage of applications finalised within 8, 9 and 10 weeks increased in each case.

Table 16 – GA Act applications – percentage finalised within benchmark

Percentage of applications finalised	2007-08	2006-07
Within 8 weeks	84%	80%
Within 9 weeks	89%	84%
Within 10 weeks	90%	88%

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

Referrals to the Public Advocate

The Public Advocate is an independent office established by the GA Act. She has a range of functions under the Act, including to investigate matters referred by the Tribunal under s 97(1)(iii)(c). Her other main function in relation to the Tribunal is to act as guardian where no one else is suitable and willing to be appointed.

Where it appears that further information will assist the Tribunal, the application is assessed by the Public Advocate's Liaison Officer who is located at the Tribunal. The Liaison Officer conducts an initial assessment and recommends whether a referral is required. Referrals tend to be made where relevant information would not readily be obtained during a hearing.

In 2007-08, 309 matters were referred to the Public Advocate for investigation, the majority of them applications for guardianship.

The increase in applications to the Tribunal has meant an increase in referrals to the Public Advocate and appointments of the Public Advocate as guardian. In recent times the additional workload has made it difficult in many cases for the Public Advocate to complete an investigation and provide a written report in the time that Tribunal targets allow.

Community guardian program

The community guardian program was established by the Public Advocate with the aim of volunteers being appointed guardians for persons with disabilities who have no one else in their lives, who are in need of a guardian, and for whom, in the absence of anyone else suitable and willing, the Public Advocate would be appointed guardian.

Prospective community guardians are selected and trained by the Public Advocate. They are then matched to an individual for whom the Public Advocate is currently the guardian and spend time developing a relationship with that person before being proposed for formal appointment as guardian. The Public Advocate provides continuing training and support to a community guardian once appointed.

Since the first application in 2007, the Tribunal has appointed four community guardians.

Equal Opportunity applications

Referrals by the Commissioner for Equal Opportunity to the Tribunal increased by 25% from 67 to 84.

There were 52 referrals under s 93(1) of the EO Act. Usually in these cases the Commissioner's endeavours to resolve a complaint by conciliation have not been successful.

There were 27 referrals under s 90(2). In these cases the Commissioner has dismissed a complaint as frivolous, vexatious, misconceived, lacking in substance or because it relates 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 two applications under s 135 of the EO Act for an exemption from the EO Act. In the matter which has been finalised, the Shire of York was granted an exemption for two years.

Three applications were made for interim orders under s 126 of the EO Act. An order was granted in one matter, the application was withdrawn in another, and the third application is still before the Tribunal.

Table 17 – EO Act applications – received and finalised 2007-08

Type of application	Number of applications received	Number of applications finalised
Section 126 – making of interim order	3	2
Section 135(1) – order for exemption	2	1
Section 90(2) – reference of complaint	27	22
Section 93(1)(a) – complaint cannot be resolved by conciliation	3	6
Section 93(1)(b) – resolution of complaint by conciliation	49	50
TOTAL	84	81

Table 18 – Number of weeks taken to finalise HR applications for 2007-08

Benchmark Category	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Equal Opportunity Act	4	10	14	17	20	26	35	51	69	112
GA Act	2	4	5	6	6	7	7	8	10	65
Mental Health Act	1	1	2	3	3	4	5	5	7	11
Human Rights	4	10	14	17	20	26	35	51	69	112

Other jurisdictions

Towards the end of 2007-08, there was a slight increase in applications for review of decisions of the Mental Health Review Board. Some of the difficulties faced by applicants are dealt with below.

Two applications for review of case planning decisions have been determined under the *Children and Community Services Act 2004*. In one case, the Tribunal convened a mediation and agreement was reached between the aggrieved grandparents and the Department for Child Protection. In the other, after preliminary argument, the Tribunal determined that it had jurisdiction to review the care plan in question but the applicant withdrew after she reached agreement with the Department. This is a relatively new jurisdiction and applications are likely to increase.

Assistance to parties

Almost all persons appearing in guardianship and administration matters represent themselves, although there has been a noticeable increase in legal representation recently. This may reflect an increased awareness and understanding of the jurisdiction among the legal profession; it may also reflect the increased value of many people's estate through rises in property and share values.

Securing legal representation in other proceedings before the Tribunal continues to be a problem for applicants. The resources of the Mental Health Law Centre and Legal Aid are limited and a number of applicants appear in reviews of Mental Health Review Board decisions without representation. Needless to say, presenting their own cases poses real difficulties for them. The Tribunal would welcome more involvement from the legal profession in these matters. Many applications do not proceed to final hearing and some assistance to applicants, even at initial directions hearings, would benefit them.

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.

A Practice Note as well as new pamphlets to assist parties in the Human Rights stream were published during the year.

Directions hearings and case management

Directions hearings in EO Act matters and mental health reviews are held each Friday before Deputy President Judge Eckert and 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 received.

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.



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

Applications under the *Mental Health Act 1996* are listed for a directions hearing on receipt when a legal practitioner is acting for an applicant. Where an applicant is unrepresented, the Tribunal makes programming orders administratively. Orders are made for the production of relevant medical records and attendance of medical witnesses. Applications are listed for hearing as quickly as possible depending on the availability of medical witnesses.

Applications under the GA Act are listed as soon as possible after lodgement for a final hearing, within eight weeks or a shorter time if circumstances require. Urgent hearings can be convened at short notice where necessary.

The Tribunal has 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 are made.

Directions hearings are not normally held in 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.



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 in the

Tribunal. Approximately 50% of matters are settled at, or shortly after, mediation. About 90% of all matters settle without the need for a final hearing.

Compulsory conferences are also used in EO Act 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, but the final hearing commonly involves facilitative dispute resolution techniques including 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 that parties are in other proceedings. Nevertheless, mediation has been used and has proven very useful in some cases, particularly where family members are in conflict.

Final hearings

Most proceedings in the HR stream go to a final hearing but a small number are determined on the documents.

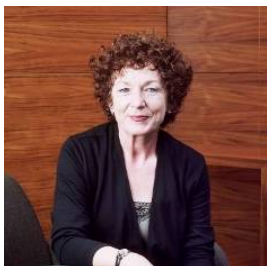
Matters which are usually decided on the documents include applications for recognition of an EPA made in another jurisdiction, which depend on substantial compliance with the form of EPA used in Western Australia, and applications for access to documents. Some applications for exemption from the provisions 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 in, or opposition to, the application.

Currently in GA Act proceedings the Tribunal must be constituted by either one or three members. Amendments to the GA Act, anticipated to be proclaimed in September 2008, will allow for one, two or three members to sit. Where a matter involves complex legal or factual issues, the Tribunal is constituted by three members but the majority of matters are determined by a single member. In either case applications are usually determined at a single hearing at the end of which decisions and reasons 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 more common for written reasons to be delivered.

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. During the past year, the Tribunal has overcome previous problems of availability of psychiatrist members by arranging for Sessional Member Professor George Lipton to be available to sit. These applications are usually dealt with at a single hearing at the end of which a decision and reasons are delivered orally.

Members of the Human Rights stream



Senior Member
Jill Toohey

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

There are four full-time members of the stream: Senior Member Jill Toohey and members Felicity Child, Donna Dean and Jack Mansveld.

Twenty-one sessional members bring to the stream a broad range of backgrounds and experience including in law, social work, accounting, medicine, psychology, occupational therapy, mediation, family therapy, and across a range of tribunals. Most of the sessional members sit in guardianship and administration proceedings.

Professional development of members

During the year members of the HR stream participated in a number of professional development sessions, the details of which appear in **Appendix 2**.

A day is set aside each quarter for professional development for full-time and sessional members in the guardianship and administration jurisdiction. Topics for discussion have included decision-making and decision-writing, consent to medical treatment under s 119(3), inspection of documents, recognition of enduring powers of attorney made in other jurisdictions and parties to applications. Presentations have been made by the Public Advocate and the Public Trustee.



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

Community relations

Members of the HR stream continue to be involved in community relations in various ways, details of which appear in **Appendix 2**.

A decision was made to aim to increase professional applicants' understanding of guardianship and administration proceedings, and presentations were made to social workers at Sir Charles Gairdner Hospital and Osborne Park Hospital. A forum for social workers held at the Tribunal was also very well-attended.

Publications

During the year a Practice Note for guardianship and administration

proceedings was published, and new pamphlets published for parties involved in proceedings.

The HR stream continued to publish its GAA Decisions Bulletin each month. The Bulletin is distributed to a very broad range of interested people including health professionals and lawyers.

SAT Decisions of interest

KS [2008] WASAT 29 (Barker J, P). Before he died, KS had appointed one of his sons his attorney under an enduring power of attorney which came into effect on execution and was to continue notwithstanding any subsequent incapacity of KS.

After KS died, another son asked the Tribunal to order the donee son to produce records of transactions made by him in connection with the power. It had not been established that KS lacked legal capacity at any stage during his lifetime.

A preliminary question arose as to the Tribunal's jurisdiction to make orders. The Tribunal initially established to deal with the application referred two questions of law to the President for determination, being whether the Tribunal has jurisdiction to make orders intervening in an enduring power where:

- (i) the donor has died; and
- (ii) the donor has retained legal capacity.

For reasons set out in his decision, the President determined both questions in the affirmative. The matter was remitted to the Tribunal as originally constituted for determination of the initial application.

FS [2007] WASAT 202 (Barker J, P, Toohey SM, Mansveld M). FS was an Aboriginal man who lived in a remote Aboriginal community. In 1987 he had received a large compensation payment for head injuries sustained in a motor vehicle accident.

In 1997 the Public Trustee was appointed FS's administrator by the Guardianship and Administration Board. The order had been confirmed twice on reviews by the Board and then came before the Tribunal for review.

A psychologist from a service that specialised in assessing Aboriginal people indicated that tests used to assess FS's capacity to make reasonable judgments about his financial affairs might not be culturally appropriate.

The Tribunal appointed an expert anthropologist experienced in FS's ways to advise it about his understanding of his financial affairs and how his cultural obligations towards others in his community might affect his ability to manage his finances in his own best interests.

The Tribunal found that, because of his cognitive deficits, FS was unable to make reasonable judgments about his finances. It considered what culturally appropriate alternatives there might be to reappointing the Public Trustee but found none was available.

The Public Trustee took the view that requests by KS for money to spend on his extended family could not be made except with the approval of the Tribunal because they were in the nature of gifts. The Tribunal took a different view of the relevant provisions of the GA Act and found that it was open for the Public Trustee to make these payments on his behalf.

EA and KD, TA, LA, BA & VT [2007] WASAT 175 (Mansveld M). Two applications were made for legal costs to be paid from the estate of the represented person.

Costs were allowed in part in the application made by the represented person's children. In all the circumstances, the Tribunal was satisfied that the legal assistance obtained by the children assisted the Tribunal to obtain information which was critical to its assessment of their father's capacity to act for himself and whether he was in need of an administrator. However, the Tribunal was not satisfied an order for costs should extend to the legal advice and representation the applicants obtained in respect of the balance of the proceedings.

The Tribunal ordered \$10,000 costs be paid, from the father's estate, towards the children's legal costs.

SG [2007] WASAT 269 (Child M, Mansveld M, McCutcheon SSessM). The Tribunal appointed the Public Trustee plenary administrator of the estate of an elderly man who had suffered cognitive impairment following a brain aneurysm.

SG's daughter asserted that the management of her father's affairs since his illness had been to his detriment and to the benefit of his spouse. In particular, she alleged that large sums had been transferred from accounts in her father's sole name into joint accounts with his spouse. In addition, over \$3 million had been transferred to the spouse's son after advice from SG's accountant about his tax. His daughter alleged the transfer was out of character for her father and was evidence of his incapacity.

The Tribunal found that SG was unable, by reason of mental disability, to make reasonable judgments about his financial affairs and that he was in need of an administrator.

The Tribunal determined that an existing EPA executed by the man in late 2006 was not an effective or appropriate means of managing his estate. It was not satisfied that the less formal arrangements for financial management of his affairs, said to be in place, were operating in the man's best interests.

The Tribunal revoked the EPA made in favour of SG's wife. Based on the medical evidence, it concluded that SG's capacity at the time it was executed was in doubt and that his wife was now in a position of conflict of interest in relation to his interests.

The Tribunal accepted the submissions of the applicant, and of the Public Advocate, that an independent administrator should be appointed to act on the man's behalf and appointed the Public Trustee as the administrator of the estate.

This decision was upheld in July 2008 by the Supreme Court in *SG v AG* [2008] WASC 123.

JP [2008] WASAT 3 (Mansveld M). JP had been involved in a workplace accident which left him with severe residual physical, cognitive and behavioural deficiencies as a consequence of brain trauma.

In September 2006, the Tribunal appointed the Public Advocate JP's limited guardian for 12 months to consent to treatment and health care; to determine what contact he should have with others; to investigate any need to consent to the use of chemical or physical restraint; and to investigate the need for and availability of any further rehabilitation treatment.

At the review of the order, evidence was given that JP would not benefit from further rehabilitation and that his behavioural difficulties (including agitation, aggression and bullying) were managed by antipsychotic medication.

The Tribunal found that, given the seriousness of any action to restrict JP's movement or behaviour, it would be preferable to take a cautionary stance and to name the restriction rather than defining the behaviour as part of the process of a disease (and by doing so, describing the intervention as treatment). This would make the intervention transparent and the guardian would need to consider whether the intervention was beneficial for JP and not for the convenience of care or medical staff of the institution in which he was living.

The Tribunal decided that JP was still in need of a guardian to consent to treatment and health care, and any restraint that he might require from time to time. It appointed his daughter as guardian. She was the only person proposed as guardian and her appointment was supported by JP's sister and his former *de facto* spouse.

DD [2007] WASAT 192 (Child M). The daughters of an elderly woman suffering from dementia applied as the donees of her enduring power of attorney (EPA) to the Tribunal for authority to make a gift from her estate to themselves and their brother.

In light of the protective nature of the GA Act under which the EPA had been created, and the obligations owed by the donees, the Tribunal determined that it was not appropriate for it to authorise a gift from the estate under the application made for directions. This was a matter for the donees to determine for themselves, having regard to the obligations they owed to the donor.

The application was dismissed.

BW [2008] WASAT 82 (Dean M). BW, an elderly man diagnosed with dementia, had been married and divorced three times. He had three children by two of his wives. His eldest child, a daughter, applied for guardianship and administration orders precipitated by BW's inappropriate financial and lifestyle decisions which the daughter deemed put him at risk in various ways.

Although the exact details of BW's estate were not known, it was thought to be large and complex and included property, shares and cash. The daughter proposed Perpetual Trustees as administrators. For the Tribunal to appoint a trustee company it must first find an individual suitable to be

appointed and that person must request in writing the appointment of the trustee company.

The Tribunal found the daughter suitable to act and, in response to her written request that Perpetual Trustees be appointed, it appointed Perpetual Trustees plenary administrator of the estate of BW.

The Tribunal appointed the Public Advocate limited guardian for a period of two years by which time it was likely that the accommodation issue would have been resolved and a family member might be in a position to take on the role of guardian for medical and other personal decisions.

Solicitors representing the applicant daughter and the third former wife applied for orders that their legal costs be paid out of BW's estate pursuant to s 16(4) of the GA Act. The Tribunal found no evidence to indicate that such payment was warranted and dismissed both applications for costs.



Re CH; Ex Parte ED [2008] WASAT 94 (Toohey SM). The applicant sought access under s 112(4) of the GA Act to a document which the Tribunal had received in the course of hearing applications to appoint a guardian and an administrator for CH. The proceedings had been finalised.

The Tribunal refused the application. The document had been given to it for

the purpose of the proceedings concerning CH. The applicant clearly knew the identity of the writer and the contents of the letter. She did not need the letter to respond to any allegations. Her reasons for seeking access to the document had nothing to do with CH.

Although the Tribunal has a wide discretion to allow access under s 112(4), it decided that the applicant's desire to inspect the letter did not outweigh other considerations. It would undermine confidence in the Tribunal's processes if access could be obtained to documents for purposes unrelated to the proceedings for which they were held without a cogent reason and a demonstrated need to know.

KD [2008] WASAT 109 (Toohey SM). The applicant asked the Tribunal to appoint an administrator for his sister, KD, and to revoke an EPA by which she had appointed two attorneys to act on her behalf.

The applicant had become concerned that KD's attorneys were not acting in her best interests. In particular, he was concerned that she had sold her unit for an amount well below its value without fully understanding the transaction or knowing that her attorneys were the purchasers through a company of which they were sole directors.

The Tribunal made an emergency order pursuant to s 65 of the GA Act appointing the Public Trustee plenary administrator for KD. It subsequently confirmed the Public Trustee's appointment. The Public Trustee investigated other matters relating to the sale of KD's unit and was considering what action against her attorneys is open to her.

Before making his application to the Tribunal, the applicant obtained a valuation of KD's unit and sought advice from solicitors to ascertain her

legal position. He asked the Tribunal for an order under s 16(4) of the *Guardianship and Administration Act 1990* (WA) for his costs to be paid out of KD's estate. The amount was \$3,462.73.

The Tribunal was satisfied that the applicant had acted in KD's best interests and that it was appropriate that his costs be paid out of her assets.

Tilley and Garbutt [2008] WASAT 143 (Eckert J, DP). Ms Tilley's daughter attended a child care centre operated by Ms Garbutt.

Soon after she turned three, Ms Tilley's daughter was promoted to the Bilbies group. That group was specified to be for children over three and a half years old. The staff to child ratio for that group was 1:10.

Even though Ms Tilley's daughter was in the higher group with the lower staff ratio, Ms Garbutt continued to charge Ms Tilley \$60 per day. Ms Garbutt told Ms Tilley that fees were based on age and that the fee would not change until her daughter turned three and a half. The other children in the Bilbies group who were aged three and a half or older were charged \$53 per day.

The Tribunal found that Ms Garbutt discriminated against Ms Tilley's daughter (and therefore Ms Tilley) on the grounds of her age pursuant to the EO Act. This was because Ms Tilley's daughter was charged a fee based solely on her age which was a different fee to that children in the Bilbies group who were over three and a half years of age were charged. The Tribunal ordered Ms Garbutt to pay Ms Tilley \$327 being the fees that Ms Tilley was overcharged.

Heikkinen and Edith Cowan University [2007] WASAT 321 (Eckert J, DP, Stepniak SSessM, Lang

SessM). Ms Heikkinen claimed that her former employer, Edith Cowan University, discriminated against her on the basis of her family responsibilities by failing to return her to her substantive position of employment on a part-time basis on the expiry of her parental leave.

The University demonstrated that it frequently employed staff both with and without family responsibilities, in part-time positions, after undertaking its standard assessment of its operational requirements.

The EO Act requires the Tribunal to apply a notional comparator when deciding if the University's conduct was discriminatory. It found that the relevant comparator was an employee who did not have the same family responsibilities as Ms Heikkinen, and who sought to return to their substantive position on a part-time basis after returning to work from a period of extended leave. The Tribunal found that Ms Heikkinen was not treated less favourably than this notional comparator and that there was no evidence of direct discrimination.

The Tribunal also found no evidence to support Ms Heikkinen's claim that the University indirectly discriminated against her by requiring her to return to work full-time in her substantive position after her parental leave.

Ms Heikkinen's application was therefore dismissed. The Tribunal awarded costs of \$1,939.96 to the University.

Commissioner for Equal Opportunity and Alcoa of Australia Ltd [2007] WASAT 317 (Eckert J, DP, Toohey SM). The Commissioner for Equal Opportunity applied to the Tribunal under s 85 and s 126 of the EO Act for an interim injunction to restrain Alcoa of Australia Ltd from terminating Mr Ian

Barrett's employment. The Commissioner submitted that the injunction was necessary to enable her to properly conduct and complete her investigation into Mr Barrett's claims of harassment, victimisation and unlawful discrimination by Alcoa in his employment.

The Tribunal did not grant the injunction, noting that there was no clear evidence that Alcoa was about to dismiss Mr Barrett without further notice.

The respondent sought costs under s 87(1) of the SAT Act. The Tribunal dismissed the application.

Re: Application for Exemption under s 135 of the Equal Opportunity Act 1984; Ex Parte Shire of York [2006] WASAT 91 [2008] WASAT 91 (Toohey SM). The Shire of York sought exemption from the provisions of the EO Act which make it unlawful to discriminate against a person on the ground of impairment in relation to access to places and vehicles, and in the provision of goods, services and facilities.

The Tribunal decided that no exemption was necessary from the provisions relating to discrimination on the ground of impairment in relation to access to a public place. This was because the EO Act provided for an exception on account of the age of the building. Any discrimination in these circumstances was not unlawful and no exemption was necessary.

In relation to discrimination on the ground of impairment in the provision of goods, services and facilities, the Tribunal accepted that the construction of a lift to the upper floor would impose a burden on the applicant but it was not satisfied the applicant had made out a case of financial hardship such that the exception on that ground applied.

However, the Tribunal decided that, in the circumstances, an exemption should be granted for two years on the conditions proposed by the applicant.

K and CEO of the Department of Child Protection [2008] WASAT 92 (Toohey SM). The applicant sought review of a decision of the CEO of the Department for Child Protection concerning contact with her son who was in the care of the CEO. The decision was part of a care plan which the CEO is obliged by the *Children and Community Services Act 2004* (CCS Act) to prepare for each child in her care.

In the course of the proceedings before the Tribunal, the CEO reviewed the care plan, as she is required to do at least once in every 12 months. A plan was prepared for the forthcoming year and the CEO published a report of her review.

The respondent argued that the making of a new plan meant the Tribunal no longer had jurisdiction to determine the proceedings before it.

The Tribunal did not accept the respondent's contentions. The CCS Act provides for review of a case planning decision, as defined, and not of the care plan. There was no evidence to support a finding that the case planning decision by which the applicant was aggrieved was materially different following the CEO's review.

The Tribunal found it had jurisdiction to continue to determine the proceedings.

Appeals to Supreme Court (including Court of Appeal) in HR matters

'G' v 'K' [2007] WASC 319. On an application under the GA Act, the Tribunal had appointed the Public Advocate and the mother of a severely

intellectually disabled young man his joint limited guardians. The young man's mother had been given authority to make decisions about where, and with whom, he should live, what services he should receive, and to consent on his behalf to medical treatment.

Against a background of long-standing conflict between the young man's mother and his paternal grandmother, in particular about where he should live, the Tribunal gave the Public Advocate authority to decide what contact, if any, he should have with others, and the extent of any contact.

The grandmother's application for leave to appeal was granted.

The Court found that five of the six grounds of appeal were not made out. However, it found that the Tribunal failed to take adequate steps to ascertain 'in whatever manner' the young man's wishes in respect of the applications before the Tribunal and it erred, in the circumstances, in accepting the opinion of a psychologist about his wishes.

The Court set aside the Tribunal's decision and remitted it for rehearing in accordance with the Court's reasons.

Commissioner for Equal Opportunity v ADI Limited [2007] WASCA 261. On an application by ADI Limited, the Tribunal had granted it exemption from provisions of the EO Act making it unlawful to discriminate in employment on the ground of race.

The ADI group of companies have contracts with the Australian Government to provide a broad range of defence-related technologies, services and systems. In doing so ADI relied on use of United States technology, access to which was subject to regulations prohibiting

access by persons who are dual nationals or nationals of some foreign countries.

ADI sought the exemption so that it could ask prospective employees details of their place of birth and citizenship; restrict provision of certain information to employees based on their nationality; reject applications from prospective employees, and transfer employees from certain projects, based on their nationality.

The Commissioner for Equal Opportunity, the Trades and Labour Council of Western Australia and Western Australians for Racial Equality Inc, all of whom had been parties to the original proceedings, appealed the decision to grant the exemption.

Of the five grounds of appeal, three were abandoned during the appeal and the appellants conceded that two were essentially one ground, being that the Tribunal erred in its construction and exercise of the discretion conferred upon it pursuant to s 135 of the EO Act.

The Court unanimously dismissed the appeal. The Court found the Tribunal

was entitled to take into account the considerations it did, in particular the balance between private and public interests and the advantages and detriment that would flow from the discriminatory conduct.

Commissioner for Equal Opportunity v ADI Limited [2007] WASCA 261 (S).

The appellants submitted that the Court should not follow the usual practice whereby costs follow the event because their involvement was of a public, rather than private, nature; the Commissioner in particular had a special statutory role in the application; the respondents were not claiming or defending a right but seeking a benefit; and the appeal dealt with a provision in the Act that had not been subject of determination by a superior court and the proper application of which was in the wider public interest.

The Court was not persuaded that it should depart from the usual rule. The Court ordered the appellants to pay the respondents' costs of the appeal to be taxed.



Areas for reform

The 8.8% increase in applications under the GA Act during the year has already been noted. It is expected that the increase will continue and, as a result, the need for additional resources, in particular additional full-time members, is becoming pressing. The principal factors contributing to this need are the steadily ageing population and the additional work that will come with the *Acts Amendment (Consent to Medical Treatment) Act 2006* which provides for advance health directives and enduring powers of guardianship.

In addition, the need for a comprehensive review of the GA Act is now clearly apparent. The current GA Act has been in place since 1990 and does not adequately meet the demands of a changing demographic and current approaches to health and lifestyle evident in new legislation in some other jurisdictions.

Enduring powers of attorney are also an increasing area of work. No one knows how many EPAs are in existence but the Public Advocate reports that they are now the largest single reason for inquiries to her telephone advice service, reflecting the increasing awareness and acceptance of EPAs by the general community as a means of dealing with financial affairs.

The right of people to require the Commissioner for Equal Opportunity to refer claims that she has dismissed to the Tribunal under s 90 of the EO Act also needs review. It is the Tribunal's view that an applicant should be required to seek to obtain the leave of the Tribunal to bring proceedings that have been dismissed by the Commissioner.

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VOCATIONAL REGULATION STREAM

The work of the Vocational Regulation stream

Much of the work of the Vocational Regulation (VR) stream is in the Tribunal's original jurisdiction and comprises work done, prior to 2005, by the various former adjudicators including vocational registration boards and other public officials responsible for disciplinary matters (vocational regulatory bodies). The Tribunal also exercises a review jurisdiction in this stream that was, prior to 2005, exercised by a range of courts.

For the purpose of this Report, the Tribunal treats as vocational matters most matters arising under the relevant sections of Acts listed in Schedule 1 of the *State Administrative Tribunal Act 2004* (SAT Act), as well as those other Acts listed in **Table 19**.

Table 19 – Vocational Acts

Architects Act 1921*# (repealed)
Architects Act 2004
Builders Registration Act 1939* #
Chiropractors Act 2005* #
Credit (Administration) Act 1984 #
Debt Collectors Licensing Act 1964 #
Dental Act 1939* #
Dental Prosthetists Act 1988*
Electricity Act 1945 #
Employment Agents Act 1976* #
Finance Brokers Control Act 1975* #
Gas Standards Act 1972
Hairdressers Registration Act 1946* #
Human Reproductive Technology Act 1991 #
Land Valuers Licensing Act 1978* #
Legal Practice Act 2003* #
Licensed Surveyors Act 1909* #
Medical Act 1894* #
Medical Radiation Technologists Act 2006*
Motor Vehicle Dealers Act 1973* #
Motor Vehicle Drivers Instructors Act 1963 #
Nurses and Midwives Act 2006*
Occupational Therapists Act 2005* #
Optometrists Act 2005* #
Osteopaths Act 2005* #
Painters Registration Act 1961* #
Pawnbrokers & Second Hand Dealers Act 1994 #
Pharmacy Act 1964* #
Physiotherapists Act 1950* # (repealed)
Physiotherapists Act 2005
Podiatrists Act 2005* #
Psychologists Registration Act 1976* # (repealed)
Psychologists Act 2005
Real Estate and Business Agents Act 1978* #
Security and Related Activities (Control) Act 1996
Settlement Agents Act 1981* #
Trade Measurement Act 2006
Travel Agents Act 1985 (WA)* #
Veterinary Surgeons Act 1960* #
Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000 #
Workers Compensation and Injury Management Regulations 1982
Working with Children (Criminal Record Checking) Act 2004

* Act prescribed for the purposes of s 105 of the SAT Act.

Act prescribed for the purposes of s 11 of the SAT Act.

Applications received and finalised

During the reporting period the VR stream received 253 applications and finalised 272 applications. Of the finalised applications 215 were in the original jurisdiction and 57 in the review jurisdiction.

Graph 2 sets out details of the applications finalised during the reporting year.

Graph 2 – VR applications completed 2007–08

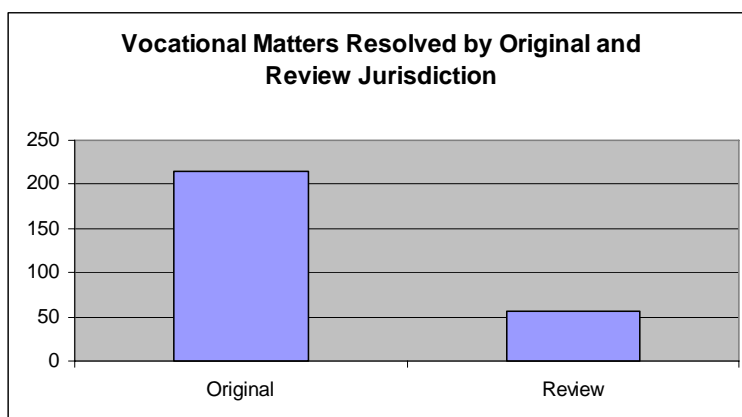


Table 20 – New VR applications received and finalised 2007-08

Enabling Act	Number of applic's received	*As approx % of all VR applic's received	Number of applic's finalised	*As approx % of all VR applic's finalised
Architects Act 2004	0	---	1	<1%
Builders Registration Act 1939	21	8%	21	8%
Chiropractors Registration Board Rules 1996 (given effect to by s18(1)(ha) Chiropractors Act 1964)	0	---	1	<1%
Dental Act 1939	5	<2%	2	<1%
Electricity Act 1945	0	---	1	<1%
Finance Brokers Control Act 1975	2	<1%	1	<1%
Hairdressers Registration Act 1946	2	<1%	2	<1%
Land Valuers Licensing Act 1978	0	---	1	<1%
Legal Practice Act 2003	35	14%	39	10%
Licensed Surveyors Act 1909	0	---	2	<1%
Medical Act 1894	20	8%	15	6%
Medical Radiation Technologist Act 2006	1	<1%	0	---
Nurses Act 1992	8	<3%	12	4%
Nurses and Midwives Act 2006	22	9%	21	8%
Painters Registration Act 1961	2	<1%	1	<1%
Pharmacy Act 1964	1	<1%	2	<1%
Psychologists Act 2005	3	<1%	0	---
Real Estate and Business Agents Act 1978	18	7%	23	8%
Security and Related Activities (Control) Act 1966	91	36%	104	38%
Settlement Agents Act 1981	10	<4%	11	4%
Trade Measurement Act 2006	0	---	1	<1%
Travel Agents Act 1985	1	<1%	1	<1%
Veterinary Surgeons Act 1960	3	<1%	3	<1%
Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000	0	---	2	<1%
Working with Children (Criminal Record Checking) Act 2004	8	<3%	5	<2%
Total	253	100%	272	100%

Members of the VR stream

The work of the VR 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.

Many of the proceedings the Tribunal classes as within the VR stream are prescribed under s 11 of the SAT Act and Schedule 1 of the *State Administrative Tribunal Regulations 2004*, and accordingly must be constituted by 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 interests 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 VR matter with members appropriate to the particular proceeding. 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*, following amendments to be made by the *Acts Amendment (Justice) Act 2008*, a single member is able to determine an application.

In all, 70 sessional members having

extensive or special experience in vocations relevant to the Tribunal's jurisdiction have been appointed. Details appear in **Appendix 1**.

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 hearing, 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 directions hearings or in compulsory conferences 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 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, or by a sessional member who is a trained mediator, and have proved highly successful in resolving disputes.

In VR matters, the presiding member must be satisfied that the penalty agreed to is within an acceptable range, having regard to other matters of a similar nature that have come before the Tribunal. A penalty hearing is sometimes held if there are doubts about appropriate penalty outcome.

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 can be seen from the following table dealing with four vocational areas, facilitative dispute resolution plays a significant role in the VR stream. For more information see the Facilitative dispute resolution report.

Table 21 – Mediated outcomes

	Matters Finalised*	Facilitated Outcomes	Mediations
Legal Practice Act 2003	28	25	10
Medical Act 1894	13	11	11
Nurses and Midwives Act 2006 and Nurses Act 1992	29	28	10
Real Estate and Business Agents Act 1978	21	15	12

*Numbers relate to individual practitioners rather than applications

Final hearings and decisions on documents

Where a matter in the VR stream proceeds beyond mediation or compulsory conference, it goes to a final hearing. A few matters are determined on the documents.

Because of the requirements of s 11 of the SAT Act, the Tribunal that conducts a final hearing in this stream generally 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, 149 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 three (2%) resulted in the application being wholly dismissed.

VR proceedings that go to a final hearing are typically resource intensive. Not only do they require three members of the Tribunal (four in medical 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 nine 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.

Benchmark performance

Table 22 – Time taken to finalise VR applications

Percentage of Vocational Regulation matters	Number of weeks to finalise
10%	3
20%	6
30%	7
40%	9
50%	10
60%	12
70%	16
80%	25

Of the matters that were finalised in 2007-08, 176 VR applications (80%), were resolved within 25 weeks.

The benchmark is 27 weeks which means that the VR stream has been able to better the benchmark. This is also an improvement of 10 weeks on the 2006-07 figures.

Professional development of members

During the year members of the VR stream participated in a number of professional development sessions, the details of which appear in **Appendix 2**.

Community relations

Members of the VR stream continue to be involved in community relations in various ways, details of which appear in **Appendix 2**.

Publications

During the year a Practice Note for consent orders in the VR stream was published.

SAT Decisions of interest

Nurses and Midwives Board of Western Australia and Watson [2008] WASAT 59 (Barker J, P). The applicant applied for an order under s 35 of the SAT Act requiring the

Commissioner of Police to produce an audiovisual recording of interview with the respondent nurse.

The Tribunal found that it was not a 'court' for the purposes of the *Criminal Investigation Act 2006* and accordingly that its powers to order production were limited by s 120 of the *Criminal Investigation Act 2006*.

Real Estate and Business Agents Supervisory Board and Landa [2008] WASAT 114 (Barker J, P, Limnios SessM, Lord SessM). The Tribunal found eight breaches of the *Real Estate and Business Agents Act 1978* and Code of Conduct for Agents and Sales Representatives by the practitioner. The Tribunal reprimanded the agent for each breach and imposed six fines totalling \$23,000. The Tribunal considered the meaning of the term 'prior written consent' and closely considered the approach that should be taken in imposing penalties in vocational regulation proceedings.

Danze and Builders' Registration Board of WA [2008] WASAT 10 (Raymond SM, Macri SessM, Affleck SSessM). The applicant, a tiler, applied to the Tribunal for review of a decision of the Builders' Registration Board of Western Australia refusing to register the applicant as a registered builder. The Tribunal considered what constituted 'work of a builder' and found that no distinction was made between trades engaged in constructing, altering, repairing, adding to or improving the walls and structural parts of buildings. The Tribunal found that the tiling work undertaken by the applicant constituted the work of a builder within the meaning of the legislation and that registration should be granted.

Medical Board of Western Australia and A Practitioner [2008] WASAT 95 (Barker J, P, Dean M, Isaachsen,

SSessM, Quatermass SSessM). Following the institution of criminal proceedings against the medical practitioner alleging aggravated indecent assault of a female patient, the Medical Board of Western Australia made two applications to the Tribunal: one seeking a final order removing the practitioner's name from the register of medical practitioners in Western Australia; and another seeking that pending the final determination of the first application, that the order of the Medical Board be affirmed and that the practitioner be constrained from practising medicine until further order, or alternatively that the Tribunal issue an injunction under s 90 of the SAT Act restraining the practitioner from practising as a medical practitioner until the determination of the substantive disciplinary proceeding. The Tribunal held that, on the facts of the case, the appropriate interim order was one that limited the right of the practitioner to practise medicine and not one that wholly constrained or restrained him from practising medicine.

S and Chief Executive Officer, Department for Community Development [2007] WASAT 222 (Chaney J, DP). The applicant sought review of the issue of a negative notice under the *Working With Children (Criminal Record Checking) Act 2004*. The Tribunal considered summary convictions against the applicant in 1977 and 1981, and his engagement in training young athletes since that time with no suggestion of any inappropriate conduct. The Tribunal concluded that the convictions were relevant to child-related employment, but considered that in light of the fact that a period of 26 years had passed since the most recent conviction and the applicant enjoyed strong support from those associated with his athletics, children were not likely to be at risk

from continued contact with the applicant. The Tribunal allowed the review application and held that the applicant was entitled to an assessment notice.

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.

Appeals to Supreme Court (including Court of Appeal) in VR matters

***Camp v Legal Practitioners Complaints Committee* [2007] WASC 309.** The Supreme Court upheld the Tribunal's finding that the practitioner was guilty of unprofessional conduct as a legal practitioner.

***Real Estate and Business Agents Supervisory Board v Espanol Holdings Pty Ltd* [No2] [2008] WASCA 109.** The Court of Appeal reversed the Tribunal's decision allowing the respondents' claim against the Real Estate and Business Agents Fidelity Guarantee Fund.

***Mijatovic v Legal Practitioners Complaints Committee* [2008] WASCA 115.** The Court of Appeal dismissed an appeal by the practitioner. The Court of Appeal determined that although the Tribunal did not have disciplinary jurisdiction under the *Legal Practitioners Act 1893* (repealed), it did under the *Legal Practice Act 2003*, and that liability under those Acts is co-extensive. The Court of Appeal upheld the Tribunal's primary findings of dishonesty.

The Court did find that one of the Tribunal's incidental findings did not satisfy the requirements of natural

justice and they directed that the full bench of the Court should not have regard to that incidental finding when it came to considering the recommendation made by the Tribunal that the practitioner be struck off the Role of Practitioners.

***Chief Executive Officer, Department For Child Protection v Grindrod* [No 2] [2008] WASCA 28.** The Court of Appeal allowed the appeal made by Department for Child Protection and remitted the matter back to the Tribunal for reconsideration. The Court held that an 'unacceptable risk' test was implied by the *Working with Children (Criminal Record Checking) Act 2004*.

***Physiotherapists Registration Board of WA v Townsend* [2008] WASCA 25.** The Court of Appeal refused the application for leave to appeal.

***Mustac v Medical Board of Western Australia* [2007] WASCA 128 (S).** The Court of Appeal declined to make any further orders subsequent to the successful appeal of the practitioner, but did order that the Medical Board pay the costs of the practitioner in the appeal.

References to the full bench

Matters referred under s 185(2)(a) of the *Legal Practice Act 2003*, to Supreme Court (full bench) recommending that the practitioner in question be struck from the Roll of Practitioners:

***Legal Practitioners Complaints Committee and De Pardo* [2007] WASAT 211;** and

***Legal Practitioners Complaints Committee and Mijatovic* [2007] WASAT 111.**

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FACILITATIVE DISPUTE RESOLUTION IN THE STATE ADMINISTRATIVE TRIBUNAL¹

From its inception on 1 January 2005 the Tribunal adopted facilitative dispute resolution (FDR) as a core practice across all streams.

FDR, as defined in the National Alternative Dispute Resolution Advisory Council's (NADRA) 2003 paper on Dispute Resolution Terms, involves processes in which a dispute resolution practitioner assists the parties to a dispute to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement about some issues or the whole dispute.

A number of important benefits flow from the Tribunal's emphasis on, and practice in relation to, FDR:

- Parties are encouraged to think creatively and formulate their own solutions to a dispute, with the assistance of an experienced Tribunal member;
- Parties can avoid incurring the time and expense of preparation for a final hearing;
- A decision which is the product of agreement between the parties is often a better outcome than one decided by the Tribunal; and
- Even when a final resolution is not facilitated, active case management, mediation or compulsory conference regularly identifies and narrows the issues making any hearing quicker and cheaper.

In the Tribunal, FDR 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 result imposed.

There are three primary forms of FDR used by the Tribunal: active case management, mediation and compulsory conference. Active case management is achieved through directions hearings where the Tribunal seeks to identify the principal issues in a matter at the earliest opportunity. Mediation is a consensual process where 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. Compulsory conferences are used where the parties on the face of it are unwilling to cooperate but where common sense demands that the parties should attempt settlement or try and reduce the matters in issue. If a party does not attend a compulsory conference, the Tribunal has the power to determine the proceeding adversely to the absent party and make any appropriate orders; or direct that the absent party be struck out of the proceeding. Mediation and compulsory conference are both sessions held in private, and evidence of things said or done in the course of those sessions is not generally admissible at later stages of the proceeding. If the parties agree in writing to settle a proceeding during mediation or compulsory conference, the Tribunal may make the orders necessary to give effect to that settlement, provided it would have the power to make a decision in the terms of



¹ This section is based on a paper to be presented at the National Mediation Conference 2008 by Member Maurice Spillane 'Mediation in the State Administrative Tribunal: from alternative to mainstream - a success story'.

the agreed settlement or in terms that are consistent with the terms of the agreed settlement. All Tribunal members are fully trained as mediators and know and understand the rules of engagement, however, they are also cognisant of the objectives of the *State Administrative Tribunal Act 2004* (SAT Act).

If a matter is settled through any of the FDR forums, the final orders in the terms of the agreed settlement are publically available on the Tribunal's website.

An overview

The following brief overview of the Tribunal's statistics for matters resolved by FDR shows its success.

Commercial and Civil stream

During the course of the 2007-08 reporting year, 330 matters were resolved in the CC stream without the need for a final hearing. Of these 110 matters were referred to mediation, of which 78 or 71% of the total referred to mediation were successfully resolved.

Development and Resources stream

In the reporting year 2006-07, 64% of the applications in the DR stream were resolved through FDR methods, and in 2007-08, this percentage has increased to approximately 75% of all applications across the DR stream and 76% in relation to town planning and local government notice applications which make up almost 90% of the work of the stream.

Human Rights stream

Figures for the 2007-08 reporting year show that in respect of equal opportunity matters, approximately 50% were settled at or shortly after mediation, while over 90% of all equal opportunity matters settle without the need for a final hearing.

Vocational Regulation stream

In the reporting year 2007-08, 168 applications were finalised in 30 VR areas. Of these, 109 applications (relating to 91 individuals) or 65% were in four vocational areas. **Table 23** sets out the impact of FDR in these four areas.

Table 23 – Mediated outcomes

	Matters Finalised*	Facilitated Outcomes	Mediations
Legal Practice Act 2003	28	25	10
Medical Act 1894	13	11	11
Nurses and Midwives Act 2006 and Nurses Act 1992	29	28	10
Real Estate and Business Agents Act 1978	21	15	12

*Numbers relate to individual practitioners rather than applications

General observations

When the Tribunal was first introduced and the prospect of mediation in vocational matters was raised, some parties were sceptical that such disputes could be resolved by any means other than a formal hearing.

However, experience has now shown an entirely different story, and it is one of the real success stories of the Tribunal to date, saving enormous amounts of time and cost, not to mention stress for the parties involved.

It must be emphasised that even though the Tribunal has been successful in FDR in a large majority of VR matters without the need for a final hearing, the Tribunal is very cognisant of the high public interest in these matters and the need to ensure transparency.

For this reason, if parties to a VR matter agree terms to finalise the

matter, two things must happen before the Tribunal will make the orders requested. These are:

- The mediator must be satisfied that, in the circumstances of the case, the penalty being agreed to is within an acceptable range, keeping in mind other matters of a similar nature that have been before the Tribunal. If the member is not satisfied with the agreed outcome, the matter will be listed before a

panel, on agreed facts, for what is essentially a hearing on penalty.

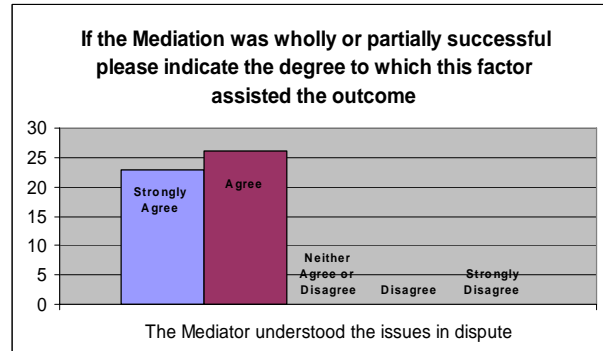
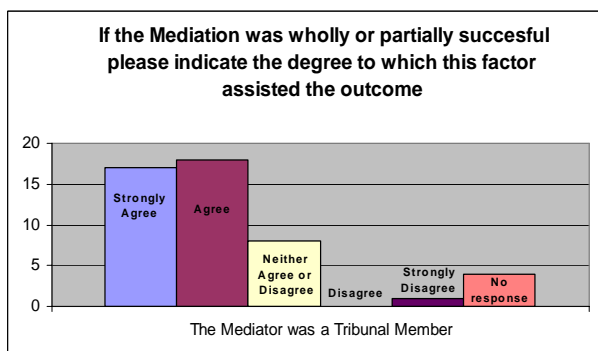
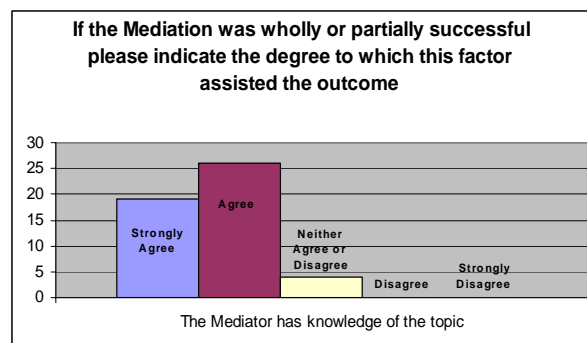
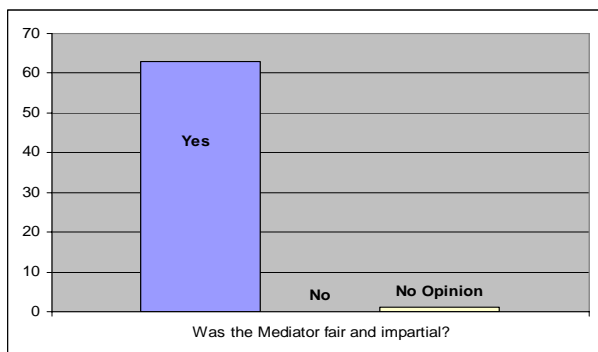
- There is full public disclosure in the Tribunal's final orders of the identity of the practitioner, the facts of the case, the allegations put, the admissions made and the penalty agreed and there is no suppression of any of the matters involved. The order setting out all of these issues is then published on the Tribunal's website.

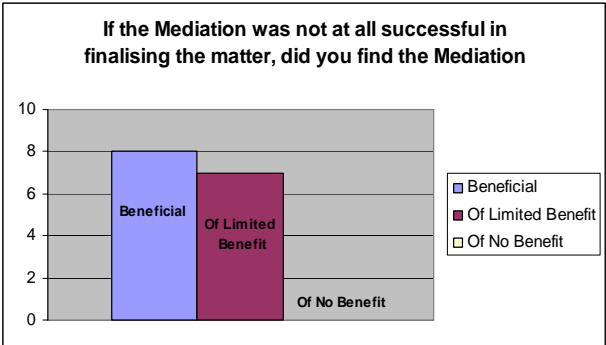
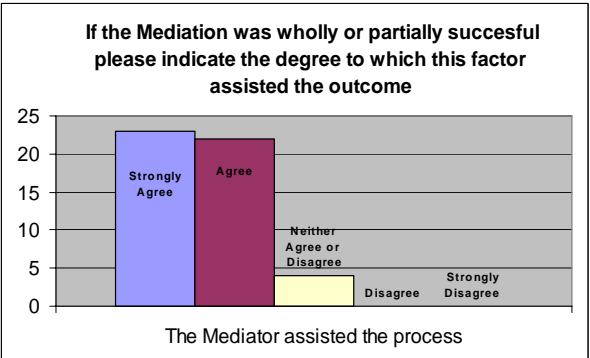
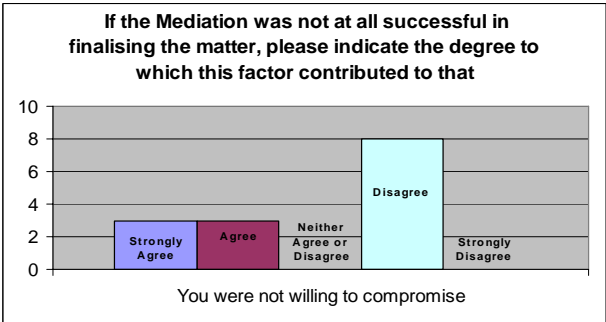
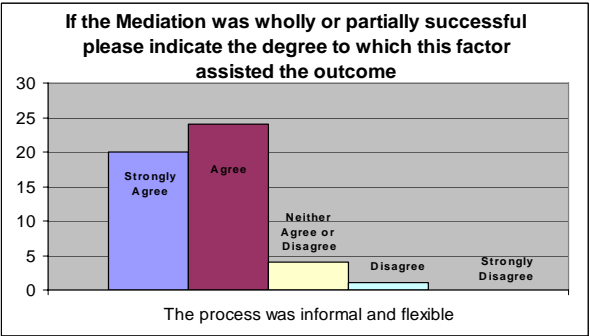
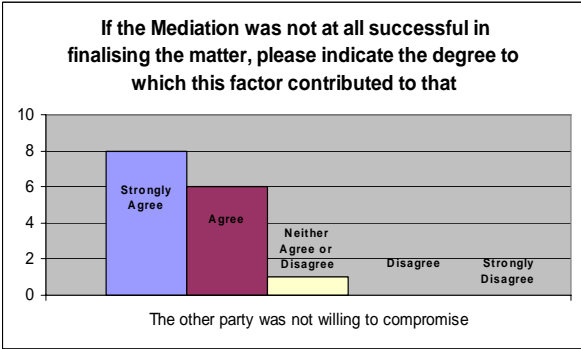
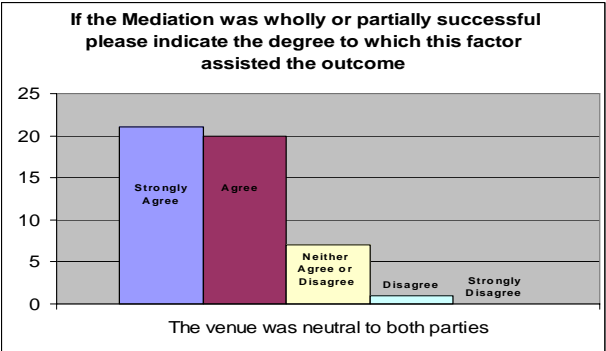
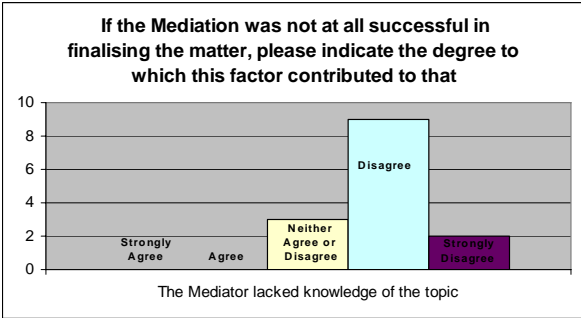
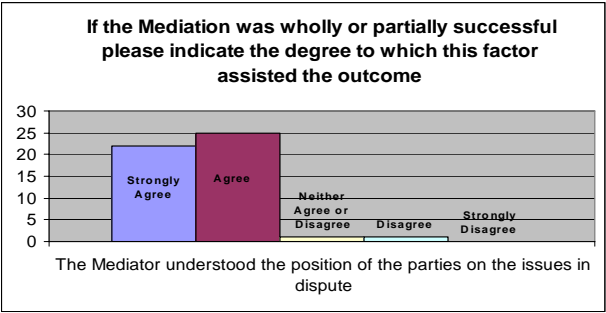
Party perceptions of mediation

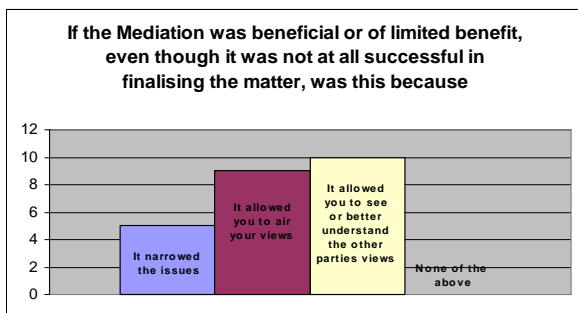
During May, June and July 2008, the Tribunal conducted an exit survey of parties to mediations.

Participation in the survey was entirely voluntary and all responses were anonymous. Sixty one completed survey forms were returned; 31 from applicants and 30 from respondents. In 34 cases, the mediation had been wholly successful, in 14 cases partially successful and in 13 not at all successful. Thirty seven parties had been legally represented. The following graphs provide an overview of the results.

Graph 3 – Mediation graphs







From this survey, there are a number of clear indicators that confirm that mediation is working at the Tribunal:

- Of the 61 surveys returned, 60 believed the mediator was fair and impartial with one having no opinion.
- Where the mediation was either wholly or partially successful in finalising the matter, the fact that the mediator:
 - had knowledge of the topic;
 - understood the issues in dispute; and
 - understood the position of the parties on those issues,was either agreed or strongly agreed by close to 100% of the participants. The fact the process was informal and flexible and the venue neutral was also important.
- Even when the mediation was not at all successful in finalising the matter, all of the participants found the mediation to be of some benefit.

Concluding observations

The Tribunal offers a process that is credible and successful and results have shown that the knowledge of competent mediators who understand the topic they are dealing with together with the Tribunal's flexibility have been key reasons for the success to date.

It is still early days but the Tribunal will continue to strive to fulfil the objectives set down by Parliament, and FDR including mediation will continue to play a central role in this regard. This is because, as a general rule, FDR outcomes are a more desirable outcome for both the public and the Tribunal.

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A CASE STUDY OF THE EFFECTIVENESS OF THE TRIBUNAL – STATE REVENUE DECISIONS²

An important review jurisdiction conferred on the State Administrative Tribunal (Tribunal) when it was established on 1 January 2005 related to state revenue. It continues to be a significant part of the Tribunal's decision-making.

Before the Tribunal commenced, state revenue decisions could be reviewed in various ways:

- Decisions of the Commissioner of State Revenue that involved the dismissal of a stamp duty or pay-roll tax assessment objection could be appealed to the Supreme Court of Western Australia;
- Land tax disputes could be referred to the state Land Valuation Tribunal;
- Decisions about first home owner grants (FHOGs) could be dealt with in the Magistrates Court; and
- The Commissioner, at the request of a taxpayer, could also apply for directions from the relevant appeal body in respect of an objection proceeding which had not been determined within the time limits prescribed by the *Taxation Administration Act 2003* (WA) (TAA).

On the establishment of the Tribunal the jurisdiction to determine all state revenue matters was conferred on it, so that the Tribunal now deals with all review applications concerning:

- Stamp duty and pay-roll tax;
- Land tax;
- FHOGs; and
- Applications for directions where an objection has not been determined by the Commissioner in the requisite statutory period.

With the Tribunal having exercised this jurisdiction for three and half years, it is possible to make some comparisons with the position prior to the establishment of the Tribunal, and draw some conclusions about the effectiveness of the Tribunal in this area and, by implication, more generally.

Statistical account of the effect of the Tribunal

Tables 24 and **25** summarise the pre-SAT and post-SAT positions in relation to the volume and disposition of state revenue work generally.

² This section is based on a paper presented by the President, Justice Michael Barker at the Taxation Institute of Australia Conference, Sydney, July 2008, 'Administrative Tribunals and State Taxation Decisions', which is available on the Tribunal's website. The Tribunal gratefully acknowledges the assistance of Mr Brad Prentice, State Solicitor's Office in the preparation of the statistics mentioned in this section.

Table 24 – Pre-SAT statistics: State revenue matters 1 July 2001 to 31 December 2004

	Stamp Duty	Pay-roll	Land Tax	FHOG	Total
Applications	33	17	9	2	61
Settled or withdrawn	17	10	1	2	30
Matters heard	1	0	8	0	9
Applicant success	1	0	0	0	1
Appeals to Court of Appeal	0	0	0	0	0
Application for direction	0	0	0	0	0
Matters ongoing at 31/5/08	9	6	0	0	15

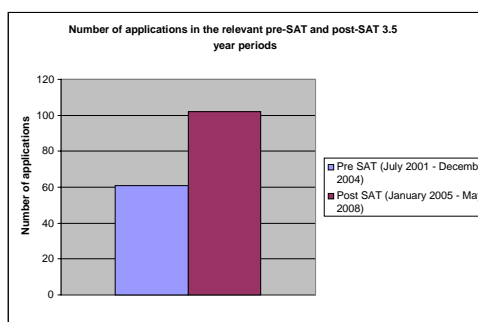
Table 25 – Post-SAT statistics: State revenue matters 1 January 2005 to 31 May 2008

	Stamp Duty	Pay-roll	Land Tax	FHOG	Total
Transferred from SC	5	1	0	0	6
Applications	44	21	30	7	102
Mediations	22	7	18	2	49
Settled or withdrawn after mediation	14	5	12	2	33
Total withdrawn or settled	23	15	16	4	58
Matters heard	22	4	13	3	42
Matters ongoing at 31/5/08	6	4	2	1	13
Applicant success at SAT	6	3	3	0	12
Commissioner success at SAT	14	1	9	3	27
Number of appeals to Court of Appeal by applicant	2	0	0	0	2
Number of appeals to court of appeal by Commissioner	3	3	1	0	7
Applicant taxpayer success in appeal	5	1	1	0	7
Respondent Commissioner success in appeal	0	0	0	0	0

Increase in applications

Taking into account all matters in **Table 24** and **Table 25**, in the three and a half year period pre-SAT there was a total of 61 applications in all categories of state revenue compared with the 102 applications in total made to the Tribunal in the equivalent post-SAT period. As **Graph 4** illustrates, this involves a 67% increase in the number of applications.

Graph 4 – Number of applications in the relevant pre-SAT and post-SAT 3.5 year periods



Applications for directions

Since the commencement of the Tribunal there have been a total of six applications in stamp duty or pay-roll tax objection proceedings for directions to achieve a timely determination of the objection proceedings by the Commissioner of State Revenue. As shown in **Table 26**, all these applications have been resolved in a timely manner so that none were ongoing as of 31 May 2008.

Table 26 – Applications for directions

	Stamp Duty	Pay-roll	Land Tax	FHOG	Total
Applications for directions	2	4	0	0	6
Directions matters resolved	2	4	0	0	6

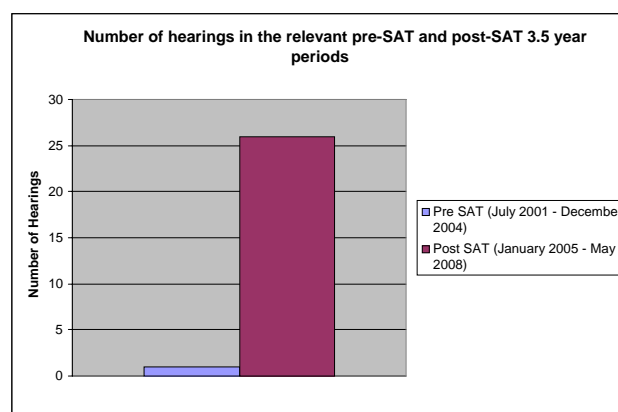
By comparison, even though the equivalent to the current s 38(4) of the TAA was in place from 2003, no applications for directions were apparently ever made to the Supreme Court or any other prior appellate body.

Number of hearings

In the three and a half years before the Tribunal was established, 50 state revenue matters (33 stamp duty and 17 pay-roll tax assessments) were the subject of appeal to the Supreme Court. Of these, only 1 matter went to a hearing and was decided by the court (in favour of the taxpayer) in that three and a half year period.

By contrast, in the (nearly) three and a half years to 31 May 2008, 65 new applications were made to the Tribunal in respect of stamp duty and pay-roll tax assessments, together with six such matters transferred to the Tribunal from the Supreme Court - a total of 71 matters. In that three and a half year period, 26 matters were heard and determined by the Tribunal. This is illustrated in **Graph 5**.

Graph 5 – Number of hearings in the relevant pre-SAT and post-SAT 3.5 year periods



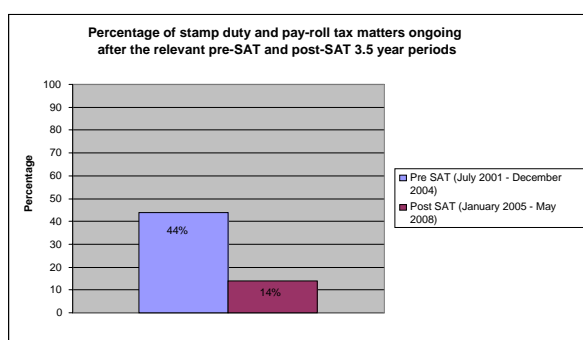
Leaving aside every other statistic, the fact that 26 matters were heard by the Tribunal in the three and a half years after the establishment of the Tribunal compared with one matter heard in the Supreme Court in the three and a half years preceding the Tribunal, demonstrates the impact of the Tribunal and the overall effectiveness and efficiency of its practices, procedures and operations.

Unresolved matters

Further, in the three and a half year period pre-SAT in relation to stamp duty and pay-roll tax appeals, of 50 matters in which taxpayers had requested review by the Supreme Court, only one matter was actually decided, 27 matters were settled or withdrawn, leaving 22 matters awaiting disposition at the end of that period. This compares with the 10 on-going matters in the Tribunal after three and a half years, after 26 matters had gone to hearings.

Graph 6 illustrates the difference percentage wise, of this efficiency dividend, being 44% of applications pre-SAT remaining on-going at the end of the three and a half year period compared to 14% post-SAT.

Graph 6 – Percentage of stamp duty and pay-roll tax matters ongoing after the relevant pre-SAT and post-SAT 3.5 year periods



Outcomes

Table 27 shows that taxpayers have had a degree of success in review applications. For example, in finally decided stamp duty matters in SAT the taxpayer was successful on six occasions and the Commissioner on 14. However, taking into account the five appeals made to the WA Court of Appeal (two by taxpayers and three by the Commissioner), which have all gone against the Commissioner, taxpayers have overall succeeded on eight occasions and the Commissioner on 12.

Table 27 – Applicant success rate

	Stamp Duty	Pay-roll	Land Tax	FHOG	Total
Applicant success at the Tribunal	6	3	3	0	12
Commissioner success at the Tribunal	14	1	9	3	27
Applicant success in overturning the Tribunal's decision in the Court of Appeal	2 (of 2)	0 (of 0)	0 (of 0)	0 (of 0)	2
Commissioner success in overturning the Tribunal's decision in the Court of Appeal	0 (of 3)	0 (of 1)	0 (of 1)	0 (of 0)	0
Total number of revenue review successes of applicant	8	3	3	0	14
Total number of revenue review matters successfully resisted by Commissioner	12	1	9	3	25

Levels of representation

Not all parties are legally represented in revenue proceedings. Mostly the Commissioner is, and, in revenue matters involving a significant quantum, applicants seeking review are also usually legally represented.

However, in a number of cases the taxpayer is represented by an accountant. In a reasonable number of cases the taxpayer is self-represented. **Table 28** shows there have been 24 stamp duty cases in the three and a half years post-SAT period where the taxpayer has not been legally represented. Overall 43 persons have been self-represented and 16 by non-legal (usually accountant) representatives.

Table 28 – Non-legal representation in the Tribunal

	Stamp Duty	Pay-roll	Land Tax	FHOG	Total
Applicant self-represented	13	1	22	7	43
Non-legal representation	11	3	2	0	16

This latter phenomenon perhaps illustrates, as much as any other factor, the significance of having a tribunal such as the State Administrative Tribunal dealing with state revenue matters. The Tribunal is set up in all respects to ensure that self-represented parties and parties represented by persons other than lawyers are not disadvantaged in the conduct of proceedings in the Tribunal. The Tribunal takes seriously its s 9 objectives which confirm it is a tribunal, not a court.

The role of mediation in state revenue proceedings

An important feature of the practice and procedure of the Tribunal is the use of mediation. This is emphasised in relation to all proceedings in the Tribunal. Save for a range of matters which are listed for an early final hearing and determination, most matters are assessed as to whether mediation may assist in their early resolution or in narrowing issues.

Sometimes mediation enables the official decision-maker, such as the Commissioner's representative or officers, to explain the decision-making process to a taxpayer in an informal setting. This can often result in the taxpayer realising that their case is hopeless and agreeing to withdraw it. Sometimes it may assist the taxpayer in accepting that further information needs to be supplied to the Commissioner for a proper reconsideration to occur. These are valuable outcomes when they occur because they mean the Tribunal's resources, and the time and costs of parties, are saved or minimised. It also often means a substantially quicker resolution time.

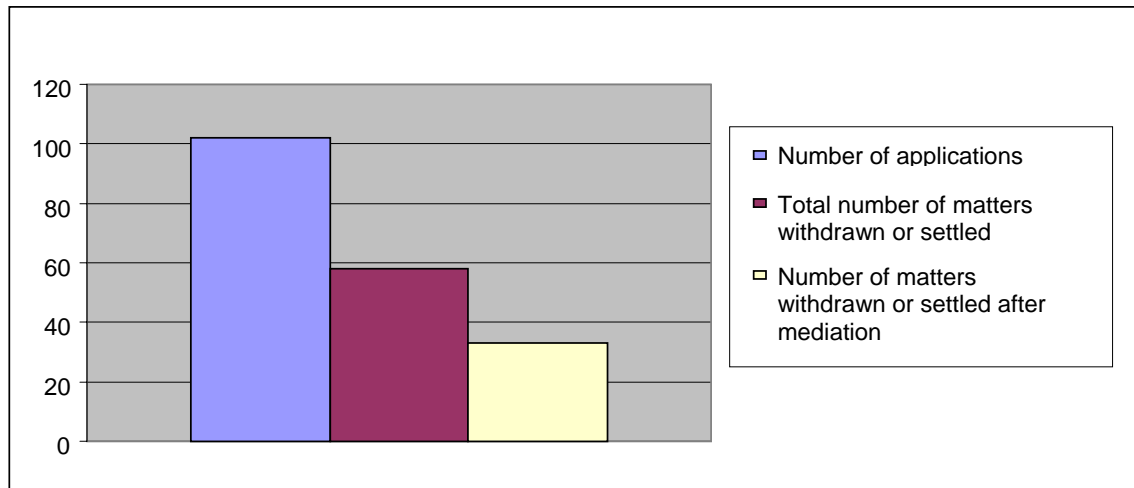
Mediation, even if it is not likely to finally resolve a matter in dispute, often serves to narrow the issues or to achieve some agreement between the parties as to what the facts are, and what is not in contention. This also serves the objectives of the Tribunal in that it helps to shorten the length of hearing and it saves the parties costs.

In the three and a half years since the Tribunal was established to 31 May 2008, 29 stamp duty and pay-roll tax matters went to mediation or compulsory conference in the Tribunal and 19 were settled or withdrawn as a result of these processes. (The total number of matters settled or withdrawn without the need for a final hearing in both areas was 38, suggesting that another 9 matters were resolved without active Tribunal involvement.)

By contrast, in the Supreme Court pre-SAT there was little or no mediation or compulsory conference mechanism utilised in relation to state revenue matters. It seems that a total of 27 stamp duty or pay-roll tax matters were either settled or withdrawn in the pre-SAT period. The process by which matters were settled or

withdrawn is not able to be simply equated with the process by which settlement and withdrawal has occurred as a result of the involvement of the Tribunal. The process of settlement or withdrawal pre-SAT, having regard to anecdotal evidence, seems to have been attended by a degree of attrition.

Graph 7 – Effect of mediation in Tribunal decision-making



Closing observations

These statistics amply demonstrate that in the area of state revenue decision-making the Tribunal has achieved its statutory objectives, shortly put, of making reliable decisions, as quickly as possible and in a way that minimises the costs of the parties.

ADMINISTRATION

Executive Officer and staff



Alistair Borg
Acting Executive Officer

Alex Watt was appointed as the Tribunal's Executive Officer in December 2004 and during the subsequent three years worked tirelessly to ensure that the Tribunal's administration was well established to deal with the work coming before it. Following Mr Watt's secondment to another agency during the year Alistair Borg has acted in the Executive Officer role, with Liam Carren assisting for a short period.

On review of the 2007-08 year, it is satisfying to acknowledge that all of the Tribunal's administrative and judicial support staff have 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 parties 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, Peter Sermon Robert Davie, Andrew Bowe and, more recently, Karen Rogers, have greatly assisted the Tribunal in the exercise of its jurisdiction and the administration of the *State Administrative Tribunal Act 2004* (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 provides varied directions hearings to assist SRPs. All parties are supported through the provision of pamphlets and Practice Notes which are reviewed and updated regularly to assist parties in proceedings. A list of these publications is contained in **Appendix 7**.

The continued development of the Tribunal's website as a valuable information resource to SRPs as well as all other parties occurred during the year. This included improvements to the SAT Wizard on the Tribunal's website which improved the functionality and assisted parties in determining the correct application to select. More information is displayed regarding each application type before proceeding to select that application. There are regular news items and the bulletins on recent decisions and decisions of note.

Engagement with the community

Contact with the community remains a significant priority for the Tribunal and for 2007-08, 88 presentations and attendances were made by members to community and special interest groups throughout the year. There were a significant number of forums and seminars at which presentations were made, 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 staff.

Parties survey

In 2005–06 and 2006-07 the Tribunal undertook to survey a sample of parties to proceedings with the results



being very positive.

This reporting year we have undertaken a more significant survey which will be administered on an ongoing basis and predominantly in an electronic format.



The Tribunal will continue to refine the survey questions

with the assistance of the company contracted to analyse the survey questions. The survey is now available electronically for members of the public who have utilised the services of the Tribunal to complete on-line.

The Tribunal not only invites parties who have had matters finalised before the Tribunal to supply feedback via the survey on-line, but upon request will send out hard copies via the post for convenience.

This has enabled the Tribunal 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 the Tribunal's website and in summary in the annual report each year.

Preliminary results of the 2007-08 parties survey were available just prior to publishing this Report. A survey of 2023 randomly selected parties who attended the Tribunal in 2007-08 resulted in 470 responses and at the 95% confidence level the error rate is 3.96%. A preliminary sample of some of the results is available in **Appendix 7**.

Tribunal's jurisdiction

Since July 2007, the following additional jurisdictions have been conferred, and existing jurisdictions consolidated or modified:

- *Betting Control Act 1954;*
- *Biosecurity and Agriculture Management Act 2007;**
- *Child Care Services Act 2007;*
- *Children and Community Services Act 2004;*
- *Chiropractors Act 2005;*
- *Country Areas Water Supply Act 1947;*
- *Dangerous Goods Safety Act 2004;*
- *Energy Coordination Act 1994;*
- *Gas Standards Act 1972;*
- *Local Government (Miscellaneous Provisions) Act 1960;*
- *Local Government Act 1995;*
- *Metropolitan Water Authority Act 1982;*
- *Metropolitan Water Supply, Sewerage and Drainage Act 1909;*
- *Nurses and Midwives Act 2006;*
- *Occupational Therapists Act 2005;*
- *Residential Parks (Long Stay Tenants) Act 2006;*
- *Rights in Water and Irrigation Act 1914;*
- *Road Traffic (Authorisation to Drive) Regulations 2008 (given effect by Road Traffic Act 1974);*
- *State Superannuation Act 2000;*
- *Swan and Canning River Management Act 2006;*
- *Taxi Act 1994;*

- *Water Agencies (Powers) Act 1984; and*
- *Water Resources Legislation Amendment Act 2007.*

* yet to be proclaimed.

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

Service Support



Anthea Chambers
Manager Service Support

Service Support is managed by Anthea Chambers. Anthea has qualifications and experience in teaching, social work and administration.

Service Support receives and processes all applications coming into the Tribunal and responds to all general enquiries and requests for assistance. This includes the operation of the front counter. The 24 staff in Service Support are divided into teams which complement the division of the Tribunal into the Human Rights (HR), Commercial and Civil (CC), Development and Resources (DR) and Vocational Regulation (VR) streams.

Each team is made up of team leaders, supervisors and a number of service officers who provide assistance to people or organisations wanting to make an application to the Tribunal. The Tribunal's website allows intending applicants to research information about matters that can be brought before the Tribunal. The SAT Wizard assists applicants to identify the enabling laws, the appropriate application type and information about how the application is to be lodged. Staff help people navigate the website, or they send applications by post to people who do not have computer access. The Tribunal aims to assist people in the lodgement and management of their matters without the need for legal representation.

In this reporting year, the front counter managed approximately 9,400 in-person enquiries. Of these, approximately 1,040 people lodged applications at the front counter, 3,000 lodged documents and 5,360 made general enquiries.

During the last year, the increase in staffing levels in the Human Rights stream, obtained early in 2007, has resulted in greater consistency in processing applications made under the *Guardianship and Administration Act 1990*.

Also during the last year, a review of the Tribunal's management of matters has been completed. As a result of this review, the division of staff into Service Support and Decision Support teams will be abolished and replaced with two service areas; one for HR matters and one for the rest of the work of the Tribunal. This will allow greater control and management of matters from lodgement to finalisation within each of these two functional areas. Work to achieve this re-alignment has commenced.

Decision Support



Mark Charsley
Manager Decision Support

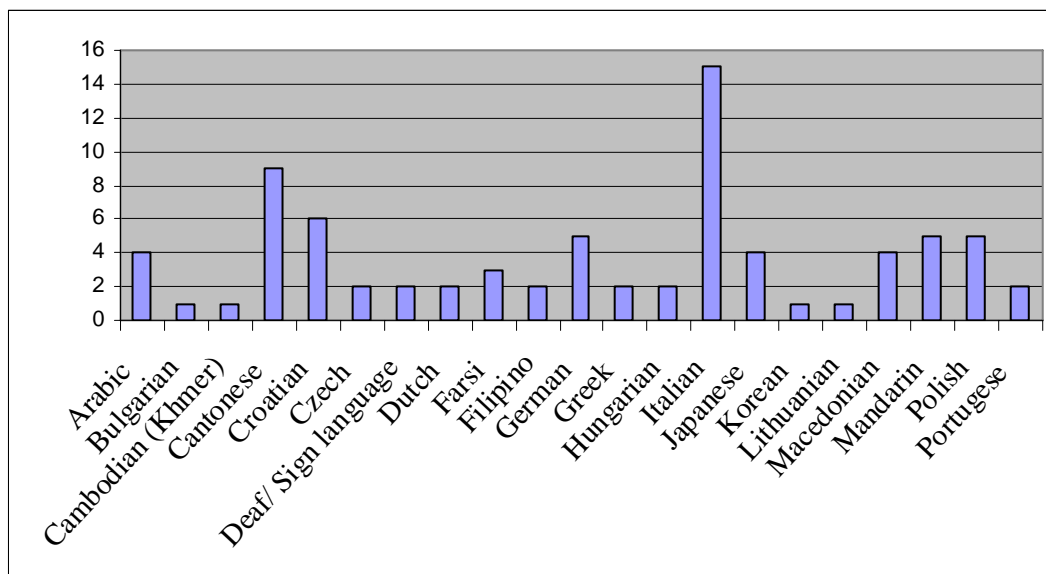
Decision Support provides support to members, staff and the public through the effort of 16 staff. They prepare, list and support the Tribunal's matters through the hearing process, making all necessary arrangements and providing logistical support prior to, during and after hearings. For the period 2007-08 Decision Support staff arranged and supported 7,328 hearings.

The needs of the parties are considered when listing matters. These needs include the ability to participate in hearings in which they feel at ease with the hearing process. 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. This commitment continues throughout the hearing process at the Tribunal.

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, overseas or for some other reason are unable to participate in the hearing and take part in the Tribunal's process. The Tribunal has limited parking at the rear of its premises for persons with limited mobility and disabilities. However, we do provide access at the rear of the Tribunal to permit persons with mobility or disabilities to be dropped off and thereby gain easier access to the rear of the Tribunal.

The diverse cultural background of Western Australian residents is reflected in the Tribunal's use of interpreters over the year; **Graph 8** provides a breakdown of the various languages which were supported by the Tribunal supplying interpreters.

Graph 8 – Interpreters for 2007 - 08



The Tribunal is committed to ensuring parties involved in a hearing can do so in a safe environment and feel able to contribute and participate fully in the process in an informal manner.

Community Relations



Peter Sermon
Manager Community Relations

Peter Sermon and Tamara Townsend have managed Community Relations over the last year by assisting members, staff, the community, professional bodies and stakeholders with information and support.

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

The Community Relations section maintains the Tribunal's website and application wizard and manages website development to meet the needs of Tribunal users. Community Relations also prepares, produces and reviews 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 the case management of an application.

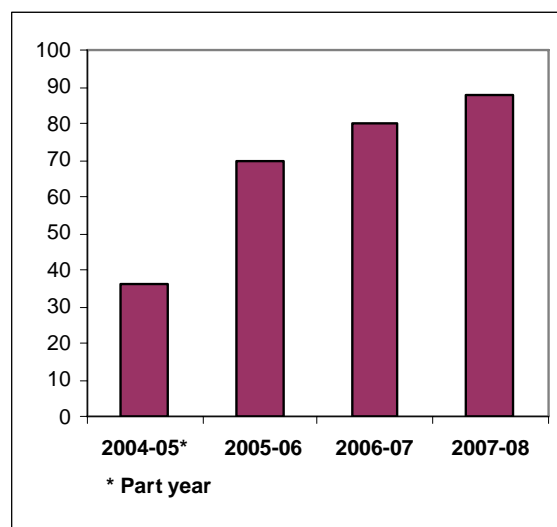
Local papers have carried articles at times during the year addressing various issues handled by the Tribunal and reporting on specific case decisions. This generated feedback and inquires as to the Tribunal's processes and practices. This is a productive outreach response mechanism which increases public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

The Community Relations section coordinates presentations and forums,

ensuring they are logistically managed and facilitated in a timely and appropriate manner.

There were 88 seminars or forums held or that members participated in or presented at over the last 12 months. See **Appendix 2**.

Graph 9 – 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 recommended a number of persons for reappointment or appointment as sessional members over the last 12 months. There were six senior sessional members and five ordinary members appointed or reappointed in the reporting year. Refer to **Table 29** for details.

Table 29 – Sessional members appointed during 2007-08

On 20 November 2007	5 senior sessional members were reappointed.
	1 senior sessional member was appointed.
	5 ordinary sessional members were appointed.

During the year there were a total of 2,265 electronic contacts (emails – see **Table 30** below) received by the Tribunal.

The Tribunal has 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.

There have been a number of changes to the Tribunal's application Wizard which assists the public and professionals in selecting the correct application for lodgement. There are additional enhancements requested and these are anticipated to again

assist the public in access and navigation of the SAT website.

We also have 762 email recipients each month who receive bulletins or news items: 438 recipients for the Monthly Development and Resources Bulletin, 201 recipients for the Guardianship and Administration bulletin and 123 recipients for news and media items.

In 2008-09 bulletins will be implemented for Commercial and Civil and Vocational Regulation matters on a quarterly basis. Recipients for those bulletins will be included in the 2008-09 annual report.

Email recipients include individuals, professional organisations, government departments and various agencies.

Table 30 – Community relations electronic contacts

Type of email	No. received 2006-07	2007-08
*Media inquiries	-	10
Matter information	341	746
Praise	14	19
Problems	18	16
Requests for Information	200	391
Suggestions	18	33
Complaints	15	7
Others (Multiple responses/contacts – same issue/contact)	558	79
Seminar responses/inquiries*	-	466
Spam	-	498
Request for bulletins (subscriptions are now automatic)	35	-
TOTAL	1,199	2,265

* Figures not recorded separately prior to 2007–08 financial year.

Business Services



Karen Rogers
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 Karen Rogers who is supported by Team Leaders within Records Services and Administration Services, and the Librarian.

Karen is a chartered management accountant (ACMA) who has 20 years experience in government in both the UK and Australia.

Administration Services comprises four staff and in addition to coordinating 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 of the Tribunal.

Records Services is lead by the team leader of 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 members, sessional members and judiciary.

As a whole, the key achievements for Business Services during the 2007-08 reporting year were:

- Further development of key performance indicator models for the Tribunal within each stream;
- Upgrading of the Tribunal sessional members' portal to include payment facility;
- Support to the 20/20 Vista public lectures;
- Implementation and execution of the Tribunal's retention and disposal records keeping plan; and
- Introduction of a fully functional digital recording system.

Initiatives proposed for Business Services for 2008-09 include:

- Extending occupancy to the ground floor of 12 St Georges Terrace;
- Review of current business structure and re-alignment of staff;
- Upgrading of teleconferencing and audiovisual facilities in a number of hearing rooms;
- Supporting Tribunal staff with improved training needs analysis and appropriate skills development; and
- Developing a business continuity plan, in accordance with the Department of the Attorney General's requirements.

Staffing

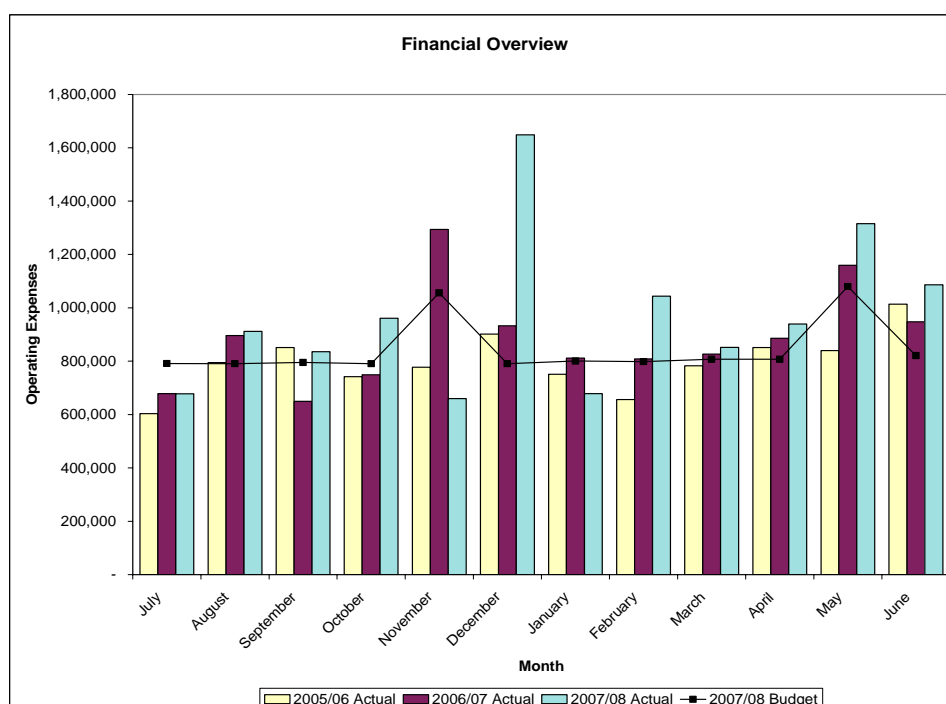
The Tribunal's approved member and staffing level is 92 full-time equivalents, however the Tribunal is currently operating at an average of 90 member and staff full-time equivalents, owing to current labour market conditions.

The above figures include three judicial members, four senior members, 10 ordinary members and five full-time equivalents allocated for sessional member usage.

Budget

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

Graph 10 – Business Services financial summary



Freedom of Information

The Tribunal received six requests under the *Freedom of Information Act 1992* during the reporting year 2007-08.

All of the applications received were for non personal-information and access was refused in each matter.

Persons who applied for access through the *Freedom of Information Act 1992* for *Guardianship and Administration Act 1990* matters were advised to inspect documents under s 112 of the *Guardianship and Administration Act 1990*.

The average time to process each application in days, from receipt of the application to the notice of decision being issued was 13 days.

SPECIAL STATUTORY REPORTS

Arrangements with other agencies

Arrangements with Chief Magistrate under s 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 2005–06 reporting year.

Arrangements with Parliamentary Commissioner under s 168

The President and the Parliamentary Commissioner (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 Solicitor's Office;
- Equal Opportunity Commission;
- Landgate;
- Public Advocate;
- Public Trustee;
- Office of State Revenue; and
- Western Australian Planning Commission.

Levels of compliance by decision-makers

Notification

Section 150(2)(d) of the SAT Act requires this report to include details of the level of compliance by decision-makers with the requirements under s 20 and s 21 to:

- (i) Notify persons of reviewable decisions and the right 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)(c) of the SAT Act requires that the annual report include details of any trends or special problems that may have emerged.

- *Increasing workload:* Since the Tribunal's commencement in January 2005 additional jurisdiction has been conferred, or existing jurisdiction consolidated or modified under the same 39 enabling acts.

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

- Advance health care planning;
- Allied health professions;
- Aquatic facilities;
- Betting and racing;
- Biosecurity and agriculture management;
- Building disputes;
- 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;
- Residential tenancies;
- Security and related activities;
- Sterilisation of children with intellectual disabilities;
- Swan and Canning River matters;
- Tobacco control; and
- Waste Avoidance and Resource Recovery Bill 2006.

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

It is anticipated that proposals to confer jurisdiction on the Tribunal in residential tenancy matters and building dispute matters will have a significant impact on the number of applications received, members required, administrative staff required and the associated accommodation issues.

- *eTribunal capacity*: The Tribunal has the vision to be one of Australasia's leading tribunals that adopts innovative technology. In setting strategic goals to meet that vision, the Tribunal 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 is not of the same level as those tribunals mentioned above. Government needs to commit the appropriate funds to these improvements sooner rather than later.

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. The first option has been exercised which will secure our accommodation through to 31 July 2010.

At commencement, the Tribunal's work station accommodation capacity was almost at 100% usage and provided limited opportunity to support room for growth. During the year the Tribunal successfully negotiated to take a further 227 m² on the ground floor of our existing building. It is anticipated that the fitout will be completed towards the end of October 2008 and planning for occupation is well advanced.

Notwithstanding the acquisition of this additional space, it is necessary to determine the accommodation requirements in the medium and longer term. To this end, the Tribunal has contracted with two experienced organisations to analyse and identify future accommodation requirements through to 2032. This project will include an analysis of the likely or predicated growth in the Tribunal's work and how this translates in spatial and location requirements.

The President considers government needs to identify a permanent 'home' for the Tribunal as an outcome of the above project.

- *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'.

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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) degree 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. Justice Barker also was a member of the Medical Board of Western Australia.

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

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

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 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. He served as Deputy Chairman and Deputy President of the former Town Planning Appeal Tribunal between 1998 and 2004.



Judge Judy Eckert
Deputy President, State Administrative Tribunal

Judge Judy Eckert completed her law degree at the University of Western Australia, and practised with Northmore Hale Davy and Leake (now Minter Ellison) for some years. 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 (1995-96) and Chair of the Real Estate and Business Agents Supervisory Board (2002-04). She also taught Commercial Practice and Drafting at the University of Western Australia Law School from 1990 to 2003.

Judge Eckert sits in the Human Rights stream and in some vocational and state revenue matters.

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. 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 barrister's 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 the Tribunal's *Standard orders made at directions hearings*, Practice Notes 2 (review proceedings), three (original proceedings) and four (Presidential review in planning matters) and the pamphlets *Information about Class 2 planning applications*, *A guide for experts giving evidence in the State Administrative Tribunal* and *Section 31 invitation by SAT for decision-maker to reconsider its decision*. 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

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 1974* and the *Firearms Act 1973*. 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 a LEADR-trained mediator 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 and has taught, on a part-time basis, constitutional and administrative law at UWA. He is also an inaugural Fellow of the Western Australian Institute of Dispute Management under the auspices of the Murdoch University. His areas of specialisation are constitutional and administrative law, environmental law and human rights, and native title and commercial law. He has published widely on these topics. 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. From 1990-96 he was head of the Centre for Constitutional Analysis in Pretoria where he had close involvement in the debates leading to and the drafting of the South African Constitution.

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 in the Tribunal.

Jim Jordan

Jim Jordan first worked as a planning consultant in Queensland and Victoria and between 1979 and 2003 was with the Western Australian Minister for Planning's Town Planning Appeal Committee. Jim was then a member of the Town Planning Appeal Tribunal before working with a private law firm. In June 2005 Jim was appointed a full-time member of the State Administrative Tribunal. Jim has a Bachelor of Arts (UWA), Master Urban Studies (U of Qld), Bachelor of Law (U of London) and a Professional Certificate in Arbitration and Mediation. He is an accredited mediator with IAMA and a Certified Practising Planner with the 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, prior to his appointment to the Tribunal, 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

Maurice graduated in law in Ireland in 1978 and practised there for 10 years before moving to Western Australia in 1988. Prior to joining the Tribunal, he practised principally in the areas of planning, local government law, environmental law, native title, medical law and professional indemnity in Western Australia.

Maurice is a member of both the Development and Resources and Commercial and Civil streams of the Tribunal and is a trained mediator.

Outside the Tribunal, Maurice holds several positions on not-for-profit organisations including Director of the Board of Mercycare, Chair of the Clinical Ethics Committee at Princess Margaret Hospital for Children, Chair of The Living Centre (an organisation supporting the HIV/AIDS community in WA) and is a member of the Scientific Advisory Committee of the World Health Organisation Collaborating Centre for Research on Children's Environmental Health.

Sessional members

State Administrative Tribunal senior sessional members and ordinary sessional members appointed under s 117, as at 30 June 2008.

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 Simon Carlin	Chiropractor
Dr Roger Clarnette	Medical Practitioner
Prof Joan Cole	Physiotherapist
Jeffrey Colley	Finance Broker
Patrick de Villiers	City Planning Consultant
Lesley Doherty	Hairdresser
Margaret Duckworth	Occupational Therapist
Ross Easton	Architect
Chris Edmonds SC	Legal Practitioner
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
Alison Garton	Psychologist
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

Member	Areas of Work/Expertise
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
Dr Mark McKenna	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
Dr 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
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	Details
Various	Full-time members	SAT professional development seminars on the second Tuesday of the month. Members and invited guests gave presentations on a range of current issues. Approximately 10 of these sessions are held each year.
05/07/2007	David Parry	Attended the Planning Institute of Australia seminar on 'Boomtown 2050 – Planning for Perth's Population Growth'.
12/07/2007	Justice Barker	Attended the Supreme Court of Western Australia – Judges, Masters and Registrars Annual Seminar Day.
12/07/2007	David Parry	Presentation Training for SAT staff on SAT legislation, DR enabling legislation and specific DR issues.
18/07/2007	David Parry, Peter McNab, Marie Connor, Jim Jordan, Maurice Spillane	Presented Development and Resources sessional members' training session.
19/07/2007-20/07/2007	Judicial and full-time members	Attended 3rd Annual SAT Kunamarri conference at the University of Western Australia.
23/07/2007	Judge Chaney	Attended a talk to students of Notre Dame University.
25/07/2007	Justice Barker, Judge Chaney, Judge Eckert, Jill Toohey, Clive Raymond, David Parry	Presented at the Law Society seminar on 'SAT: Procedure, Problems and Pitfalls'.
01/08/2007	Judge Chaney, Clive Raymond, Jennifer Hawkins, Marie Connor	Participated in preparation of a State Revenue DVD mock Tribunal hearing and mediation.
01/08/2007	Clive Raymond	Presented on <i>Residential Parks (Long-stay Tenants) Act 2006</i> at DOCEP.
10/08/2007	Clive Raymond	Presented on SAT to WA Retirement Complexes Residents' Association.
14/08/2007	Clive Raymond	Presented on <i>Residential Parks (Long-stay Tenants) Act 2006</i> to the Tenants Advice Service and others.
17/08/2007	Clive Raymond	Attended the Strata Titles Institute of WA Forum.
18/08/2007-19/08/2007	Judge Chaney	Presented and facilitated at the Advocacy Training Weekend in Busselton.
21/08/2007	Judge Chaney, Clive Raymond, Tim Carey, Bertus de Villiers, Jennifer Hawkins, Peter McNab	Attended and presented at the CC stream Planning Day.
22/08/2007	Judge Eckert, Jill Toohey, Jack Mansveld, Felicity Child, Donna Dean	Presented at a meeting of Social Workers.
23/08/2007	Justice Barker	Attended the Law Society of Western Australia function for the Judiciary.
24/08/2007	Justice Barker	Attended Bar Readers Course Closing 2007.
10/09/2007	Judge Chaney, David Parry, Peter McNab, Marie Connor, Jim Jordan	DR Stream Professional Development Day, Guildford.

Date	Member	Details
19/09/2007	Jill Toohey	Presented on guardianship issues to social workers at Sir Charles Gairdner Hospital.
17/09/2007	David Parry; Marie Connor, Jim Jordan, Peter McNab, *Lloyd Graham, *Patric de Villiers, *Rebecca Moore, *Brian Hunt, *Antony Ednie-Brown	Attended a presentation on WA Planning Commission by Mr V McMullen, DPI at the Tribunal.
21/09/2007	Justice Barker	Evidence to Standing Committee on Legislation WA Parliament SAT review.
13/10/2007	Judge Eckert, Jill Toohey, Murray Allen, Jack Mansveld, Donna Dean, *Sue Gillett, *Guy Hamilton, *John James, *Hannah Leslie	Attended the Office of the Public Advocate's Justice & Disability Conference held at Perth Convention & Exhibition Centre.
14/10/2007	Jill Toohey	Presented on guardianship and administration at Peel Community Legal Centre.
23/10/2007	Judge Chaney	Attended presentation to Judges by Justice Kirby at Supreme Court on judgment writing.
25/10/2007	Justice Barker	Welcomed delegates to the Mental Health Review Board National meeting.
25/10/2007	Jill Toohey	Attended the Heads of Guardianship Jurisdictions meeting in Sydney.
26/10/2007	Jill Toohey	Attended the Australasian Guardianship and Administration Council (AGAC) meeting in Sydney.
27/10/2007	Judge Eckert	Presented on equal opportunity matters in SAT to tenant advocates at the Equal Opportunity Commission.
29/10/2007	Clive Raymond, Bertus de Villiers, Felicity Child, Jennifer Hawkins, Jim Jordan, Jack Mansveld	Attended the Residential Tenancies Seminar presented by Magistrate Marleen Boon.
29/10/2007	Jill Toohey	Presented on guardianship and administration to social workers and nursing staff at the Osborne Park Aged Care.
13/11/2007	Judge Eckert	Attended the Disability and Justice Conference.
21/11/2007	Justice Barker; Judge Eckert; Murray Allen; Jill Toohey; Jack Mansveld; Felicity Child; Donna Dean; *Eric Leipoldt; *Hannah Leslie; *Daniel Stepniak; *Sue Gillett; *Jo Stanton	Guardianship Professional Development Day.
23/11/2007	Judge Chaney	Presented at the Lexus Nexis Seminar at the Hyatt Regency regarding Practice and Procedure at the SAT.
23/11/2007	Clive Raymond, Bertus de Villiers, Jennifer Hawkins	Participated in the Commercial and Civil forum on Mediation and recent decisions.
26/11/2007	Judge Eckert, Judge Chaney, David Parry, Jill Toohey, Jim Jordan, Clive Raymond, Bertus de Villiers, Jennifer Hawkins, Jack Mansveld	Attended a presentation at the Tribunal by Mr Bruce Roberts, Registrar of Titles and Manager, Registration Services, Landgate.
27/11/2007	Judge Eckert	Presented to the Equal Opportunity Commission regarding tenant advocates.

Date	Member	Details
02/12/2007	Justice Barker	Participated in Forensic Institute Moot Court programme.
04/12/2007	Justice Barker, Judge Chaney, Murray Allen, Clive Raymond	Attended the Vocational Regulatory Bodies Forum: Medical. Justice Barker made a presentation.
05/12/2007	Justice Barker, Judge Chaney, Murray Allen, Clive Raymond	Attended the Vocational Regulatory Bodies Forum: Commercial. Justice Barker made a presentation.
06/12/2007 – 07/12/2007	Murray Allen	Attended a seminar by the Victorian Mental Health Review Board held in Melbourne.
07/12/2007	Judge Chaney	Presented on SAT's role in planning law to Murdoch University School of Law Summer Program 2008.
08/12/2007	Justice Barker	Attended 'Law making for a small federation – National Infrastructure and Regulation seminar' organised by Australian Constitutional Law Association.
11/12/2007	Clive Raymond, Bertus de Villiers, Jennifer Hawkins,	Attended the Commercial and Civil forum on Construction Contracts Act. Clive Raymond presented.
12/12/2007	Jennifer Hawkins	Made a presentation to the State Tenancy Conference hosted by the Tenants' Advisory Service and DOCEP.
15/01/2008	Judge Eckert, Murray Allen, Jill Toohey, Jack Mansveld, Donna Dean, Felicity Child	Human Rights Professional Development Day.
28/01/2008	Bertus de Villiers	Presided over arbitration moot at Murdoch University School of Law.
06/02/2008	Justice Barker	Meeting with His Excellency, Dr Ken Michael AC, Governor of WA, Patron of SAT Vista Public Lecture Series.
25/02/2008	Judicial and full-time members	Attended a presentation at the Tribunal by Lieutenant General Sanderson on Indigenous Cultural Considerations.
25/02/2008	DR stream members	Development and Resources sessional members' decision writing seminar.
26/02/2008	Bertus de Villiers	Attended the Land Reform Conference in Pretoria, South Africa and presented a paper.
27/02/2008	Judge Chaney	Attended seminar on Juries at the Central Law Courts.
10/03/2008	David Parry, Maurice Spillane, Jim Jordan, Marie Connor, Peter McNab	Presented Local Government Information Sessions (x2) at the Tribunal.
17/03/2008	Judge Chaney	Attended and presented at DR decision-writing seminar for DR sessional members at the Tribunal.
17/03/2008	DR stream members	Presented to the Local Government Information Session at SAT.
17/03/2008	David Parry	Presented to SAT staff education lunchtime seminar No.1/2008 'Overview of SAT including SAT legislation and enabling Acts'.

Date	Member	Details
26/03/2008	Judicial and full-time members	SAT Vista Public Lecture Series #1: Mr Jeremy Dawkins Chairman WA Planning Commission presented 'Grand plans and accidents: Frank and fearless advice about the future of Perth'.
27/03/2008 - 28/03/2008	Justice Barker, Judge Chaney, David Parry, Jim Jordan, Peter McNab, Maurice Spillane	Attended and participated at the National Environmental Law Association National Law Conference, Fremantle.
04/04/2008	HR stream members	Human Rights Professional Development Day.
07/04/2008	Judicial and full-time members	Attended a presentation at the Tribunal by Dr Julie Owens on Services to Aboriginal Communities.
10/04/2008 – 11/04/2008	Judge Chaney, Judge Eckert	Attended District Court Judges Conference in Joondalup.
13/04/2008	David Parry	Attended the Institute of Arbitrators and Mediators Australia National Conference in Fremantle and presented a paper on 'Concurrent Evidence: A practical Guide'.
14/04/2008 – 17/04/2008	Jim Jordan	Attended the Planning Institute of Australia (PIA) National Conference in Sydney.
23/04/2008	Judicial and full-time members	SAT Vista Public Lecture Series #2: Justice Christopher Steytler, President of the WA Court of Appeal presented 'Sentencing in the Criminal Justice System'.
23/04/2008	Bertus de Villiers	Presented on SAT Procedures and firearms applications to the West Metro Firearms Licensing Conference at the West Metropolitan Police District.
23/04/2008	Judge Eckert, Jill Toohey	Attended the Heads of Guardianship Jurisdictions meeting in Darwin.
24/04/2008	Judge Eckert, Jill Toohey	Attended the Australasian Guardianship and Administration Council (AGAC) meeting in Darwin.
05/05/2008	Justice Barker	Participated in Law Week Opening Ceremony, Supreme Court of Western Australia.
05/05/2008	Jill Toohey, David Parry	Presented to SAT staff education lunchtime seminar No.2/2008 'Communicating with Parties'.
15/05/2008	Clive Raymond, David Parry, Jill Toohey, Jim Jordan, Maurice Spillane, Tim Carey, Jennifer Hawkins, Donna Dean, Felicity Child, Murray Allen	Attended a lunchtime members' forum at the Tribunal given by the Department of Health on the Public Health Bill.
19/05/2008	David Parry	Presented a Development and Resources Local Government and Community Information Session at Broome Shire Council.
21/05/2008	Clive Raymond	Participated in the Institute of Arbitrators and Mediators Workshop on Construction Contracts Act.
23/05/2008	David Parry, Jim Jordan, Peter McNab, Maurice Spillane	Presented a Development and Resources Local Government Information Session for Avon-Midland councils by video link.
23/05/2008	David Parry, Jim Jordan, Peter McNab, Maurice Spillane	Presented a Development and Resources Local Government Information Session for Kalgoorlie-Boulder and regional councils by video link.

Date	Member	Details
26/05/2008	David Parry, Jim Jordan, Peter McNab	Presented a Development and Resources Local Government Information Session for Great Southern councils by video link.
27/05/2008	Judicial and full-time members	SAT Vista Public Lecture Series #3: Mr Barry Carbon, former head of the WA, Qld and Commonwealth EPAs, and the New Zealand Ministry for Environment presented 'Responding to Climate Change'.
27/05/2008	David Parry	Made a presentation on 'Concurrent Expert Evidence' to the Institute of Arbitrators and Mediators Australia WA seminar at Mount Lawley.
28/05/2008	Clive Raymond	Made a presentation on commercial tenancy disputes to the Small Business Development Corporation (SBDC) professional development breakfast at the SBDC training rooms.
29/05/2008 – 30/05/2008	Justice Barker, David Parry	Participated in the State Heritage Summit at Fremantle Prison. David Parry presented a paper on 'Compliance'.
05/06/2008 - 06/06/2008	Justice Barker, Judge Eckert, David Parry, Maurice Spillane, Clive Raymond, Jack Mansveld, Felicity Child	Attended and participated at the 11 th Annual AIJA and COAT Tribunals Conference at Gold Coast, Queensland.
16/06/2008	David Parry, Tim Carey	Presented to SAT staff education lunchtime seminar No.3/2008 'Overview of SAT Practice Notes and Standard Orders'.
16/06/2008	HR stream members	Guardianship Professional Development Day. Guest speakers: Pauline Bagdonavicius (Public Advocate) and John Skinner (Public Trustee).
18/06/2008	Judicial and full-time members	SAT Vista Public Lecture Series #4 held at the Government House Ballroom Mr Malcolm McCusker AO QC, Parliamentary Inspector presented 'The Public Accountability of the Corruption and Crime Commission (CCC)'.
19/06/2008	Judge Eckert	Attended the Interpreters Conference (via telephone link-up).
19/06/2008-20/06/2008	Maurice Spillane	Attended VCAT and a workshop on Judicial Dispute Resolution presented by Judicial College of Victoria in Melbourne.
23/06/2008	David Parry, Jim Jordan, Peter McNab	Presented a Development and Resources Information Session to State Authorities at the Tribunal.
24/06/2008	Justice Barker, Judge Chaney	Attended Prof Bill Marshall's presentation on 'The Treatment of Sexual Offending' at the District Court.
25/06/2008	David Parry, Marie Connor, Jim Jordan, Peter McNab, Maurice Spillane	Attended a seminar at the Tribunal presented by *Patric de Villiers on 'State Planning Policy No 3.5 – Historic Heritage Conservation'.
25/06/2008-27/06/2008	Judge Chaney	Attended Australian Institute of Judicial Administration Inc (AIJA) Law & Technology Conference in Sydney.

* Refers to Sessional Members

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

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
Commercial & Civil	Animal Welfare Act 2002	74(1)(b)	-	0	1	0
		74(2)	-	0	1	0
	Associations Incorporation Act 1987	7(2) 8(2)	- -	0 0	0 0	1 1
	Betting Control Act 1954	27F(2)(c)	-	0	0	1
	Births, Deaths and Marriages Registration Act 1988	67(1)	-	0	1	0
	Builders Registration Act 1939	41(1)	-	0	54	52
	Business Names Act 1962	19(3)	-	0	1	0
	Caravan Parks and Camping Grounds Act 1995	27(1)	1	2	1	0
	Commercial Tenancy (Retail Shops) Agreements Act 1985	6(1)(b)	-	2	2	3
		6A(1)(b)	-	1	0	0
		11(5)	1	3	4	8
		12(1)(b)	-	3	2	0
		12A(4)	-	1	-	0
		12D(3)(a)	-	-	-	1
		12D(3)(b)	-	-	-	1
		13(3)(a)	-	2	2	1
		13(7)	794	1457	1663	1491
		13(7b)	8	8	17	2
		14	3	4	2	2
		15F(1)	-	-	-	5
		16(1)	16	34	40	38
		27(3)(b)	-	1	2	2
	Community Services Act 1972 (repealed)	17C(1)(a)	-	1	0	0
	Construction Contracts Act 2004	46(1)	-	3	2	6
	Consumer Credit (Western Australia) Act 1996	36(6)	1	-	-	0
		68(1)	1	3	3	5
		70(1)	-	1	1	0
		72(1)(a)	1	-	-	0
		83(1)	-	1	2	2
		88(1)	3	1	0	0
		92	5	23	30	50
		93(1)	3	44	12	11
		93(2)	-	6	0	1
		101(1)	1	-	-	1
		102(1)	1	-	-	0
		107(1)	1	-	-	0

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
		155	-	-	-	1
	Country Towns Sewerage Act 1948	62(2)	-	1	0	0
	Credit Act 1984	74(3)	-	-	-	1
		104(3)	1	-	-	0
	Dangerous Goods (Transport) Act 1998 (repealed)	27	-	1	0	0
		31(c)	-	2	1	0
	Dog Act 1976	17(1)	-	2	0	0
		26(5)(a)	1	0	1	1
		26(5)(b)	5	2	1	4
		27(7)(a)	-	-	-	2
		33F(2)(b)(ii)	-	0	1	1
		33F(6)(a)	-	1	1	0
		33F(6)(b)	1	1	0	0
		33F(6)(b)(ii)	-	2	0	0
		33G(2)(d)(ii)	-	0	3	1
		33G(2)(d)	-	1	0	0
		33G(4)(a)	-	-	-	1
		33H(5)(a)	-	-	-	1
	Explosives and Dangerous Goods Act 1961 (repealed)	52(1)	-	-	-	1
	Firearms Act 1973	22(2)	20	20	25	28
	First Home Owner Grant Act 2000	31(1)	1	4	3	3
	Health Act 1911	137(ii)	-	2	1	0
		36(1)	5	12	7	5
	Local Government (Miscellaneous Provisions) Act 1960	295(3)(d)	-	1	0	0
		374(2)(a)	8	6	22	4
		374A(3)	1	0	1	0
		377(5)	1	-	-	0
		380(3)	-	1	0	0
		389	-	1	0	0
		399(5)	-	0	2	1
		401(3)	76	128	39	67
		401A(6)	-	3	7	2
		403(6)	1	2	1	1
		408(3)	1	4	1	2
		409(3)	1	-	-	3
		417 (3)	-	1	0	0
	Marketing of Potatoes Act 1946	19A	-	0	1	1
	Petroleum (Submerged Lands) Act 1982	92(1)	-	-	-	1
	Residential Parks (Long Stay Tenants) Act 2006	7(1)(b)	-	-	-	2
		62(2)	-	-	-	2

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
		66(2)	-	-	-	5
		68(2)	-	-	-	3
	Retirement Villages Act 1992	56(1)(a)	-	1	0	0
		56(1)(b)	2	1	1	4
		57(1)	-	1	0	1
		58(1)	-	0	1	0
		59(1)	-	0	1	0
		62(1)	-	0	1	0
		63(1)	-	1	0	0
		9(6)	-	1	0	0
	Road Traffic Act 1974	25(1)	-	2	3	1
		48(4)	10	36	58	66
	Soil and Land Conservation Act 1945	34(1)	-	10	0	0
		39(1)	1	2	0	0
	Strata Titles Act 1985	100(1)	-	4	1	1
		101	-	0	2	0
		102(1)(e)	-	1	0	0
		102(1)(f)	1	1	1	0
		103C(1)	-	0	3	3
		103D(1)	-	1	1	0
		103E(1)	-	1	1	2
		103F(1)	4	3	5	5
		103F(4)	-	1	0	1
		103G(1)	1	2	3	4
		103H(1)	-	1	0	1
		103I(1)	-	1	2	0
		103M(1)	-	-	-	2
		103N(1)	-	1	0	0
		103P(1)	-	1	0	0
		26(5)	-	-	-	1
		27(3)(a)	-	1	0	0
		27(3)(b)	-	1	0	0
		39A(4)(c)(ii)	-	0	1	0
		82	3	0	1	0
		83(1)	47	98	95	81
		85	8	3	5	2
		87	-	-	-	1
		88	-	0	1	1
		89	-	0	1	0
		90	-	6	3	1
		91	1	1	4	3
		92	3	1	0	0
		93(1)	-	1	0	0
		94(1)	2	2	0	0
		95(1)	-	2	1	0
		97(1)	1	2	2	1
		99(1)	-	1	2	1
		99A(1)	-	2	1	1

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
		Sched 3, CI 12(10)(a)	1	-	-	0
		Sched 3, CI 13A(5)	1	-	-	0
	Swan River Trust Act 1988 (repealed)	68(2)	-	2	0	0
	Taxation Administration Act 2003	38(4)	-	0	2	0
		40(1)	30	41	9	17
		22(2)	5	-	-	0
	Taxi Act 1994	23(4)	-	0	2	0
		30(3)	-	0	1	0
	Transport Co-ordination Act 1966	57(3)	1	-	-	0
Human Rights	Children and Community Services Act 2004	94	-	-	-	2
	Equal Opportunity Act 1984	126	-	-	-	3
		135(1)	1	2	3	2
		85	-	4	1	0
		90(2)	8	16	10	27
		93(1)(a)	2	4	5	3
		93(1)(b)	15	64	48	49
		93(1)(c)	1	-	-	0
	Guardianship and Administration Act 1990	104A(1)	3	12	8	14
		104A(4)	-	-	-	1
		106(1)	11	36	29	43
		106(5)	2	1	0	0
		108(3)(b)	-	1	2	1
		109(1)(a)	-	5	10	11
		109(1)(b)	2	3	7	10
		109(1)(c)	3	3	15	17
		109(2)(a)	1	2	2	0
		109(2)(b)	-	3	3	3
		112(4)	17	48	41	51
		17A(1)	8	15	11	9
		40(1) - Type 1	448	891	933	917
		40(1) - Type 2	264	583	582	676
		47(1)	1	0	1	1
		49(1)(a)	-	0	2	0
		59(1)	-	0	1	0
		71A	-	1	1	0
		74(1)	7	12	13	17
		77(1)	-	-	-	1
		80(6a)	-	1	0	2
		82(1)	1	1	2	2
		84 - Type 1	180	410	433	469

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
Development & Resources		84 - Type 2	37	95	153	184
		84(1) - Type 1	-	1	0	0
		85(2) - Type 1	8	1	19	26
		85(2) - Type 2	3	9	5	3
		86(1) - Type 1	115	226	198	207
		86(1) - Type 2	28	42	43	61
		87(1) - Type 1	23	36	68	79
		87(1) - Type 2	3	4	10	17
		Sch 5 Cl 3	-	0	1	0
		95(2)	1	-	-	0
	Mental Health Act 1996	148A(1)	18	7	10	11
		148A(2)	1	2	0	0
		148E	1	-	-	0
	Aboriginal Heritage Act 1972	18(5)	-	-	-	1
	East Perth Redevelopment Act 1991	45(1)	-	1	1	6
	Fish Resources Management Act 1994	66	-	1	0	0
		149(1)	7	3	1	3
	Fishing and Related Industries Compensation (Marine Reserves) Act 1997	8(1a)	-	-	-	1
		8(2)	1	-	-	0
	Hope Valley-Wattleup Redevelopment Act 2000	29(1)	2	-	-	0
	Jetties Act 1926	7A(1)(a)	-	2	8	0
		7A(1)(b)	-	1	0	0
	Land Administration Act 1997	220(c)	1	3	3	0
		224(4)	1	-	-	0
		222(1)	-	2	6	1
	Local Government Act 1995	2.27(6)	1	1	1	0
		3.25(5)	6	3	5	3
		5.125(1)	-	-	-	1
		6.77	3	4	2	3
		6.82(1)	1	-	-	1
		9.7(1)(a)	1	3	16	6
		9.7(1)(b)	1	1	1	1
		9.7(2)	-	1	5	0
	Metropolitan Region Town Planning Scheme Act 1959 (repealed)	35F(1)(b)	1	1	0	0

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
	Planning and Development Act 2005	Review of decision	-	2	22	4
		170(5)	-	0	3	2
		176(1)	-	-	-	1
		188(2)(b)	-	0	1	3
		211(2)	-	-	-	2
		244(3)	-	0	8	7
		250(1)	-	0	24	22
		253(3)	-	1	9	19
		249(1)	-	6	20	7
		251(1)	-	8	39	45
		251(2)	-	2	23	31
		251(3)	-	1	6	6
		251(4)	-	0	1	4
		252(1)	-	29	216	228
		252(2)	-	5	22	11
		255(1)	-	4	16	23
	Rights in Water and Irrigation Act 1914	26GG(1)(a)	-	1	1	4
		26GG(1)(c)	-	0	2	0
		26GG(1)(d)	-	0	1	0
		26GG(1)(e)	-	-	-	1
		26GG(1)(f)	-	1	0	0
		26GH(1)	-	0	2	0
		26GI(b)	-	-	-	1
	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	6	1	0	-
		cl 27ASch 1	1	2	0	-
	Taxation Administration Act 2003	38(5)	-	0	1	3
		40(1)	-	0	6	9
	Valuation of Land Act 1978	33(2)	8	2	2	6
		36(1)	-	1	0	0

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
Vocational Regulation	Western Australian Planning Commission Act 1985 (repealed)	25(2)	1	-	-	0
	Architects Act 1921 (repealed)	22A(3)	-	1	0	0
	Architects Act 2004	40(2)(c)	-	0	1	0
	Builders Registration Act 1939	12D	1	10	9	13
		13(1)	1	2	3	1
		13(1ba)(b)	1	-	-	0
		13(2)	9	10	2	2
		14(1)	5	19	9	5
		41(1)	25	54	0	0
	Children and Community Services Act 2004	224(2)	-	0	1	0
		225(1)	-	0	1	0
		94	-	0	2	0
	Credit (Administration) Act 1984	24(1)	1	-	-	1
	Chiropractors Registration Board Rules 1996 (given effect to by s 97 Chiropractors Act 2005)	rule 12(1)	-	0	2	0
	Debt Collectors Licensing Act 1964	11(1)	1	1	0	0
	Dental Act 1939	30(2)	-	1	0	2
		33(a)	-	-	-	3
	Electricity Act 1945	31(1)	-	1	1	0
		47(1)	-	0	1	0
	Finance Brokers Control Act 1975	23(1)	1	-	-	1
		82	-	3	1	1
	Gas Standards Act 1972	13A(11)(c)	-	1	1	0
	Hairdressers Registration Act 1946	16A(1)	-	1	2	1
		16(1a)	-	-	-	1
	Land Valuers Licensing Act 1978	27	-	3	1	0
	Legal Practice Act 2003	149(1)(b)	-	1	0	1
		180(1)	15	46	29	28
		150(1)(b)	-	-	-	1
		155	-	-	-	1
		156(4)	-	-	-	1
		20(9)	-	1	0	0
		202	-	1	0	1
		39(3)	-	-	-	1
		44(a)	-	1	0	0
		44(c)	1	0	1	1

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
	Licensed Surveyors Act 1909	20B	-	2	1	0
	Medical Act 1894	12BA(5)	-	-	-	1
		12BB(1)(a)	1	3	2	0
		13(1)(a)	8	7	6	11
		13(1)(b)	1	0	1	0
		13(1)(c)	4	5	11	8
		13(1)(d)	-	1	1	0
		13(1)(e)	-	0	3	0
		13(2)	1	0	1	0
		13(9ba)	-	1	1	0
	Medical Radiation Technologists Act 2006	99(b)	-	-	-	1
	Motor Vehicle Dealers Act 1973	20(1)(a)(i)	2	2	1	0
		20(1)(b)(i)	1	1	0	0
		10(2)(a)	-	1	0	0
		22(1)	-	0	1	0
	Nurses Act 1992 (repealed)	43(2a)	-	1	1	0
		63(1)(b)	2	3	1	3
		64(2)(g)	1	1	0	1
		78	2	1	0	0
		59B(4)	1	-	-	0
		59C(1)	1	0	4	4
	Nurses and Midwives Act 2006	58(1)	-	-	-	8
		61(1)	-	-	-	14
	Optometrists Act 1940 (repealed)	26(1)	-	1	1	0
	Painters Registration Act 1961	16(1)	-	3	0	0
		16B(1)	33	-	-	0
		18(1)	3	4	2	2
	Pharmacy Act 1964	32(2)	-	0	3	1
	Physiotherapists Act 1950 (repealed)	Regulation 21	2	0	1	0
	Psychologists Registration Act 1976 (repealed)	39(1a)	-	2	1	0
		44	-	1	1	0
	Psychologists Act 2005	58(1)	-	-	-	2
		100(6)	-	-	-	1
	Real Estate and Business Agents Act 1978	102(1)(a)	8	3	6	12
		102(1)(b)	1	1	5	2
		23(1)	3	3	3	3
		93(1)	-	1	3	1
	Security and Related Activities (Control) Act 1996	67(1)	24	41	55	45
		67(3b)(a)	13	9	5	19
		72(1)	8	27	24	27
	Settlement Agents Act 1981	23(1)	2	0	1	1
		83	5	4	5	9

Stream	Act	Section	No. of Applications 2004/05 (part year)	No. of Applications 2005/06	No. of Applications 2006/07	No. of Applications 2007/08
	Trade Measurement Act 2006	Section 81(c)	-	0	1	0
	Travel Agents Act 1985	21(5)	-	-	-	1
		23(1)	1	0	2	0
	Veterinary Surgeons Act 1960	22(1)	-	-	-	1
		23(12)	1	-	-	0
		23(2a)	2	1	2	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	0
		Regulation 100(1)(b) & 100(2)	-	1	-	0
	Workers Compensation and Injury Management Regulations 1982	Regulation 41(a) Review	-	1	1	0
	Working With Children (Criminal Record Checking) Act 2004	26(2)(a)	-	0	5	7
		26(2)(b)	-	-	-	1
SAT	State Administrative Tribunal Act 2004	Section 44(3)	-	0	1	2
		44(3)(b)	-	-	-	1
		83(2)(a)	-	-	-	2
TOTAL			2723	5232	5552	5674

Appendix 4 – Enabling Acts

Act	Original	Review	Stream
Aboriginal Heritage Act 1972	x	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
Child Care Services Act 2007	x	x	Vocational
Children and Community Services Act 2004		x	Human Rights
Chiropractors Act 2005	x	x	Vocational
Commercial Tenancy (Retail Shops) Agreements Act 1985	x		Commercial and Civil
Competition Policy Reform (Western Australia) Act 1996	x		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
Control of Vehicles (Off-road Areas) Act 1978		x	Commercial and Civil
Co-operative and Provident Societies Act 1903		x	Commercial and

Act	Original	Review	Stream
			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 Safety Act 2004		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
Emergency Management Act 2005		x	Commercial and Civil
Employment Agents Act 1976	x	x	Vocational
Energy Coordination Act 1994		x	Development and Resources
Equal Opportunity Act 1984	x		Human Rights
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
Health Act 1911	x	x	Commercial and Civil
Heritage of Western Australia Act 1990	x	x	Development

Act	Original	Review	Stream
			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		x	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 and Midwives Act 2006	x	x	Vocational
Occupational Therapists Act 2005	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 and Resources
Perth Parking Management Act 1999		x	Commercial and Civil

Act	Original	Review	Stream
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	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 1998		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
Road Traffic (Authorisation to Drive) Regulations 2008 (given effect by 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 and Canning River Management Act 2006		x	Development and Resources
Taxation Administration Act 2003	x	x	Commercial and Civil

Act	Original	Review	Stream
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 s 472F 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 (given effect by s 277 of the Workers' Compensation and Injury Management Act 1981)		x	Vocational
Working with Children (Criminal Record Checking) Act 2004		x	Vocational

Appendix 5 – Pamphlets

Pamphlet	Stream
Introduction	All
Access and Facilities	All, mostly HR
A guide for experts giving evidence in the State Administrative Tribunal	CC, DR and VR
Section 31 invitation by SAT for decision-maker to reconsider its decision	CC, DR and VR
Commercial & Civil	CC
A Guide for the conduct of Applications to Review the decisions of the Building Disputes Tribunal	CC
Development & Resources	DR
Information about Class 1 planning applications	DR
Information about Class 2 planning applications	DR
Documents that may be required by the State Administrative Tribunal in planning applications	DR
Guardianship and Administration Act 1990: Information concerning conduct of hearings	HR
Human Rights	HR
Guardianship and Administration Act 1990: Applications and Proceedings	HR
Vocational	VR

Appendix 6 – Rules Committee membership

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

Members at 30 June 2008 were:

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

Appendix 7 – Parties survey 2006-07 – Preliminary results

Question - reference:	% Response 2007 -08	% Response 2006 -07
The efficiency of SAT staff (good to excellent).	85%	82%
Help from staff (polite and professional).	86%	82%
The information provided by staff (accurate and up to date).	86%	80%
The information and SAT documents sent in a timely manner.	78%	80%
SAT letters and notices were easy to follow.	80%	79%
The telephone manner of staff (polite and professional).	85%	77%
SAT application forms were easy to follow.	69%	70%
Calls were transferred to correct person.	84%	69%
Waiting time when telephoning SAT (good to excellent).	79%	68%
For those in which access to disability services was applicable (good to excellent).	58%	64%
Respondents who found the waiting time when visiting SAT offices good to excellent.	79%	62%
Respondents who found the facilities in the waiting room good or average.	60%	64%
Time taken in the processing of the application from lodgement to completion (good or average).	66%	62%
Respondents who found the website easy to navigate.	85%	76%
Respondents who had obtained their application form through the SAT website.	60%	67%
Respondents who attended a hearing at SAT.	83%	86%
Respondents who had attended more than one hearing.	65%	34%
Respondents who thought that the courtesy of the SAT member was excellent or good.	92%	90%
Respondents who felt that the knowledge of the SAT member was excellent or good.	88%	84%
Respondents who found that the layout of the hearing room was excellent or good.	87%	78%