



SAT

State
Administrative
Tribunal

Western Australia

Annual Report 2005

30 September 2005

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PRESIDENT’S REPORT - THE FIRST SIX MONTHS IN REVIEW

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

This is my first report under section 150. However, because the Tribunal commenced operation on 1 January 2005, it is not an "Annual Report" but a report on the Tribunal’s first six months.

Later in this report I provide background to the establishment of the Tribunal and expand on its operation up to 30 June 2005. In this section I will provide some introductory comments and general observations about the first six months in review.

The Tribunal, as I have noted, commenced operation on 1 January 2005. The legislation setting up the Tribunal – the *State Administrative Tribunal Bill 2003* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003* – was passed by the Parliament on 10 November 2004. Both Acts were proclaimed by the Governor to take effect on 1 January 2005 with the exception of provisions transferring jurisdiction to the Tribunal under the *Guardianship and Administration Act 1990* which were proclaimed to take effect from 24 January 2005.

On 24 November 2004, I had added to my existing commission as a judge of the Supreme Court of Western Australia, my commission as the inaugural President of the State Administrative Tribunal.

On the same date, His Honour Judge John Chaney of the District Court of Western Australia was commissioned as a Deputy President of the Tribunal, as was Her Honour Judge Judy Eckert of the District Court of Western Australia. Judge Eckert was also commissioned as a judge of the District Court immediately prior to her commissioning as a Deputy President of the Tribunal.

By the time the Tribunal commenced operation on 1 January 2005, the Governor had appointed Murray Allen, David Parry, Clive Raymond and Jill Toohey as Senior Members of the Tribunal, and Tim Carey, Felicity Child, Marie Connor, Donna Dean, Bertus De Villiers, Jack Mansveld, Peter McNab, Belinda Moharich and Maurice Spillane as members of the Tribunal. Accordingly, the Tribunal had a complement of 16 full-time members soon after it commenced.



President, Justice Michael Barker with Deputy Presidents, Judge John Chaney and Judge Judy Eckert at the Tribunal’s launch.

Additionally, by 1 January 2005, the Governor had appointed nearly 100 senior sessional members and sessional members to assist the Tribunal in its work.

Executive Officer Alex Watt was appointed, pursuant to the *State Administrative Tribunal Act 2004*, just before the Tribunal commenced. By then, he was supported by more than 50 staff, including four managers.

The Mental Health Review Board was also co-located at the Tribunal's premises from the Tribunal's commencement with a senior member of the Tribunal, Murray Allen, as its President.

The Tribunal was able to commence on time and ready for business by reason of the earlier establishment efforts of Department of Justice Director General, Alan Piper, Executive Director Court Services, Ray Warnes, Director Higher Courts, Bob Carter, and the dedicated service of the State Administrative Tribunal Project Team headed by Andrew Marshall.

At 1 January 2005, the Tribunal was given jurisdiction under 136 enabling Acts. On 24 January 2005, the Tribunal gained jurisdiction under the *Guardianship and Administration Act 1990*. Since then, the Tribunal has exercised jurisdiction under 137 enabling Acts together with the jurisdiction it has under the *State Administrative Tribunal Act 2004*.

From the outset the Tribunal has been extremely mindful of its objectives set out in section 9 of the *State Administrative Tribunal Act 2004* which are, in short, to deal with matters fairly, speedily, with as little formality as is practicable and with a view to minimising the costs to parties.

To deal with the different types of work likely to be generated by the various enabling Acts, the work of the Tribunal has been organised within four streams: Human Rights; Development and Resources; Commercial and Civil; and Vocational Regulation. Members are assigned to work in particular streams although they are available when required to work across streams. The President and one or both of the Deputy Presidents oversee each stream.

Prior to commencement, a large number of adjudicators made administrative decisions and conducted administrative review proceedings under the various enabling Acts. In most cases, matters pending before these former adjudicators were transferred to the Tribunal on 1 January 2005. As a result, the Tribunal inherited a significant number of "legacy" matters from former adjudicators.

The Tribunal also received new applications from 1 January under the various enabling Acts and from 24 January under the *Guardianship and Administration Act 1990*.

In the first six months of its operation, 897 legacy matters were transferred to the Tribunal and 2723 new applications were made under the various enabling Acts.

Details of the number of new applications that arose under each of the enabling Acts are given later in this report. However, by way of overview, the largest number of individual applications was made under the *Guardianship and Administration Act 1990*, with 929 applications. The next highest number was made under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* with 794 applications.

I am pleased to report that of the 897 legacy matters, 749 or 83% had been finalised by 30 June 2005; and that of the 2723 new applications made up to 30 June 2005, 1937 or 71% had been finalised as of that date.

I should add that under the transition provisions of the *State Administrative Tribunal Act 2004* a former adjudicator which continued to exist and, as at 1 January 2005, had partly or wholly heard but not completed a matter which they estimated could be completed within six months, were entitled to complete the matter unless the President chose to direct otherwise. In the case of reviews pending before the Minister for Housing and Works under the *Local Government (Miscellaneous Provisions) Act 1960* concerning building control issues I exercised this power of direction, but otherwise former adjudicators were allowed the opportunity to complete part-heard matters during the six month period.

One of my first tasks as President of the new Tribunal was to establish practices and procedures for the various types of applications that could arise under the various enabling Acts. In this regard, the practice and procedures adopted by a number of former adjudicators, including the Guardianship and Administration Board (of which I had been the President since April 2004) and the Town Planning Appeals Tribunal, provided a useful guide.

The practice of the former Guardianship and Administration Board, especially as it had been developed in the last part of 2004, was adopted for applications that would arise under the *Guardianship and Administration Act 1990*, to ensure they would be listed for a final hearing as soon as possible after they were lodged.

The practice of the former board was designed to enable at least 75% of all applications to be finalised within eight weeks of lodgment. For some years, the former board had struggled to meet this benchmark. I am pleased to report, however, that in the first six months of the Tribunal's operation, 79% of all applications made under the *Guardianship and Administration Act 1990* have been determined within eight weeks of their lodgment.

As to the numerous applications that were expected to continue under the *Commercial Tenancy (Retail Shops) Agreements Act 1985*, I decided that they should continue to be dealt with on the documents as they had been in the former Commercial Tribunal.

As to review proceedings that would arise under many enabling Acts, I decided the best way generally to deal with these would be to list applications for a directions hearing within about 21 days of lodgment.

At the first directions hearing, the application would usually be considered by a judicial member or senior member of the Tribunal with a view to identifying the matters that were likely to be in issue and the best way forward; in particular, whether mediation or compulsory conference was appropriate to resolve or help narrow the issues prior to listing the matter for a final hearing, or whether a decision on the documents was appropriate.

The depth of mediation and compulsory conference experience of a number of former adjudicators, and particularly the former Town Planning Appeals Tribunal, suggested that matters in dispute in review proceedings could often be resolved in a structured conference or at mediation presided over by a member of the Tribunal.

These forms of alternative decision-making have proved to be more effective, quicker and cheaper than formal hearings in many tribunals throughout Australia, and often better suit the objectives and experience of parties to proceedings, especially when they are self-represented as they often are in the Tribunal.

In its first six months, the Tribunal has used mediation and compulsory conferences extensively in all streams with success in both finally resolving matters and in narrowing issues. While the Tribunal's computer business systems do not presently permit a statistically accurate report of mediation and compulsory conference outcomes, it will be posted on the Tribunal's website when available and published in the next Annual Report.

However, by way of illustration, members have reported that in the Development and Resources stream, about 66% of all minor town planning applications are resolved without the need for a final, formal hearing; and that about 66% of all major town planning applications are referred to mediation, of which about 70% are resolved without a formal, final hearing. These trends are significant indeed.

The Tribunal remains committed to using mediation and compulsory conference in the resolution of all types of proceedings in the Tribunal. At 30 June 2005, 11 of the Tribunal's full-time members were trained mediators and a number of sessional members are also trained mediators. I expect that by 30 June 2006, all full-time members of the Tribunal will be trained mediators.

Since its commencement, the Tribunal has been anxious to keep inconvenience to parties and consequently the costs to parties to a minimum. Accordingly, the Tribunal has encouraged parties to participate in proceedings by telephone or videoconference where their personal attendance is difficult and their personal absence is unlikely to prejudice the fair hearing of the case. Many parties living outside the metropolitan area have been able to participate in directions hearings and, where appropriate, in mediations and final hearings by telephone and videoconference.

Witnesses have also been encouraged to give their evidence by videoconference if they are based outside the metropolitan area, or reside in other states of Australia or overseas and their personal attendance is not considered critical to the proper disposition of the proceedings.

From its commencement, the Tribunal has placed great importance on its website at www.sat.justice.wa.gov.au as a primary means of communicating with all persons who may wish participate in proceedings in the Tribunal, make an application and/or learn more about the work of the Tribunal and how it approaches its work. The website is, in many ways, the key to Tribunal processes.

All written decisions of the Tribunal are posted on the website's Decisions Database and before long, many final orders made by the Tribunal, especially in the vocational regulation stream, will also be posted on the website for public information. In this way, even if there are no formal written reasons for decisions published on the website, the terms of a final order will be available to the public.

One of the features of the website is the SAT Wizard, which enables an applicant to complete electronically, any one of the 831 forms of application that can be made under the various enabling Acts. Once completed, the application can be printed out and posted to or lodged in person at the Tribunal, or, with the approval of the Executive Officer, emailed or faxed. Many applicants have taken the opportunity to create their application electronically in this way.

The SAT Wizard also provides an extensive array of information about the various types of applications that can be lodged with the Tribunal.

I hope that by 30 June 2006, all parties to proceedings will be able to e-lodge applications and all necessary forms with the Tribunal without the need to post or deliver hard copies to the Tribunal. This will be an important step in using information technology in a way that significantly advances the Tribunal's objectives.

The Tribunal already encourages parties involved in proceedings to provide email addresses for service and to give each other documents in electronic form. Many have taken up this option.

It follows that the State Administrative Tribunal very clearly sees itself as an administrative tribunal, not a court. Its practices and procedures are designed to meet the needs, experiences and resources of the people who become involved in proceedings before it.

For the large part, parties involved in the Tribunal's proceedings are self-represented and do not expect to be professionally represented.

Unlike courts, where the expectation is that the administration of justice is best served by the professional legal representation of the participants, in a tribunal such as the State Administrative Tribunal the usual expectation is that most participants will be self-represented.

The Tribunal will continue to monitor the extent to which participants are self-represented and seek their feedback with a view to providing the best possible service to self-represented parties.

In the past six months the Tribunal has undertaken a range of activities designed to inform the community and interest groups of its role, functions and decision-making processes and to obtain their feedback on its operation. Details of the Tribunal's community consultations are set out later in this report.

It is, I think, fair to say that the establishment and performance of the Tribunal in its first six months of operation has confirmed the emergence of the generalist, overarching tribunal as an important phenomenon in the growth of tribunals in Australia and New Zealand.

The Tribunal follows the model of the Victorian Civil and Administrative Tribunal (VCAT). VCAT was modelled to a large extent on the Commonwealth Administrative Appeals Tribunal, which was first established in 1975. There has been a trend towards the establishment of this type of tribunal throughout Australia and also in New Zealand. In 2004, the New Zealand Law Commission recommended the establishment of a generalist, overarching tribunal for that country and made special reference to the appropriateness of the VCAT and State Administrative Tribunal models.

In England, proposals have also been advanced for the establishment of an all-encompassing tribunal to coordinate the large array of tribunals in that country.

I believe the emergence of the generalist, overarching tribunal reflects the community's recognition of the important role tribunals play in providing administrative justice through an independent review of administrative decisions, as well as a reliable, quick and relatively cheap means of making a range of other decisions according to law. The Tribunal also affords a useful additional means of oversight of the system of public administration in the State.

The growth of tribunals in Australia and New Zealand has been recognised by the formation in 2002 of the Council of Australasian Tribunals (COAT), of which the State Administrative Tribunal is a member. As President of the Tribunal, I am also a member of the Executive Committee of the COAT. As at 30 June 2005, the Tribunal was taking steps to encourage the formation of a WA chapter of the COAT to provide a forum for members of State and Commonwealth tribunals based in Western Australia to discuss matters of common interest.

My vision for the Tribunal, which the Tribunal has adopted, is that it should become one of Australia and New Zealand'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.

In its first six months of operation, the Tribunal has taken significant steps in realising this vision and providing the people of the State with an open, accountable and independent administrative review and decision-making service in which they can have justified confidence.

I am pleased to report that the Tribunal's progress has been extremely encouraging. Members have undertaken their work with considerable dedication, enthusiasm and in a timely manner. A cursory review of decisions posted on the Tribunal's website and reported in a number of law reports speaks to the quality of decision-making.

The staff, lead by Executive Officer Alex Watt, have approached their new tasks with enthusiasm and skill, and have adapted to new processes and information technology with considerable good humour.

I note, in particular, the considerable efforts of my Deputy Presidents, Judge John Chaney and Judge Judy Eckert, and Alex Watt, which helped set the Tribunal's course.

I also pay tribute to the tireless work of my former associate, Shannon Chapman, who assisted me enormously in the setting-up phase of the Tribunal and in the first six months of its operation. Her commitment and attention to detail was exemplary in every way and her efforts in establishing the SAT Wizard will surely have a lasting, beneficial effect.

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

The Hon. Justice Michael Barker
President, State Administrative Tribunal

BACKGROUND TO ESTABLISHMENT OF THE TRIBUNAL – 40 YEAR ENDEAVOUR

The establishment of the Tribunal satisfied calls that had been made over a period of nearly 40 years, for reform of the State's administrative review and decision-making system.

As has been well documented elsewhere, the first recommendation for such a tribunal came in 1964 from John Wickham, who later became The Hon Justice Wickham of the Supreme Court of Western Australia. It was followed by numerous other recommendations, including: the *1982 Law Reform Commission of Western Australia* report, chaired by Mr David Malcolm (the present Chief Justice of Western Australia); the findings of the "WA Inc" Royal Commission in 1992; the Commission on Government in 1995; both the Gunning and Temby finance broker enquiries; and the *1999 Law Reform Commission of Western Australia* report, "*Review of the Criminal and Civil Justice System in Western Australia*".

In March 2001, Attorney General Jim McGinty MLA, set up a taskforce to develop a model for a civil and administrative review tribunal. Mr M L Barker QC (now Justice Barker) chaired the taskforce, which comprised eight members.

The Taskforce produced the "Taskforce Report on the Establishment of a State Administrative Tribunal", in May 2002 - or the "Barker Report" as it became known - which had regard to this policy background and provided the blueprint for the establishment of the Tribunal.

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

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

While the legislation was being developed and progressed through Parliament, the Department of Justice set up a Project Team to help establish the Tribunal. It proceeded to locate and fit-out the new Tribunal's premises at 12 St Georges Terrace. The project team also advertised for and processed applications for prospective members and staff, developed necessary technology and attended to all the administrative needs of the Tribunal to enable commencement on 1 January 2005.

At the official launch on 5 January 2005, the President acknowledged the many people who had worked hard to establish the Tribunal's framework for commencement on 1 January 2005 and recorded his gratitude to those people who laid the foundations for the Tribunal and its operations.

The President's opening address may be found on the Tribunal's website, www.sat.justice.wa.gov.au.

CONSEQUENCES OF THE ESTABLISHMENT OF THE TRIBUNAL

Commencement of the Tribunal has meant that review and original decision-making proceedings that were formerly conducted in more than 60 boards, courts and tribunals and before other public office holders in Western Australia, have been transferred to the Tribunal.

As the Attorney General, Jim McGinty MLA, explained to the Legislative Assembly on the second reading of the Bills, the reforms to establish the Tribunal are intended to give Western Australia "the most modern and advanced administrative decision-making system in the country."

The Attorney explained on the second reading of the Bills that the benefits of the State Administrative Tribunal are numerous and include:

- a right to obtain reasons for decision-making by public servants;
- the removal of confusion in the public mind because one overarching Tribunal is identified as the place where people can seek redress;
- less formal, less expensive and more flexible procedures than are used in traditional courts by using a more inquisitorial and less adversarial approach;
- the development of best tribunal practices – both procedural and in terms of common decision-making principles across various jurisdictions;
- improved quality and consistency in decision-making;
- in a democratic context, the provision of a more appropriate and timely means for citizens to obtain administrative justice;
- the improvement in public accountability of official decision-making from heightened scrutiny of administrative decisions;
- separation of the licensing and registration functions carried out by vocational bodies from the disciplinary function; and
- avoiding the ad-hoc creation of new tribunals to provide administrative review in evolving areas of government decision-making.

The Attorney General's Second Reading Speech may be found on the Tribunal's website, www.sat.justice.wa.gov.au.

As the President said at the launch on 5 January 2005, “for over a century tribunals and boards of various types have been a feature of the system of government Western Australia inherited from the British. Over the years they had grown enormously in number, 'a bit like topsy', with differing practices and procedures and personnel, although with relatively limited resources.”

At one level, the creation of the State Administrative Tribunal – with three judicial members, 13 full-time non-judicial members and a contingent of sessional members – represents a major rationalisation of their number and membership. The changes to the system of administrative review and decision-making are designed to ensure the Tribunal has the capacity to make timely decisions, to adopt alternative forms of decision-making, including mediation, and to enhance the consistency and quality of administrative decision-making.

At another level, the Tribunal represents the creation of a single, well-resourced body, dedicated to ensuring citizens of the State, who are aggrieved by the decisions of public officials and local governments that adversely affect their interests, are accorded administrative justice.

The creation of the Tribunal also ensures a degree of scrutiny of the State's public administration system additional to that provided by the Parliament and other public accountability agencies, in those areas of decision-making that fall within the Tribunal's jurisdiction.

OUR OBJECTIVES

The objectives of the Tribunal set out in the *State Administrative Tribunal Act 2004*, section 9 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 practicable and minimise the costs to parties; and
- to make appropriate use of the knowledge and experience of Tribunal members.

The Tribunal is bound by the rules of natural justice except to the extent that the *State Administrative Tribunal Act 2004* or an enabling Act authorises a departure from those rules.

However, the *Evidence Act 1906* does not apply to the Tribunal's proceedings and the Tribunal is:

- not bound by the rules of evidence or practices or procedures applicable to courts record except to the extent that it adopts those rules, practices or procedures or the regulations or rules make them apply; but
- to act according to equity, with good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Indeed, the Tribunal may inform itself on any matter as it sees fit.

A number of other provisions of the Act are designed to ensure that persons participating in Tribunal proceedings have every opportunity to have their application or interests fully considered.

OUR VISION AND VALUES

The Tribunal's vision is to be a tribunal that adopts best practice and innovative technology in making fair and timely decisions for the benefit of the people of the State.

Five values are considered to be critical elements to the operation of the Tribunal:

- lawfulness;
- fairness;
- rationality;
- openness (sometimes called transparency); and
- efficiency.

These values are reflected in seven values that underpin the Non-Judicial Members' Code of Conduct made under section 121 of the Act, and affect the conduct of staff of the Tribunal, namely:

- respect for the law;
- fairness;
- independence;
- respect for people;
- diligence and efficiency;
- integrity; and
- accountability and transparency.

OUR JURISDICTION

Under Part 3 of the Act, the Tribunal has the jurisdiction provided by an enabling Act to deal with a matter, as well as any jurisdiction or power that the *State Administrative Tribunal Act 2004* provides in relation to that matter.

As at 30 June 2005, the Tribunal had jurisdiction under 137 enabling Acts.

The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* amended or repealed provisions of 136 Acts to enable the conferral of jurisdiction on the Tribunal. Jurisdiction was also given to the Tribunal under the *Construction Contracts Act 2004*, as of 1 January 2005.

Apart from Division 56 of the *Conferral of Jurisdiction Act*, all other Divisions of the *Conferral of Jurisdiction Act* took effect on 1 January 2005. Division 56, which deals with the *Guardianship and Administration Act 1990*, was proclaimed to take effect on 24 January 2005.

Proclamation of the *State Administrative Tribunal Act 2004* and *Conferral of Jurisdiction Act*, gave the Tribunal either an original or a review jurisdiction, under these various enabling Acts.

The enabling Acts are listed in Appendix 1.

OUR WORK

The Tribunal’s work is divided into four streams that enable procedures to be adapted to suit the different types of matters coming before the Tribunal and the particular needs of different people who use the Tribunal.

After the Tribunal has received an application, parties are notified either that the Tribunal has scheduled a preliminary directions hearing or a final hearing, or that the Tribunal will make a decision based on documents filed in the Tribunal.

When a directions hearing is notified, it is usually held within about 21 days of the application being lodged. At a directions hearing, the matter is scheduled for mediation, a compulsory conference or a final hearing.

Some applications go to a directions hearing before being decided on the documents.

HUMAN RIGHTS STREAM

Work

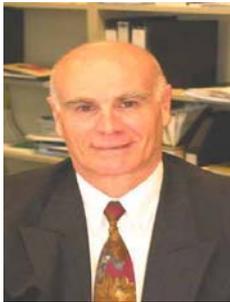
This stream makes decisions that affect some of the most vulnerable people in the community in relation to guardianship, administration and discrimination. It also reviews decisions of the Mental Health Review Board.



Senior Member Jill Toohey (centre) in a guardianship hearing room.

Most of the work of the Human Rights stream is in the Tribunal’s original jurisdiction and comprises the work done formerly by the Guardianship and Administration Board and the Equal Opportunity Tribunal. In its review jurisdiction, the Human Rights stream reviews decisions of the Mental Health Review Board under the *Mental Health Act 1996*. It also reviews some decisions under the *Gender Reassignment Act 2000* and the *Adoption Act 1994* although, so far, no applications have been received under these two Acts.

Applications for review of decisions of the Mental Health Review Board have increased greatly since the Tribunal was established. Since January 2005 there have been 19 of these applications for review. Only a small number of review applications were previously made to the former appeal forum, the Supreme Court. The Tribunal expects that its relative accessibility and a reduction in the cost of review proceedings in the Tribunal will mean a general increase in the number of these applications over time.



Senior Member
Murray Allen.

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

Members

The work of the stream is overseen by the President and Deputy President Judge Eckert. Full-time members of the stream are Senior Member Jill Toohey and Members Felicity Child, Donna Dean and Jack Mansveld. Together, they have many years experience in the Commonwealth Refugee Review Tribunal, Administrative Appeals Tribunal, Social Security Appeals Tribunal, Guardianship Administration Board, Office of the Public Advocate and a range of other community organisations. Thirty-one sessional members, many of who were formerly members of the Guardianship Administration Board and the Equal Opportunity Tribunal, also bring a broad range of experience to the work of this stream.

Practice and procedure

Applications under the *Guardianship and Administration Act 1990* are generally listed for hearing as soon as they are received, and a hearing is held approximately six to eight weeks later. Where necessary, hearings can be held at short notice, sometimes as soon as the day of or after an application has been received. For the period 24 January to 30 June, 79% of all applications under the Act were finalised within eight weeks of lodgement.

Directions hearings are held occasionally in guardianship and administration matters where, for example, there are a number of parties involved, or aspects of how the hearing will be conducted need to be case managed.

Mediation is used occasionally in applications under the *Guardianship and Administration Act 1990*. Parties are not free to reach a binding agreement in these matters because, under the *Guardianship and Administration Act 1990*, the Tribunal must be satisfied that any order made is in the best interests of the person whom the order concerns. Nonetheless, mediation has proved useful in some cases where families are in conflict. The Tribunal will continue to explore how it can make best use of preliminary processes such as mediation, compulsory conferences and directions hearings in relation to these applications.

Applications for review of decisions of the Mental Health Review Board are listed for directions as soon as they are received, and for a hearing as soon as possible after that. When hearing these applications, the Tribunal must comprise a legal practitioner, a psychiatrist and a person who is neither a legal practitioner nor a psychiatrist. The Tribunal's limited number of members who are psychiatrists has been an issue in these matters. However, the process for appointment of additional psychiatrists is underway. An additional issue has been the non-availability of treating psychiatrists to give evidence and measures will be put in place over the next six months to deal with this.

Nearly all persons appearing before the Tribunal in guardianship and administration matters are self-represented and do not have legal representation. In Mental Health Review Board reviews, persons are sometimes represented by, the Mental Health Law Centre, the Official Visitor appointed under the *Mental Health Act 1996*, or the Health Consumers' Council.

The Tribunal aims to assist self-represented persons as far as possible in presenting their cases and to make the pre-hearing procedures and the hearing itself as accessible as possible.

Applications under the *Equal Opportunity Act 1984* are listed for a directions hearing on receipt of the application. Judge Eckert and Senior Member Jill Toohey hold directions hearings each week. The Tribunal encourages parties to attend mediation or a compulsory conference early in the process to either resolve the matter or to narrow the issues in dispute. This practice has proved successful in settling disputes without the need to go to a final hearing in the vast majority of cases.

Relationship with user groups

Under the *Guardianship and Administration Act 1990*, the Tribunal may refer to the Public Advocate for investigation and report any matter or question arising in the course of an application. The Tribunal and the Public Advocate have been working closely to develop and streamline procedures for the referral of matters for investigation.

The Tribunal has also been pleased to engage in consultations with the Public Advocate about changes that may be desirable to the *Guardianship and Administration Act 1990*.

In addition, the Tribunal has engaged in regular consultations with the Public Trustee and officers from her office concerning the performance of the functions of the administrator of last resort and review of accounts of private administrators. The latter function was given to the Public Trustee by amendments to the *Guardianship and Administration Act 1990* as of 1 January 2005 and, from the Tribunal's perspective, appears to be working well.

The Tribunal is grateful to the Mental Health Law Centre for providing a “duty lawyer” service for directions hearings in Mental Health Review Matters. It is hoped that the Tribunal and the Centre will continue to work together to achieve a fair and speedy outcome for applicants.

The Tribunal has given presentations to a wide range of organisations including the Disability Services Commission, community organisations, social workers and community legal centres. In the coming year the Tribunal hopes to develop relationships with a range of individuals and organisations that regularly make applications and appear before it in matters arising in this stream.

Significant developments

A number of issues have begun to emerge, particularly in applications for guardianship and administration, which the Tribunal will likely have to consider in the coming months. They include questions concerning authority to consent to medical treatment under section 119 of the *Guardianship and Administration Act 1990*, a general issue that has been of interest to the former Guardianship and Administration Board and the Public Advocate for some time.

Enabling Acts

The following Acts give the Tribunal jurisdiction in this stream.

| Act | Original | Review |
|---------------------------------------------------|----------|--------|
| <i>Adoption Act 1994</i> | | * |
| <i>Equal Opportunity Act 1984</i> | * | |
| <i>Gender Reassignment Act 2000</i> | | * |
| <i>Guardianship & Administration Act 1990</i> | * | |
| <i>Mental Health Act 1996</i> | | * |

DEVELOPMENT AND RESOURCES STREAM

Work

The Development and Resources stream determines applications concerning development, subdivision, building, water, fisheries, other resources, land valuation, rating, land tax, compensation and related matters under 36 enabling Acts. With one exception, this jurisdiction involves review of decisions made by original decision makers such as State and local governments. Most of the work of this stream was formerly done by the Town Planning Appeals Tribunal, the Land Valuation Tribunal and the Fisheries Objection Tribunal.



Senior Member David Parry.

Members

The work of the stream is overseen by the President and Deputy President Judge Chaney. Full-time members of the stream at 30 June 2005 are, Senior Member David Parry and members, Marie Connor, Jim Jordan and Peter McNab.

David Parry was formerly a barrister specialising in planning, environmental and local government administrative and judicial review. Marie Connor is a town planner and former member of the Town Planning Appeal Tribunal. Jim Jordan, is a town planner who has also completed a law degree and was a senior member of the former Town Planning Appeal Tribunal. Peter McNab is a lawyer who practised as a barrister in administrative law and was a law lecturer. Belinda Moharich was a member from 1 January 2005 to 6 June 2005, when she resigned to return to private legal practice. Jim Jordan was then appointed in her place.

The stream also draws on the collective experience of a number of sessional members whose qualifications and experience include town planning, land valuation, architecture, heritage conservation, mediation, land surveying, building surveying, anthropology, indigenous heritage, local government and fisheries.

Practice and procedure

All matters are listed for an initial directions hearing within about 21 days after the application is lodged, and are then case-managed by members.

Town planning matters that involve developments with a value of less than \$250,000, or \$500,000 in the case of a single house, subdivisions of three lots or less, and local government notices directed to persons who are self-represented, are listed for an initial directions hearing before a single member. This operates as mediation or early neutral evaluation of the application and often produces resolution without the need for a final hearing.

Other town planning matters and applications arising in this stream are initially considered at a weekly directions hearing conducted by Judge Chaney and David Parry.

Fisheries matters are listed for an initial directions hearing before the President.

Mediation and compulsory conferences are used extensively and successfully in the stream and all full-time members allocated to the stream are trained mediators.

Matters that are not resolved through mediation or compulsory conference are determined at a final hearing, although a number of matters have been determined on the documents provided by the parties without the need for a hearing.

The stream has also trialled and introduced a number of practices to ensure disputes are determined as speedily and with as little cost to the parties as possible.

Expert witnesses are generally required to confer with one another in advance of the hearing, and to prepare and file a joint statement of matters agreed between them, matters not agreed, and the reasons for any disagreement.

Expert witnesses are also generally required to give evidence concurrently.

Where the review is in relation to the refusal of an application, which the Tribunal could approve subject to conditions, the original decision maker is generally required to provide the applicant before the hearing with a set of draft, "without prejudice" conditions of approval. If the Tribunal is later minded to allow the review on conditions, these draft conditions enable conditions to be set without a further delay in the proceedings. The provision of these draft conditions is not taken as a concession by the decision maker that approval of the application is appropriate, but it allows for a single hearing to take place.

A number of matters have also been subject to special case management. For example, the Tribunal identified rating review matters, which raised a common question of whether land was used exclusively for a charitable purpose and was therefore exempt from rates. The Tribunal determined four out of ten matters as appropriate "test" cases, requiring the evidence to be in the form of agreed statements of facts and documents, and that the expert witnesses confer and prepare a joint statement. As a result, a final hearing, which could have taken up to two weeks, took the equivalent of a single hearing day.

Relationship with user groups

Shortly after the establishment of the Tribunal, a Development and Resources Consultation Forum was created. A large number of town planners, building surveyors, local government representatives, lawyers, valuers, and people involved in primary industries, were invited to an initial meeting. More than 100 people attended.

Members of the stream have also spoken at seminars organised by the Planning Institute of Australia, community legal centres and the Environmental Defender's Office.

Significant developments

A number of important decisions have been published by the Tribunal, both in relation to substantive areas and the scope of the Tribunal's powers:

- In ***Yennett Pty Ltd and Department of Fisheries*** [2005] WASAT 31, (2005) 38 SR (WA) 357, the Tribunal considered whether a Fishery Management Plan under the *Fish Resources Management Act 1994* dealt exhaustively with rights to vary fishing entitlements. The Tribunal determined that it did not and discretion to grant a variation existed in certain circumstances.
- In ***JM Bestall and Commissioner of State Revenue*** [2005] WASAT 32, (2005) 38 SR (WA) 311, the Tribunal interpreted provisions of the *Land Tax Assessment Act 2002* in order to determine whether land formed part of a "private residential property" and was therefore exempt from land tax. The Tribunal set out principles, which can be applied by the Commissioner in other cases.
- In ***Nicholls and Western Australian Planning Commission*** [2005] WASAT 40, the Tribunal formulated principles concerning the significance of a draft planning instrument or policy and the circumstances in which adverse planning precedent is a relevant consideration in planning assessment.
- In ***Randall and Town of Vincent*** [2005] WASAT 129, the Tribunal adopted an interpretation of planning legislation to determine whether a proposed increase in the number of patrons at existing licensed premises was a "use" and therefore "development".

- In ***Dumbleton & Anor and Town of Bassendean*** [2005] WASAT 145, the Tribunal determined that a local government and the Tribunal has discretion to refuse a residential development even though it conforms to the *Residential Design Codes of Western Australia*, although conformity is likely to be a significant consideration in the exercise of planning discretion.
- In ***Lakes Action Group Association (Incorporated) and Shire of Northam and Anor*** [2005] WASAT 8, ***Sara Commisso and City of Gosnells*** [2005] WASAT 61 and ***Drake and City of South Perth & Anor*** [2005] WASAT 128, the Tribunal considered the limits upon the entitlement to make representations to the Minister for Planning and Infrastructure in relation to the failure of a local government to enforce a town planning scheme and the Minister’s referral of such representations to the Tribunal.
- In ***Empire Securities & Ors and Western Australian Planning Commission*** [2005] WASAT 98, the Tribunal held that there is no power to grant planning approval subject to advice notes, although this was previously a common practice.
- In ***Bakker and City of Nedlands*** [2005] WASAT 106, the Tribunal determined that it did not have power to entertain an application, which was not made to an original decision maker.
- In ***Springmist Pty Ltd and Shire of Augusta-Margaret River*** [2005] WASAT 143, the Tribunal determined that, unlike the Town Planning Appeal Tribunal, it has power to grant owner’s consent to the making of a planning application on behalf of a local government.

Enabling Acts

The following Acts give the Tribunal the power to make or review decisions in this stream.

| Act | Original | Review |
|-------------------------------------------------------------------------------|----------|--------|
| <i>Aboriginal Heritage Act 1972</i> | | * |
| <i>Agricultural and Related Resources Protection Act 1976</i> | | * |
| <i>Armadale Redevelopment Act 2001</i> | | * |
| <i>Biological Control Act 1986</i> | | * |
| <i>Caravan Parks and Camping Grounds Act 1995</i> | | * |
| <i>Control of Vehicles (Off-road Areas) Act 1978</i> | | * |
| <i>Country Areas Water Supply Act 1947</i> | | * |
| <i>East Perth Redevelopment Act 1991</i> | | * |
| <i>Fish Resources Management Act 1994</i> | | * |
| <i>Fisheries Adjustment Schemes Act 1987</i> | | * |
| <i>Fishing and Related Industries Compensation (Marine Reserves) Act 1997</i> | | * |

| | | |
|-------------------------------------------------------------------|---|---|
| <i>Heritage of Western Australia Act 1990</i> | | * |
| <i>Hope Valley-Wattleup Redevelopment Act 2000</i> | | * |
| <i>Jetties Act 1926</i> | | * |
| <i>Land Administration Act 1997</i> | * | |
| <i>Land Drainage Act 1925</i> | | * |
| <i>Land Tax Assessment Act 2002</i> | | * |
| <i>Litter Act 1979</i> | | * |
| <i>Local Government Act 1995</i> | | * |
| <i>Maritime Archaeology Act 1973</i> | | * |
| <i>Metropolitan Region Town Planning Scheme Act 1959</i> | | * |
| <i>Metropolitan Water Authority Act 1982</i> | | * |
| <i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909</i> | | * |
| <i>Midland Redevelopment Act 1999</i> | | * |
| <i>Pearling Act 1990</i> | | * |
| <i>Plant Diseases Act 1914</i> | | * |
| <i>Plants Pests & Diseases (Eradication Funds) Act 1974</i> | | * |
| <i>Rights in Water and Irrigation Act 1914</i> | | * |
| <i>Soil and Land Conservation Act 1945</i> | | * |
| <i>Subiaco Redevelopment Act 1994</i> | | * |
| <i>Swan River Trust Act 1988</i> | | * |
| <i>Town Planning and Development Act 1928</i> | | * |
| <i>Valuation of Land Act 1978</i> | | * |
| <i>Water Boards Act 1904</i> | | * |
| <i>Water Services Licensing Act 1995</i> | | * |
| <i>Waterways Conservation Act 1976</i> | | * |
| <i>Western Australian Planning Commission Act 1985</i> | | * |

COMMERCIAL AND CIVIL STREAM

Work

The Commercial and Civil stream exercises both original and review jurisdiction. Its original jurisdiction comprises decisions previously made by the Strata Title Referee, the Retirement Villages Disputes Tribunal and by the Commercial Tribunal.



Senior Member Clive Raymond (centre) in a mediation room.

This includes the resolution of disputes under the *Strata Titles Act 1985*, the *Retirement Villages Act 1992*, the *Commercial Tenancies (Retail Shops) Agreements Act 1985*, the *Consumer Credit (WA) Act 1996*, *Credit Act 1984* and *Fair Trading Act 1987*. Its review jurisdiction includes reviews of State revenue decisions.

Many applications under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* are also determined on the documents without the need for any formal hearing.

The Stream inherited 161 legacy matters from former adjudicators and has experienced a steady inflow of new work.

Members

The President and Deputy Presidents oversee work in this stream. Senior Member Clive Raymond initially considers most applications, other than taxation matters, usually at a directions hearing. He, together with full-time members Tim Carey, Bertus De Villiers and Maurice Spillane, who are all lawyers with experience in administrative, constitutional and local government law and general litigation, have responsibility for the final determination of the remainder of matters. Sessional members are called upon when their special expertise is required.

A number of matters involving the review of State revenue decisions are determined by the President or a Deputy President, following an initial directions hearing.

Practice and procedure

Matters are set for a directions hearing as early as possible. This is usually within three to four weeks of an application being lodged. The Tribunal is aiming to reduce this time to within three weeks of lodgment.

Directions hearings are used to address any technical deficiencies in the application, to assess the most appropriate means of resolving the matter and to make orders to have the matter ready for determination. This includes assessing whether the conduct of a mediation hearing or a compulsory conference would assist the parties to come to their own resolution of the dispute, or to narrow the issues to be determined. The hearing enables open communication between the Tribunal and the parties, so issues are well understood and the processes explained.

The Tribunal has resolved a number of matters without the need for a final hearing. Parties in these cases have been able to reach an agreed outcome without a resolution being imposed upon them. In this regard, the flexibility provided through the *State Administrative Tribunal Act 2004* has allowed the Tribunal to adopt a different approach from the former boards and tribunals in a number of instances.

Some cases that would have been decided on the documents without any direct contact with the Strata Titles Referee or the other party are now being resolved through mediation. Some matters that would have been dismissed are being amended and dealt with, or withdrawn promptly so appropriate proposals can be put before the strata company.

Conversely, commercial tenancy disputes that had to be referred to mediation are now being referred only if it is deemed beneficial. This avoids unnecessary delay and the risk of the process being abused.

Similarly, reviews of notices to carry out alterations to unsafe buildings, or building works that had not been approved under the *Local Government (Miscellaneous Provisions) Act 1960*, were previously dealt with by a long Ministerial administrative process. These matters are now set for a directions hearing, so issues are addressed immediately. Again, many of these cases are being resolved through conferences and mediation.

Relationship with user groups

A number of initiatives have been undertaken to establish contact with and maintain awareness of the views of user groups.

On 23 February 2005 the stream held a seminar to introduce its members and procedures to interested user groups, which was well attended.

Senior Member Clive Raymond has attended and spoken at various conferences including the Law Society's conference on the *Construction Contracts Act 2004* and the annual conference of the Spatial Science Institute of Western Australia.

Mr Raymond has also accepted nomination by the Department of Justice to participate in the Community Titles Advisory Committee, which is made up of representative bodies participating in and regulating the *Strata Titles Act 1985*.

Significant developments

A number of important decisions have been published by the Tribunal, both in relation to substantive areas and the scope of the Tribunal's powers:

- In ***Tangent Nominees Pty Ltd and Edwards and Anor*** [2005] WASAT 119, the Tribunal examined the requirements for leave to be granted under s 41(2) of the *Builders' Registration Act 1939* (WA) for leave to be granted to review a decision of the Building Disputes Tribunal. The Tribunal applied the tests previously applied by the District Court when leave to appeal to that court was required. That test, consistent with Supreme Court authority, recognises that grant of leave lies in the discretion of the Tribunal, but that, in general, it must be shown that the decision in respect of which leave is sought is wrong, or at least attended with sufficient doubt to justify the grant of leave. In addition, it must be demonstrated that a substantial injustice would be done if the decision were not reversed. Leave should also be granted where fundamental rules of natural justice have been breached. The test demonstrates a tension between the requirements for leave and the concept of a hearing de novo. The Tribunal found that all but one of the grounds of proposed review raised was without merit, and restricted the grant of leave to one ground. The matter has been appealed to the Supreme Court.

- In ***A and Commissioner of Police*** [2005] WASAT 121, the Tribunal reviewed a decision by a licensing officer not to issue the applicant with security officer and crowd controller licences under the *Security and Related Activities (Control) Act 1996*. The licensing officer concluded that she was not satisfied that the applicant was of good character and a fit and proper person to hold the licences. That conclusion was released based on a review of a statement of material facts of certain sexual charges made against the applicant, for which the applicant had still to be tried. The case examined the public interest in the control of the issue of such licences. The applicant's case was that he was entitled to a presumption of innocence on the charges, and unless convicted, no account should be taken of the charges against him. The Tribunal concluded that the requirement not to issue a licence unless it is satisfied that the applicant is of good character or that there is no other good reason why the licence should not be issued, meant that a person against whom serious charges were alleged, which, if proved, would disqualify that person from being licensed, should not be licensed as a crowd controller until the question had been resolved. On the other hand, the nature of the charges did not reflect on the applicant's suitability to carry out the duties of a security officer, and the Tribunal found that such a licence could be issued. The matter has been appealed to the Supreme Court.

Enabling Acts

The following enabling Acts give the Tribunal the power to make decisions or review decisions in this stream.

| Act | Original | Review |
|--------------------------------------------------------------|----------|--------|
| <i>Aerial Spraying Control Act 1966</i> | | * |
| <i>Agricultural Produce (Chemical Residues) Act 1983</i> | | * |
| <i>Agricultural Produce Commission Act 1988</i> | | * |
| <i>Animal Welfare Act 2002</i> | | * |
| <i>Associations Incorporation Act 1987</i> | | * |
| <i>Births Deaths and Marriages Registration Act 1998</i> | | * |
| <i>Business Names Act 1962</i> | | * |
| <i>Cemeteries Act 1986</i> | | * |
| <i>Chattel Securities Act 1987</i> | | * |
| <i>Chicken Meat Industry Act 1977</i> | | * |
| <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> | * | |
| <i>Community Services Act 1972</i> | | * |
| <i>Competition Policy Reform (WA) Act 1996</i> | | * |
| <i>Consumer Credit (WA) Act 1996</i> | * | |
| <i>Co-operative and Provident Societies Act 1903</i> | | * |
| <i>Country Towns Sewerage Act 1948</i> | | * |
| <i>Credit Act 1984</i> | * | |
| <i>Credit (Administration) Act 1984</i> | * | |
| <i>Cremation Act 1929</i> | | * |
| <i>Dangerous Goods Safety Act 2004</i> | | * |

| | | |
|-----------------------------------------------------------------------|---|---|
| <i>Dangerous Goods (Transport) Act 1998</i> | | * |
| <i>Dog Act 1976</i> | | * |
| <i>Energy Coordination Act 1994</i> | | * |
| <i>Explosives and Dangerous Goods Act 1961</i> | | * |
| <i>Fair Trading Act 1987</i> | * | |
| <i>Fire and Emergency Services Authority of WA Act 1998</i> | | * |
| <i>Fire Brigades Act 1942</i> | | * |
| <i>Firearms Act 1973</i> | | * |
| <i>First Home Owner Grant Act 2000</i> | | * |
| <i>Health Act 1911</i> | | * |
| <i>Hire-Purchase Act 1959</i> | | * |
| <i>Hospitals and Health Services Act 1927</i> | | * |
| <i>Housing Societies Act 1976</i> | | * |
| <i>Legal Contribution Trust Act 1967</i> | | * |
| <i>Local Government (Miscellaneous Provisions) Act 1960</i> | | * |
| <i>Marketing of Eggs Act 1945</i> | | * |
| <i>Marketing of Potatoes Act 1946</i> | | * |
| <i>Pawnbrokers and Second-hand Dealers Act 1994</i> | * | * |
| <i>Perth Parking Management Act 1999</i> | | * |
| <i>Petroleum Act 1967</i> | | * |
| <i>Petroleum Pipelines Act 1969</i> | | * |
| <i>Petroleum Retailers Rights and Liabilities Act 1982</i> | | * |
| <i>Petroleum (Submerged Lands) Act 1982</i> | | * |
| <i>Pig Industry Compensation Act 1942</i> | | * |
| <i>Poisons Act 1964</i> | | |
| <i>Public Meetings and Processions Act 1984</i> | | * |
| <i>Radiation Safety Act 1975</i> | | * |
| <i>Rail Safety Act 1998</i> | | * |
| <i>Retirement Villages Act 1992</i> | * | |
| <i>Road Traffic Act 1974</i> | | * |
| <i>Royal Agricultural Society Act 1926</i> | | * |
| <i>State Superannuation Act 2000</i> | | * |
| <i>Strata Titles Act 1985</i> | * | |
| <i>Taxation Administration Act 2003</i> | | * |
| <i>Taxi Act 1994</i> | | * |
| <i>Transport Co-ordination Act 1966</i> | | * |
| <i>Veterinary Chemical Control and Animal Feeding Stuffs Act 1976</i> | | * |
| <i>Western Australian Marine Act 1982</i> | | * |
| <i>Western Australian Meat Industry Authority Act 1976</i> | | * |

VOCATIONAL REGULATION STREAM

Work

The Vocational Regulation stream hears matters in both the original and review jurisdictions of the Tribunal.

In the original jurisdiction, the Tribunal hears and determines allegations made by vocational regulatory bodies of misconduct by persons licensed by those bodies. In the review jurisdiction, the Tribunal reviews decisions made by those bodies regarding licences to operate in a vocational area. In relation to some areas, the Tribunal reviews decisions regarding fidelity and compensation funds. Most of the work conducted in this stream was formerly done by vocational registration boards.

There are 38 enabling Acts dealing with vocational regulation, which confer jurisdiction on the State Administrative Tribunal.

Members

President Justice Barker and Deputy Presidents Judge John Chaney and Judge Judy Eckert oversee the work of the stream. A number of full-time members and a large number of sessional members assist in the vocational area.

A significant volume of work is generated under the *Security and Related Activities (Control) Act 1996*, which deals with the licensing of security agents and crowd controllers. Members Tim Carey, Bertus De Villiers and Maurice Spillane oversee much of this work, and often preside at hearings in relation to that vocation.

Pursuant to section 11(4) of the *State Administrative Tribunal Act 2004*, the Tribunal must, in dealing with vocational regulatory matters, be constituted by three persons, one of whom is a legally qualified member, one who has extensive or special experience in the same vocation as the person affected by the decision or matter, and one person not engaged in that vocation who is familiar with the interests of people dealing with those engaged in that vocation. Given the number of vocations within the Tribunal's jurisdiction, a large number of sessional members are required in order to meet the requirements of section 11(4). More than half of the Tribunal's sessional members are appointed for their vocational qualification, which enables them to participate in hearings in relation to members of their vocation.

Practice and procedure

Like other streams in the Tribunal, new applications are listed for a directions hearing within about 21 days of lodgment.

With the exception of security agents and crowd controllers, all initial directions hearings are heard before President Justice Barker or Deputy President Judge Chaney. Security agents and crowd controller matters are initially dealt with in directions hearings before members Carey, De Villiers or Spillane.

The purpose of the initial directions hearing is to determine the most efficient way in which issues can be resolved. The Tribunal has introduced mediation into the area of Vocational Regulation with some success. Even in relation to disciplinary matters, the Tribunal has found that the opportunity for parties to discuss issues and consider appropriate outcomes can often lead to a complete resolution of a matter, or at least to a narrowing of the issues in dispute. This has resulted in a significant reduction in the time required for a hearing, and in turn a reduction in the costs of the proceedings.

When conducting mediations or compulsory conferences in a vocational area, the Tribunal is aware of the role it has in serving the public interest, which requires the imposition of appropriate penalties where the standards of a particular vocational group have not been met. Any agreement reached by the parties to a vocational proceeding will only conclude the proceedings where the Tribunal accepts that the proposed settlement is appropriate. The outcome must be consistent with the public interest in maintaining a proper regime of vocational disciplinary regulation.

In at least one case, the Tribunal has declined to accept a proposed consent order between a practitioner and a vocational regulatory body because the Tribunal did not consider that the outcome properly reflected the gravity of the offence. In that matter, the parties considered the Tribunal's observations on the matter, and ultimately agreed to the orders the Tribunal had suggested which would meet the public interest.

It has been the Tribunal's experience to date that mediation is capable of assisting the resolution of vocational regulatory matters.

The requirement to constitute the Tribunal with three members does not apply to procedural hearings, compulsory conferences or mediations. Those exceptions do not enable the Tribunal to deal with matters immediately, if for example, a respondent to a disciplinary matter wished to plead guilty to the allegation against them at the initial directions hearing, because of the need to constitute the Tribunal in accordance with section 11(4) of the *State Administrative Tribunal Act 2004* or an applicant affected by a registration decision wishes to obtain an order staying its effect pending a final hearing of the application. This may result in delay and inconvenience to the parties. In many cases, the appropriate outcome is relatively clear, and there remains a question as to whether anything is gained by the requirement for additional members to deal with the issues of penalty.

An issue also arose early on concerning matters that had been part or fully heard but not finally determined by the former Legal Practitioners Disciplinary Tribunal as of 1 January 2005. The former adjudicator then ceased to exist. The effect of section 250A of *The Legal Practice Act 2003* and the *State Administrative Tribunal Act 2004*, section 5, was to make it difficult for the President to use members of the former adjudicator to complete their work as he could otherwise do under section 167(15) of the *State Administrative Tribunal Act 2004*. The President has requested the formation of regulations under section 167(2) to overcome this difficulty. As of 30 June 2005, the regulations were being drafted.

Relationship with user groups

In April and May 2005, the Tribunal invited members of various regulatory boards and industry associations to a series of forums to discuss the operations of the Tribunal. The forums presented the opportunity to discuss the Tribunal's procedures in relation to vocational matters and for the interest groups to raise concerns and have questions answered.

The meetings were well attended and provided valuable feedback to the Tribunal about concerns which various industry bodies had and the likely workflow that could be expected in particular areas.

Enabling Acts

The table shows the Acts giving the Tribunal the power to make disciplinary decisions or to review licensing decisions.

| Act | Original/ Disciplinary | Review/ Licensing |
|------------------------------------------------------|-----------------------------------|------------------------------|
| <i>Architects Act 1921</i> | * | * |
| <i>Builders Registration Act 1939</i> | * | * |
| <i>Chiropractors Act 1964</i> | * | * |
| <i>Debt Collectors Licensing Act 1964</i> | * | * |
| <i>Dental Act 1939</i> | * | * |
| <i>Dental Prosthetists Act 1985</i> | * | * |
| <i>Electricity (Licensing) Regulations 1991</i> | * | * |
| <i>Employment Agents Act 1976</i> | * | * |
| <i>Finance Brokers Control Act 1975</i> | * | * |
| <i>Gas Standards Act 1972</i> | * | * |
| <i>Hairdressers Registration Act 1946</i> | * | * |
| <i>Human Reproductive Technology Act 1991</i> | * | * |
| <i>Land Valuers Licensing Act 1978</i> | * | * |
| <i>Legal Practice Act 2003</i> | * | * |
| <i>Licensed Surveyors Act 1909</i> | * | * |
| <i>Medical Act 1894</i> | * | * |
| <i>Motor Vehicle Dealers Act 1973</i> | * | * |
| <i>Motor Vehicle Drivers Instructors Act 1963</i> | no | * |
| <i>Nurses Act 1992</i> | * | * |
| <i>Occupational Therapists Registration Act 1980</i> | * | * |
| <i>Optical Dispensers Act 1966</i> | * | * |
| <i>Optometrists Act 1940</i> | * | * |
| <i>Osteopaths Act 1997</i> | * | * |
| <i>Painters' Registration Act 1961</i> | * | * |
| <i>Pharmacy Act 1964</i> | * | * |
| <i>Physiotherapists Act 1950</i> | * | * |
| <i>Podiatrists Registration Act 1984</i> | * | * |
| <i>Professional Combat Sports Act 1987</i> | | * |
| <i>Psychologists Registration Act 1976</i> | * | * |
| <i>Real Estate and Business Agents Act 1978</i> | * | * |

| | | |
|-----------------------------------------------------------|---|---|
| <i>Security and Related Activities (Control) Act 1996</i> | * | * |
| <i>Settlement Agents Act 1981</i> | * | * |
| <i>Travel Agents Act 1985</i> | * | * |
| <i>Veterinary Surgeons Act 1960</i> | * | * |

PRACTICE AND PROCEDURE

General

The practice and procedure usually adopted by the Tribunal is explained in the stream discussions of Our Work in the previous section.

The breadth of the Tribunal's jurisdiction demands that it maintain flexibility in the procedures it adopts to deal efficiently with matters brought before it.

Many applications are best dealt with by bringing the parties before the Tribunal in a directions hearing very early in the process, so the Tribunal can assess how best to resolve the issues in each particular matter.

In other cases, such as applications arising under the *Guardianship and Administration Act 1990*, the best way forward involves promptly listing applications for a final hearing. In the case of guardianship and administration applications the final hearing is usually held within six or seven weeks of lodgment.

In other areas, such as applications under the retail shops legislation and many *Strata Titles Act 1985* matters, the best way forward is to decide matters on the documents without a formal hearing.

In many cases, forms of alternative decision making such as mediation and compulsory conference will also seem most appropriate.

The Tribunal considers that where expert witnesses are involved in proceedings it will usually be appropriate to make special orders requiring experts to confer before a hearing and to give their evidence concurrently at the hearing. This process is likely to assist the Tribunal's decision-making processes, shorten the length of hearings and save on costs to parties.

The Tribunal usually requires parties to proceedings that are likely to go to a formal hearing to file statements of the issues, facts and contentions that arise. This procedure helps to identify the real issues in a case and helps to shorten the length of a hearing.

Rules Committee

Section 172 of the *State Administrative Tribunal Act 2004* requires a rules committee to be formed. In anticipation of the commencement of operations on 1 January 2005, the Tribunal's Rules Committee was set-up and on 24 December 2004, it adopted the *State Administrative Rules 2004*.

Membership of the Rules Committee was broadened once the Tribunal had commenced. Present membership of the committee is set out in Appendix 2.

The rules have been of assistance in the early operation of the Tribunal. As methods of dealing with various types of applications have developed, a need to review the rules has emerged. A practice note will soon be issued and posted on the Tribunal's website confirming the usual practice and procedure in most areas and will reflect the Tribunal's experience during its first six months.

Practice notes

The review of the Tribunal's rules has been undertaken in conjunction with the development of a practice note that explains the practices of the Tribunal in the different areas of its jurisdiction. Although much progress was made in the preparation and settling of the practice note up to 30 June 2005, it is yet to be published. The new practice note will be posted on the Tribunal's website and will be followed by amendment to the rules. The Rules Committee considers that, regulation through a practice note, rather than through rules, is preferable in the interests of maintaining maximum flexibility in the practices and procedures of the Tribunal. In this way, the objectives of reaching decisions fairly according to the substantial merits of the case, whilst acting as speedily and with as little formality as possible, and minimising costs to parties, are better served. Once amended, the rules will provide a framework within which the procedures outlined in the practice note will operate.

MEETING THE NEEDS OF OUR COMMUNITY

Daily

Each day Tribunal staff members at the main reception counter, service officers and staff responding to e-mail queries, provide a one-on-one service to members of the public about how to use the Tribunal's services.



Reception staff assist applicants on their arrival at the Tribunal.

SAT website

The SAT website is, in many ways, the key to the Tribunal's processes. It not only contains information on the Tribunal and its processes but also hosts the SAT Wizard, which helps applicants make an application to the Tribunal.

The SAT website was developed to appeal to a wide range of users, from builders, real estate agents and lawyers, to self-represented citizens looking to have an administrative decision made or reviewed.

The website enables applicants to search a wide-ranging database incorporating the 137 enabling Acts and complete their application form electronically.

SAT Wizard and electronic communications

The SAT Wizard is a specially designed website program that helps users to navigate through the application process and prepare electronically an application to the Tribunal. It makes applying to the Tribunal a straightforward process.

It is exactly the same process, no matter how simple or complicated the matter or the monetary sums involved.

Users are taken through a step-by-step process to identify the right Act, section or enabling Act for their particular matter.

If the applicant is not able to identify the relevant Act and section, the Wizard enables the user to browse through the list of Acts, or to conduct a search using key words, that apply to their particular matter. Once the relevant Act and section have been selected, the Wizard generates an application form tailored to the applicant's matter. The form can be printed and completed by hand, or completed online and printed out. The application is then posted to the Tribunal or delivered in person to 12 St Georges Terrace. The application may be emailed or sent by facsimile to the Tribunal with the approval of the Executive Officer. The applicant is also required to send a copy of the application to the respondent/s, which may, in many cases be done by email. The Tribunal maintains a register of decision makers and their email addresses for the service of applications.

Applicants are also invited to serve their application by email on the appropriate decision-maker. This is one example of the Tribunal's commitment to expediting application processes.

Telephone and videoconferencing

Tribunal hearing rooms are equipped to ensure all hearings and proceedings are accessible by electronic means. If parties are unable to attend in person because of illness or distance, the Tribunal believes it essential they should have the opportunity to fully participate in the hearing process. Applicants can do this through the Tribunal's video and telephone conferencing facilities. The Tribunal uses the WA Telecentre network of more than 60 listed centres throughout the State either to facilitate a videoconference or teleconference.

These systems allow hearings to take place when parties are unable to meet in one place. They also provide access to urgent decision-making processes for parties in country areas or where witnesses are located in country areas, interstate or overseas.

Decisions Database

Most reasons for decisions the Tribunal makes are kept on this database. For privacy reasons, the Tribunal sometimes removes any features that could identify the parties or other people. This applies to guardianship and mental health matters, for example.

A number of decisions made by the following former boards, referees or tribunals before January 2005 have also been included in the database:

- Guardianship and Administration Board;
- Equal Opportunity Tribunal;
- Strata Titles Referee; and
- Town Planning Appeals Tribunal.

Use of technology

Individuals, organisations, vocational boards and government agencies can apply to have the Tribunal make decisions, settle disputes and review decisions by using the SAT Wizard.

Full-time members also have full access to the Tribunal's computer-based systems. It is anticipated that sessional members will also soon have customised access to the operations of the Tribunal through a portal. They will then have access to information on scheduled hearings, a customised calendar that is automatically updated when they are listed for a hearing, online access to future listings, and access to previous decisions of boards and tribunals, as the full-time members currently do.

Community Seminars

The Tribunal is committed to engaging the community in its continuing development. It also aims to provide appropriate and accessible information to support people in making an application and understanding the Tribunal's processes. One of the key elements in achieving this is the ongoing development of the SAT website and the SAT Wizard.

Tribunal members have also met with many of the groups and individuals who use its services, including vocational regulatory bodies, professional associations and decision makers whose decisions are reviewed through the Tribunal.

User groups were invited to participate in a series of six community meetings that were held in early 2005. Each of the meetings focused on the activities of one of the four streams. Judicial and senior members gave presentations on the operation of the Tribunal and answered questions. Attendees had an opportunity to provide feedback to the Tribunal on the practicalities of the processes currently in place. The seminars proved beneficial for both the Tribunal and those who attended.

The following stream seminars were held on:

- Development and Resources, 1 February 2005;
- Human Rights, 16 February 2005;
- Commercial and Civil, 23 February 2005;
- Vocational Regulation, 17 May 2005;
- Vocational Regulation, 18 May 2005; and
- Vocational Regulation, 24 May 2005.

Speeches and presentations

The Tribunal is committed to providing accessible information about the Tribunal to the broader community. The Tribunal has responded to a number of requests for presentations. A list of various presentations made on behalf of the Tribunal during the first six months is contained in Appendix 3.

TRIBUNAL MEMBERSHIP

Members

Upon its commencement, the Tribunal's members comprised:

- a Supreme Court judge as President;
- two District Court judges as Deputy Presidents;
- four senior members as full-time members of the Tribunal, one of whom was also the President of the Mental Health Review Board;
- nine members appointed on a full-time basis;
- 67 senior sessional members; and
- 33 sessional members.

In the period 1 January to 30 June 2005:

- Member Belinda Moharich resigned as of 6 June 2005;
- Member James Jordan was appointed as of 21 June 2005; and
- 19 additional senior sessional members and sessional members have been appointed.

A list of all members of the Tribunal by category as at 30 June 2005 is set out in Appendix 4.

The profiles of the judicial members, full-time senior members and members are contained in Appendix 5.

Use of full-time members and sessional members

During the first six months of operation, the Tribunal's work has largely been acquitted by the judicial members and the full-time, non-judicial members. Sessional members have been used as required.

In the Human Rights stream sessional members have been listed frequently to deal with guardianship and administration applications and mental health appeals to the Tribunal.

Sessional members have also been listed frequently as members of a Tribunal panel to hear vocational regulation matters, as required under section 11 of the *State Administrative Tribunal Act 2004*.

As the Tribunal progresses past its establishment phase during the next 12 months the role sessional members can expect to play in the work of the Tribunal will be developed and is likely to become more formalised than it has been during the establishment phase of the Tribunal.



(L-R) Full-time members, at back, Jim Jordan, Maurice Spillane and Jack Mansveld with, at front, Bertus De Villiers, Donna Dean and Peter McNab. Absent – Felicity Child, Marie Connor and Tim Carey.

Professional development

Under section 143 of the *State Administrative Tribunal Act 2004*, judicial members are responsible for directing the education, training and professional development of the Tribunal members.

During the first six months of the Tribunal's operation, full-time members have undertaken professional development through their attendance and participation in:

- conventions and conferences;
- courses, seminars, workshops, training and video conferencing;
- meetings, public speaking, discussion groups, forums, & presentations;
- appropriate in-house training or professional development;
- tertiary courses;
- researching and writing technical publications;
- service on technical or research committees;
- program learning packages; and
- professional development online, CD-ROMs, video DVD audio package.

During the next 12 months, structured in-house training and professional development will be developed for many sessional members of the Tribunal as their role stabilises.

STAFF, BUDGET AND PREMISES

Executive Officer's Report

The first six months of operations has been a tremendous success.

With entirely new systems, new processes and new procedures, our 61 staff (as of 30 June) have performed to a very high and professional standard.

More than half of our staff were not initially familiar with the work of tribunals but relatively few mistakes have been made since January. Importantly, these have resulted in improvements to the Tribunal's practice and procedures, as well as staff learning and development.

Since January 2005, the managers, team leaders and staff have done a marvellous job in implementing the administrative systems required to ensure the successful commencement of the most complex new jurisdiction created in Western Australia since 1969 when the District Court of Western Australia was established.

Planned improvements to the supporting technologies, together with the impending appointment of many staff members to permanent positions within the Tribunal will ensure it is greatly assisted in meeting its vision to become one of Australia's leading tribunals. Our mission is to be *"a tribunal that adopts best practice and innovative technology in making fair and timely decisions for the benefit of the people of the State"*.

Alex Watt
Executive Officer

Our staff

The Tribunal is supported by an executive officer and 61 full-time staff who are all employed by the Department of Justice. The executive officer is under the direction of, and reports to the Tribunal's President.

Thirty of the staff employed at the Tribunal were transferred from, or had worked with, the former boards and tribunals or adjudicators.

Alex Watt **Executive Officer**

The Executive Officer, Alex Watt, is made available under section 148 of the *State Administrative Tribunal Act 2004* to assist in the administration of the Act and the exercise of the Tribunal's jurisdiction.

Alex joined the Tribunal in December 2004. He was formerly a long serving senior officer for the Western Australian Industrial Relations Commission.



(L-R) Manager Service Support Anthea Chambers, Manager Listings & Decision Support Peter Sermon, Manager Community Relations Mark Charsley, Executive Officer Alex Watt and Manager Business Services Shane Wilkinson.

Prior to that he worked in the administration of disability services, education, training and the banking sector. He has multiple qualifications in business and is a member of the Australian Society of CPAs.

Anthea Chambers

Manager Service Support

Anthea manages a team of 23 service support officers. She has degrees in arts and social work and is a qualified teacher. Prior to starting at the State Administrative Tribunal, she was executive officer of the Guardianship and Administration Board. She has managed contracts and services at the Victim Support Service for the Department of Justice and worked nearly 20 years as a social worker in a variety of settings, predominantly providing crisis management and trauma counselling services.

Peter Sermon

Manager, Listings & Decision Support

Peter Sermon manages the Tribunal's listing resources and ensures they are all efficiently utilised. He has more than 25 years experience in the public sector and was formerly employed with the Department of Justice in the Guardianship and Administration Board for six years. Peter has extensive experience in administration, statistical analysis, risk management, financial management and human resources.

Shane Wilkinson

Manager Business Services

Shane has 27 years experience working for the courts and tribunals of the Department of Justice. For the majority of this time, he was a clerk of the court for various courts throughout regional WA. Prior to joining the Tribunal he was the registrar of the Equal Opportunity Tribunal. Shane was seconded to the Tribunal's project team and was instrumental in developing systems and processes.

Mark Charsley

Manager Community Relations

Mark previously worked for the Guardianship and Administration Board as manager customer services. His career started in the UK with studies in the hospitality industry but soon moved into the social care arena working for the Benefits Agency. He then worked in a local authority funded community legal centre providing information, advice and advocacy on a range of issues. He has also worked extensively in the area of alternative dispute resolution and currently volunteers with the Citizens Advice Bureau's mediation services.

Tribunal administrative support

In the administration of the Act and the exercise of the Tribunal's jurisdiction, services are divided into four main categories:

- Service Support;
- Decision Support;
- Business Services; and
- Community Relations.

Service Support

The Tribunal's 20 service support staff handles all applications, in addition to general enquiries.

Individuals, organisations and vocational regulatory bodies boards and government agencies can apply to or be a respondent before the Tribunal in the making of decisions, the settlement of disputes and the review of decisions.



The Tribunal's administrative support area on level 4.

Application forms to start proceedings with the Tribunal can be completed online, through the SAT Wizard or be ordered by telephone or by post. The SAT Wizard has been designed to help people apply to the Tribunal. However, service support staff also use the wizard to help people identify the enabling laws, the appropriate application type and how the application needs to be lodged.

Divisions within Service Support currently match the four streams of Human Rights, Commercial and Civil, Development and Resources and Vocational Regulation.

Each Stream has a team leader, a supervisor and a number of service officers who can provide assistance to persons or organisations that want to make an application to the Tribunal.

Decision Support

Decision Support has a team of 14 who are responsible for listing matters before the judicial members and members as appropriate to ensure matters are resolved quickly.

This includes listing matters for directions hearings, mediation, compulsory conference and final hearings. These may be conducted on the Tribunal premises, in the metropolitan area and in rural communities. Hearings are facilitated by teleconferencing and video link to enable parties who are overseas, interstate or in remote locations to participate and ensure matters are dealt with in a timely manner.

Most hearings are open to the public and the daily hearing list is placed on the Tribunal's website and in State newspapers.

Business Services

Business Services has nine staff and encompasses the library, records, transcripts and administrative support functions for the Tribunal.

The library was established for the full-time and sessional tribunal members. A part-time librarian handles the procurement and maintenance of the library resources.

Four staff provide records services to the Tribunal that include mail and fax distribution and despatch, creation of matter files and management of off-site records.

The records supervisor ensures records practices adhere to the Tribunal's record keeping plan and manages records in accordance with a retention and disposal schedule.

Transcript requests are progressed by an officer who ensures the person receives a copy of the transcript and, where applicable, the appropriate fee is paid.

Two staff assist the manager with monitoring budget performance, management of cash collections, payment and reconciliation of accounts, reporting on business performance indicators, management of assets and management of premises and infrastructure.

Community Relations

This support area comprises two key roles, a manager and a specialist public affairs officer.

Community Relations' responsibilities include evaluating new technology and its suitability for the Tribunal. This includes maintaining and updating the SAT website and application wizard and managing its development to meet the needs of Tribunal users. Community Relations also prepares and produces leaflets and other publications. The Community Relations Manager is the central point of contact for all matters relating to the Tribunal, not connected to an application or the production of applications, such as feedback on the website.

Community Relations also coordinates outreach and presentation requests, ensuring they are met in a timely and appropriate manner.

Staff supporting judicial and non-judicial members

The President is supported by an Executive Secretary, Anna Courtman, who was appointed late in the reporting period. The President was also assisted greatly by his associate, Shannon Chapman.

The two Deputy Presidents each have an associate and share a secretary. As at 30 June, Judge Chaney's associate was Toni Sherwood and Judge Eckert's associate was James Trimble. The President's orderly, Philip Fryer, assists the three judicial members and provides them with sterling service.

Members of the Tribunal receive administrative support from three secretaries, Margaret Defrenne, Shevaun Shah and Vicki Nash.

Security staff

The Tribunal has been well served by four security officers; Gordon Martin, Les Ross, Ricki Pulko and Tracey Butler, who assist in the orderly functioning of the Tribunal. They each help to maintain order, when required, and also provide great assistance to the members of the public who are unfamiliar with the Tribunal.



Security Officer Ricki Pulko (right) supports people attending the Tribunal.

Staff manual

Managers and team leaders have been documenting and refining practices and procedures since January 2005.

During 2005/06 information repositories will be consolidated into two online resources forming the core of a formalised staff manual.

Existing staff resources include an extensive online help facility within the case management system, benchmark standards provided by the executive officer and access to a “staff wizard”, which provides detailed information on each enabling provision which an application can be made to the Tribunal.

Budget and financial information

The table below shows the January to June 2005 budget for the Tribunal and the actual funds spent in the same period.

The table breaks budget and cost down into three areas:

- those costs directly associated with the members of the Tribunal;
- costs of support staff; and
- cost of facilities and operating requisites.

The executive officer together with the Department of Justice, in consultation with the Department of Treasury and Finance, are examining the budget requirements for future years to ensure the Tribunal has adequate resources to meet current and expectation demand.

Table 1 - Financial overview

| | January to June Budget | Actual |
|----------------------------|------------------------|-------------------|
| | 2004/05 \$,000 | 2004/05 \$,000 |
| Operating Costs | | |
| Judicial and Tribunal | 2,397 | 2,171 |
| Registry Support | 1,687 | 1,687 |
| Rentals and Operating | 2,471 | 2,689 |
| <i>Sub Total Operating</i> | 6,555 | 6,547 |
| Revenue | -168 | -152 |
| Net Total Operating | 6,387 | 6,395 |

Accommodation

The Tribunal’s main premises are on Levels 4, 8 and 9 at 12 St Georges Terrace, Perth, Western Australia.

The premises were fitted out in 2004 especially for the use of the Tribunal in anticipation of the State Parliament enacting the *State Administrative Tribunal Bill 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2004*.

In early 2004, a number of bodies whose functions were to be transferred to the Tribunal were co-located at the premises. These included the Commercial Tribunal, the Guardianship and Administration Board, the Land Valuation Appeals Tribunal, the Strata Titles Referee, the Retirement Villages Disputes Tribunal, the Equal Opportunity Tribunal and the Town Planning Appeals Tribunal.



Tribunal foyer.

The Tribunal’s premises include appropriate offices and work areas for members and staff. Staff accommodation is at capacity. However the Court Services division of the Department of Justice is actively exploring options to address future needs.

The premises also include 12 hearing rooms, nine mediation rooms and four meeting rooms, as well as office accommodation for the representative of the Public Advocate and duty counsel of the Legal Aid Commission. The premises also include a library.

The design and construction of the building has limited to some extent the design of the Tribunal’s hearing rooms, which range from the more formal and large to the informal and small.

The Tribunal is able to accommodate a range of hearing types in the hearing rooms. The formal large hearing rooms are amenable to proceedings involving a number of parties, or when public interest in the proceedings necessitates more hearing room space. The informal hearing rooms are amenable to proceedings where the participants are not represented and the hearings are best conducted in an informal setting, such as those under the *Guardianship and Administration Act 1990* or the *Mental Health Act 1996*.

The Tribunal's hearing rooms, as initially designed and constructed, required redesign and alteration soon after the Tribunal commenced to make them more amenable to the way a tribunal normally operates. The initial design had failed, for example, to provide for the appropriate location of witnesses in some hearing rooms, and inappropriately located work areas for members of staff who act as support officers in the hearing room. The design of some hearing rooms also impeded the efficient movement of support officers in the course of the hearing.

Additionally, in the most formal and largest hearing room the design and construction of the room conveyed a solemnity and formality more befitting a superior court than an administrative tribunal, and the fit-out of that hearing room had also resulted in the location and position of the witness being quite unsatisfactory.

Necessary modifications to the current fit-out of the hearing rooms that were expected to be completed in January this year were delayed. The hearing room modifications are now planned for September 2005.

Accessibility issues, especially those involving emergency egress arrangements for persons with disabilities, remain unresolved.

The design and construction inadequacies of the Tribunal will need to be addressed when decisions are made concerning the best future location of the Tribunal.

Agreement between the President and Chief Executive Officer under section 148(3)

Section 148(3) of the State Administrative Tribunal Act states that the services and facilities of the Department of Justice may be used for the purposes of the Act on such terms as agreed by the President and the Chief Executive Officer.

Although no formal service level agreement is in place, the Department of Justice has provided facilities and services and these will continue to be provided to the Tribunal.

ARRANGEMENTS WITH OTHER AGENCIES

Arrangements with Chief Magistrate under section 116

The President has concluded formal Arrangements with the Chief Magistrate that enable a Magistrate to sit as a member of the Tribunal, following a request made to the Chief Magistrate by the President. The Arrangements are contained in Appendix 6.

Arrangements with Parliamentary Commissioner under section 168

The President and the Parliamentary Commissioner (or Ombudsman) have commenced discussions with a view to making arrangements between them concerning in particular 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.

STATISTICAL ACCOUNT OF MATTERS BEFORE THE TRIBUNAL

By section 150(2) of the *State Administrative Tribunal Act 2004* the annual report must include details of the number, nature and outcome of matters that have come before the Tribunal and the number and nature of matters that are outstanding. The information in this section provides those details.

From January 2005, where a former adjudicator continued to exist, the transitional provisions of the SAT Act allowed for the "former adjudicator" to bring a matter to conclusion, within six months, if it had been heard in full or part prior to the conferral date. If a matter could not be concluded within six months it was to be transferred to the State Administrative Tribunal. Where a matter had not been partly or fully heard it was transferred automatically to the Tribunal as of 1 January 2005. The matters transferred from former adjudicators are termed "legacy matters" in this report.

All other applications received by the Tribunal since January 2005 were termed "new applications".

A statistical overview of the activities of the Tribunal is given in the table below with referenced tables.

Table 2 - Overview of matters to 30 June 2005

| New Applications | | | Legacy Matters | | |
|-------------------------------------------------------------------------------------------------|-------|---------------------|---------------------------------------------------------------------|-----|----------|
| | | Table | | | Table |
| Applications Received | 2,723 | 3, 4 & 5 | Matters transferred | 897 | 8 |
| Matters resolved | 1,937 | 6 | Matters resolved | 749 | 8 |
| Matters not resolved | 786 | 7 | Matters not resolved | 148 | 8 |
| not resolved, part heard | 58 | | not resolved, part heard | 13 | |
| not resolved, listed for a hearing or for decision on the documents | 622 | | not resolved, listed for a hearing or for decision on the documents | 115 | |
| matters reserved for decision | 19 | | matters reserved for decision | 4 | |
| applications awaiting resolution. | 87 | | applications awaiting resolution | 16 | |
| Synopsis of applications made pursuant to the <i>Guardianship and Administration Act (1990)</i> | | | | | 9 |

Table 3 - Number of new applications received by enabling Act and provision

| Stream | Act | Section | No. of Applications |
|---------------------------------|-------------------------------------------------------|-----------|---------------------|
| Commercial & Civil | Commercial Tenancy (Retail Shops) Agreements Act 1985 | 11(5) | 1 |
| | | 13(7) | 794 |
| | | 13(7b) | 8 |
| | | 14 | 3 |
| | | 16(1) | 16 |
| | Consumer Credit (Western Australia) Act 1996 | 101(1) | 1 |
| | | 102(1) | 1 |
| | | 107(1) | 1 |
| | | 36(6) | 1 |
| | | 68(1) | 1 |
| | | 72(1)(a) | 1 |
| | | 88(1) | 3 |
| | | 92 | 5 |
| | | 93(1) | 3 |
| | Credit Act 1984 | 104(3) | 1 |
| | Dog Act 1976 | 26(5)(a) | 1 |
| | | 26(5)(b) | 5 |
| | | 33F(6)(b) | 1 |
| | Firearms Act 1973 | 22(2) | 20 |
| First Home Owner Grant Act 2000 | 31(1) | 1 | |

| Stream | Act | Section | No. of Applications |
|----------------------------------|------------------------------------------------------|--------------------|---------------------|
| | Health Act 1911 | 36(1) | 5 |
| | Local Government (Miscellaneous Provisions) Act 1960 | 374(2)(a) | 8 |
| | | 374A(3) | 1 |
| | | 377(5) | 1 |
| | | 401(3) | 76 |
| | | 403(6) | 1 |
| | | 408(3) | 1 |
| | | 409(3) | 1 |
| | Retirement Villages Act 1992 | 56(1)(b) | 2 |
| | Road Traffic Act 1974 | 48(4) | 10 |
| | Soil and Land Conservation Act 1945 | 39(1) | 1 |
| | Strata Titles Act 1985 | Sch3, Cl 12(10)(a) | 1 |
| | | Sch3, Cl 13A(5) | 1 |
| | | 102(1)(f) | 1 |
| | | 103F(1) | 4 |
| | | 103G(1) | 1 |
| | | 82 | 3 |
| | | 83(1) | 47 |
| | | 85 | 8 |
| | | 91 | 1 |
| | | 92 | 3 |
| | | 94(1) | 2 |
| | 97(1) | 1 | |
| Taxation Administration Act 2003 | 40(1) | 30 | |
| Taxi Act 1994 | 22(2) | 5 | |
| Transport Co-ordination Act 1966 | 57(3) | 1 | |

| Stream | Act | Section | No. of Applications |
|--------------|------------------------------------------|----------------|---------------------|
| Human Rights | Equal Opportunity Act 1984 | 135(1) | 1 |
| | | 90(2) | 8 |
| | | 93(1)(a) | 2 |
| | | 93(1)(b) | 15 |
| | | 93(1)(c) | 1 |
| | Guardianship and Administration Act 1990 | 104A(1) | 3 |
| | | 106(1) | 11 |
| | | 106(5) | 2 |
| | | 109(1)(b) | 2 |
| | | 109(1)(c) | 3 |
| | | 109(2)(a) | 1 |
| | | 112(4) | 17 |
| | | 17A(1) | 8 |
| | | 40(1) - Type 1 | 448 |
| | | 40(1) - Type 2 | 264 |
| | | 47(1) | 1 |
| | | 74(1) | 7 |
| 82(1) | 1 | | |
| 84 - Type 1 | 180 | | |

| Stream | Act | Section | No. of Applications | |
|-------------------------------------------------|------------------------------------------------------------------------|------------------------|---------------------|----|
| | | 84 - Type 2 | 37 | |
| | | 85(2) - Type 1 | 8 | |
| | | 85(2) - Type 2 | 3 | |
| | | 86(1) - Type 1 | 115 | |
| | | 86(1) - Type 2 | 28 | |
| | | 87(1) - Type 1 | 23 | |
| | | 87(1) - Type 2 | 3 | |
| | | 95(2) | 1 | |
| | | Mental Health Act 1996 | 148A(1) | 18 |
| | | | 148A(2) | 1 |
| 148E | 1 | | | |
| Resource & Development | Caravan Parks and Camping Grounds Act 1995 | 27(1) | 1 | |
| | | | | |
| | Fish Resources Management Act 1994 | 149(1) | 7 | |
| | Fishing and Related Industries Compensation (Marine Reserves) Act 1997 | 8(2) | 1 | |
| | Hope Valley-Wattleup Redevelopment Act 2000 | 29(1) | 2 | |
| | Land Administration Act 1997 | 220(c) | 1 | |
| | | 224(4) | 1 | |
| | Local Government Act 1995 | 2.27(6) | 1 | |
| | | 3.25(5) | 6 | |
| | | 6.77 | 3 | |
| | | 6.82(1) | 1 | |
| | | 9.7(1)(a) | 1 | |
| | | 9.7(1)(b) | 1 | |
| | | | | |
| | Metropolitan Region Town Planning Scheme Act 1959 | 35F(1)(b) | 1 | |
| | Town Planning and Development Act 1928 | 10AA | 12 | |
| | | 18(2a) | 3 | |
| | | 26(1)(a)(i) | 51 | |
| | | 26(1)(a)(ii) | 19 | |
| | | 26(1)(a)(iii) | 4 | |
| | | 26(1)(ab) | 3 | |
| | | 26(1)(ad) | 2 | |
| | | | | |
| 7B(6)(a) | | 2 | | |
| 7B(8)(b) | | 3 | | |
| 8A(1) | | 93 | | |
| Town Planning Scheme | | 6 | | |
| CI 27A sch1 | 1 | | | |
| Valuation of Land Act 1978 | 33(2) | 8 | | |
| Western Australian Planning Commission Act 1985 | 25(2) | 1 | | |
| Vocational Regulation | Builders Registration Act 1939 | 12D | 1 | |
| | | 13(1) | 1 | |
| | | 13(1ba)(b) | 1 | |
| | | 13(2) | 9 | |

| Stream | Act | Section | No. of Applications |
|--------|----------------------------------------------------|---------------|---------------------|
| | | 14(1) | 5 |
| | | 41(1) | 25 |
| | Credit (Administration) Act 1984 | 24(1) | 1 |
| | Debt Collectors Licensing Act 1964 | 11(1) | 1 |
| | Finance Brokers Control Act 1975 | 23(1) | 1 |
| | Legal Practice Act 2003 | 180(1) | 15 |
| | | 44(c) | 1 |
| | Medical Act 1894 | 12BB(1)(a) | 1 |
| | | 13(1)(a) | 8 |
| | | 13(1)(b) | 1 |
| | | 13(1)(c) | 4 |
| | | 13(2) | 1 |
| | Motor Vehicle Dealers Act 1973 | 20(1)(a)(i) | 2 |
| | | 20(1)(b)(i) | 1 |
| | Nurses Act 1992 | 59B(4) | 1 |
| | | 59C(1) | 1 |
| | | 63(1)(b) | 2 |
| | | 64(2)(g) | 1 |
| | | 78 | 2 |
| | Painters' Registration Act 1961 | 16B(1) | 33 |
| | | 18(1) | 3 |
| | Physiotherapists Act 1950 | Regulation 21 | 2 |
| | Real Estate and Business Agents Act 1978 | 102(1)(a) | 8 |
| | | 102(1)(b) | 1 |
| | | 23(1) | 3 |
| | Security and Related Activities (Control) Act 1996 | 67(1) | 24 |
| | | 67(3b)(a) | 13 |
| | | 72(1) | 8 |
| | Settlement Agents Act 1981 | 23(1) | 2 |
| | | 83 | 5 |
| | Travel Agents Act 1985 (WA) | 23(1) | 1 |
| | Veterinary Surgeons Act 1960 | 23(12) | 1 |
| | | 23(2a) | 2 |
| TOTAL | | | 2723 |

Table 4 - Number of new applications received by stream and graph of number of applications received by month.

| STREAM | Month during 2005 | | | | | | Total |
|------------------------|-------------------|------------|------------|------------|------------|------------|-------------|
| | January | February | March | April | May | June | |
| Human Rights | 85 | 218 | 202 | 251 | 244 | 214 | 1,214 |
| Resource/Development | 47 | 55 | 39 | 32 | 35 | 27 | 235 |
| Commercial & Civil | 119 | 209 | 190 | 173 | 192 | 199 | 1,082 |
| Vocational Regulations | 12 | 53 | 39 | 16 | 40 | 32 | 192 |
| TOTAL | 263 | 535 | 470 | 472 | 511 | 472 | 2723 |

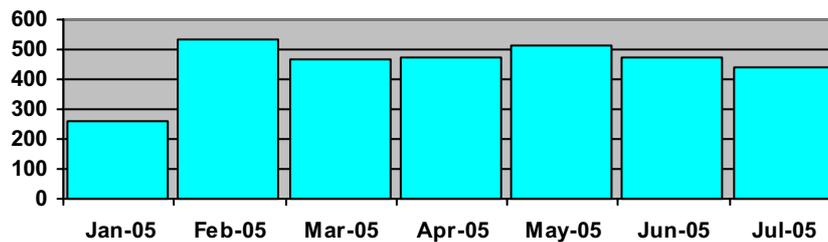


Table 5 - Pie Chart illustrating percentage of new applications by stream.

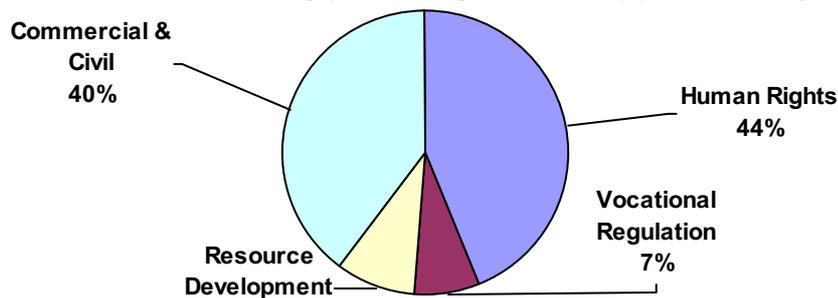


Table 6 - Number of new applications resolved by stream and graph of matters resolved by month.

| STREAM | Month during 2005 | | | | | | Total |
|------------------------|-------------------|------------|------------|------------|------------|------------|-------------|
| | January | February | March | April | May | June | |
| Human Rights | 0 | 55 | 132 | 218 | 140 | 310 | 855 |
| Resource/Development | 2 | 12 | 32 | 48 | 36 | 41 | 171 |
| Commercial & Civil | 2 | 160 | 155 | 143 | 155 | 199 | 814 |
| Vocational Regulations | 1 | 14 | 14 | 36 | 16 | 16 | 97 |
| TOTAL | 5 | 241 | 333 | 445 | 347 | 566 | 1937 |

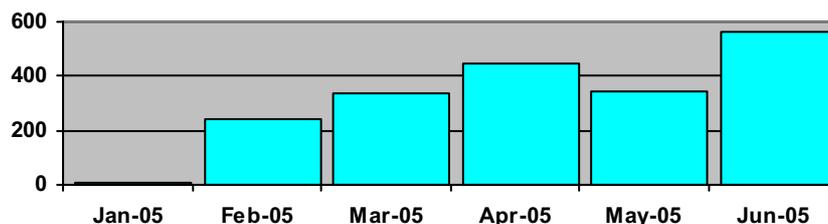


Table 7 - Number of new applications not resolved with an indication of current matter status.

| Stream | Act | Total "new application" matters not finalised | Number of these that are part heard | Those listed for a hearing or for decision on the documents |
|----------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------|-------------------------------------|-------------------------------------------------------------|
| Human Rights | Guardianship and Administration Act 1990 | 313 | 9 | 196 |
| | Equal Opportunity Act 1984 | 19 | 1 | 18 |
| | Mental Health Act 1996 | 11 | 4 | 4 |
| Resource Development | Fish Resources Management Act 1994 | 4 | 0 | 3 |
| | Fishing and Related Industries Compensation (Marine Reserves) Act 1997 | 1 | 0 | 1 |
| | Hope Valley-Wattleup Redevelopment Act 2000 | 2 | 0 | 2 |
| | Jetties Act 1926 | 1 | 0 | 0 |
| | Land Administration Act 1997 | 1 | 0 | 1 |
| | Local Government Act 1995 | 13 | 1 | 8 |
| | Town Planning and Dev. Act 1928 | 151 | 14 | 108 |
| | Valuation of Land Act 1978 | 5 | 1 | 4 |
| | WA Planning Commission Act 1985 | 1 | 0 | 1 |
| | Commercial & Civil | Commercial Tenancy (Retail Shops) Agreement Act 1985 | 27 | 1 |
| Consumer Credit (WA) Act 1996 | | 6 | 0 | 6 |
| Dog Act 1976 | | 1 | 0 | 1 |
| Firearms Act 1973 | | 14 | 2 | 9 |
| First Home Owner Grant Act 2000 | | 1 | 0 | 1 |
| Health Act 1911 | | 1 | 0 | 1 |
| Local Govt. (Miscellaneous Provisions) Act 1960 | | 36 | 1 | 14 |
| Retirement Villages Act 1992 | | 2 | 0 | 1 |
| Road Traffic Act 1974 | | 4 | 0 | 3 |
| Soil/Land Conservation Act 1945 | | 1 | 0 | 1 |
| Strata Titles Act 1985 | | 44 | 0 | 26 |
| Taxation Administration Act 2003 | | 28 | 12 | 16 |
| Taxi Act 1994 | | 5 | 5 | 0 |
| Vocational Regulation | Credit (Administration) Act 1984 | 1 | 0 | 1 |
| | Builders Registration Act 1939 | 28 | 4 | 20 |
| | Debt Collectors Lic. Act 1964 | 1 | 0 | 1 |
| | Legal Practice Act 2003 | 15 | 0 | 14 |
| | Medical Act 1894 | 8 | 0 | 7 |
| | Motor Vehicle Dealers Act 1973 | 2 | 0 | 1 |
| | Nurses Act 1992 | 3 | 0 | 3 |
| | Painters' Registration Act 1961 | 2 | 1 | 1 |
| | Physiotherapists Act 1950 | 2 | 1 | 1 |
| | Real Estate & Agents Act 1978 | 5 | 1 | 3 |
| Security and Related Activities (Control) Act 1996 | 21 | 0 | 21 | |

| | | | | |
|--------------|------------------------------|------------|-----------|------------|
| | Settlement Agents Act 1981 | 5 | 0 | 3 |
| | Veterinary Surgeons Act 1960 | 1 | 0 | 1 |
| TOTAL | | 786 | 58 | 510 |

Table 8 - Number of Legacy matters transferred and current status.

| Former adjudicator | No. of matters transferred | No. of matters resolved | No. of matters unresolved |
|---------------------------------------------|----------------------------|-------------------------|---------------------------|
| Swan River Trust | 1 | 0 | 1 |
| Builders Registration Board | 1 | 0 | 1 |
| Chiropractors Registration Board | 0 | 0 | 0 |
| Commercial Tribunal | 162 | 156 | 6 |
| Dental Board of WA | 0 | 0 | 0 |
| Electrical Licensing Board | 4 | 3 | 1 |
| Equal Opportunity Board | 49 | 48 | 1 |
| Finance Brokers Supervisory Board | 4 | 4 | 0 |
| Fisheries Objections Tribunal | 42 | 37 | 5 |
| Firearms Applications | 6 | 3 | 3 |
| Guardianship & Administration Board | 258 | 247 | 11 |
| Legal Practitioners Disciplinary Tribunal | 39 | 15 | 24 |
| Local Government (Miscellaneous Provisions) | 107 | 60 | 47 |
| Medical Board of WA | 18 | 18 | 0 |
| Motor Vehicles Dealers Licensing Board | 1 | 1 | 0 |
| Pharmaceutical Council of WA | 1 | 0 | 1 |
| Physiotherapists Registration Board | 1 | 1 | 0 |
| Psychologists Board of WA | 0 | 0 | 0 |
| Retirement Villages Disputes Tribunal | 4 | 2 | 2 |
| Strata Title Referee | 62 | 40 | 22 |
| Town Planning Appeal Tribunal | 124 | 103 | 21 |
| Taxation Administration | 11 | 10 | 1 |
| Security Control - Commissioner of Police | 2 | 1 | 1 |
| TOTAL | 897 | 749 | 148 |

Table 9 - Synopsis of applications made pursuant to the *Guardianship and Administration Act 1990* (GAA), including the part year activities of the former Guardianship and Administration Board (GAB).

| | 2004/ 2005 | | | | | | |
|-------------------------------------------------------------------------|----------------|---------|----------|-------|-------|-----|------|
| | June to Jan 24 | January | February | March | April | May | June |
| Applications transferred from GAB to SAT | | 258 | | | | | |
| Balance of incomplete applications brought forward from previous month. | | | 293 | 274 | 264 | 302 | 383 |
| New applications received | 1056 | 85 | 209 | 193 | 250 | 234 | 207 |
| Sub-total (this is the number of work-in-progress applications) | | 343 | 502 | 467 | 514 | 536 | 590 |
| Applications finalised by orders in the month | 1058 | 50 | 228 | 203 | 212 | 153 | 322 |
| Closing "work in progress" | 258 | 293 | 274 | 264 | 302 | 383 | 268 |

At 30 June 2005, 46 GAA applications were waiting to be listed to a hearing.

The former adjudicator (GAB) had a performance indicator, which set a timeframe of completion for 75% of GAA matters within 8 weeks of the date of receiving an application. The State Administrative Tribunal adopted this benchmark and to June 30 has achieved a 79% standard. Of the 258 legacy matters transferred, 11 remain unresolved.

LEVELS OF COMPLIANCE BY DECISION-MAKERS

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

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

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

At this early stage of its operation, it is difficult for the Tribunal accurately to comment on the extent to which decisions makers are complying with the requirements.

However, decision makers, whose decisions have been subject to review applications, appear to have complied with their notification obligations, particularly the right to seek review.

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

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

Obviously, as time goes on, the Tribunal will be in a better position to assess the ongoing level of compliance by decision makers. As it did in the early months of its operation, the Tribunal will, from time to time, conduct forums for discussion with decision makers whose decisions are subject of review by the Tribunal, and in that context will have the opportunity to remind decision makers of their obligations under the Act.

With respect to the obligations under section 21 to provide written reasons upon request, there appears to be general compliance by most decision makers.

However, the Tribunal has encountered delay on the part of the Builders' Registration Board in providing written reasons for licensing decisions, which are the subject of review.

The explanation offered to the Tribunal has been that the workload of the Board is such that compliance with section 21 has not been possible. Orders under section 22 by the Tribunal for the provision of reasons have been made requiring the Builders' Registration Board to provide written reasons within a specified time.

More meaningful observations will be able to be made as to compliance by decision makers with section 21 in future annual reports when the Tribunal has greater experience against which to gauge levels of compliance.

TRENDS AND SPECIAL PROBLEMS THAT HAVE EMERGED

Section 150(2) of the Act requires that the annual report include details of any trends or special problems, which may have emerged. By reason of the short period of the Tribunal's operation to date, the Tribunal is unable to make any meaningful observations about trends and special problems. As the experience of the Tribunal grows, trends may be discerned from the number and nature of applications in a particular area of jurisdiction, and particular problems may become evident.

However, one area of jurisdiction is worth mentioning at this point. The Tribunal has held a number of meetings with representatives of vocational regulatory bodies. Some of those expressed confusion as to how the new regime of the State Administrative Tribunal would affect their activities. The Tribunal has some concerns that in some cases vocational bodies may not have referred matters to the Tribunal in a timely manner because of uncertainty with respect to their own roles and what might be expected of them once proceedings are commenced. The Tribunal has attempted to assist those bodies, wherever possible, but will need to monitor the extent to which they are referring matters to the Tribunal in a timely and appropriate way.

The need to make regulations to help overcome difficulties in finalising matters that were part or fully heard, but not determined, by the former Legal Practitioners Disciplinary Tribunal as at 1 January 2005, has already been referred to in the section "Our Work". As at 30 June Regulations were being drafted by Parliamentary Counsel to respond to this difficulty.

PROPOSALS FOR IMPROVING THE OPERATIONS OF THE TRIBUNAL

Section 150 permits the report to set out proposals for improving the operations of the Tribunal.

General observation

Since it commenced its operation, the systems and procedures of the Tribunal have been under constant review by both members and administrative staff.

The process of constant review and adjustment has effectively resolved many of the inevitable practical issues and problems that emerged as the Tribunal began its task.

The President has set up a number of committees to assist him in making decisions to improve the effective operations of the Tribunal. Committees are made up of judicial, senior and ordinary members of the Tribunal and relevant members of the administrative staff.

Sessional members

As the workload of the Tribunal increases, it is likely that the use of sessional members will increase beyond the levels experienced in the first six months. The proper utilisation of sessional members has the capacity to ensure that the Tribunal can continue to offer its services in an effective and timely way. It is important to the operation of the Tribunal that mediations, compulsory conferences and hearings can be provided within a short time of the initial directions hearing and preferably as quickly as the parties can be ready to proceed. In the first six months of its operation, the Tribunal has been able to achieve that objective using mainly its full-time members.

As the time commitment of full-time members for hearings, conferences, mediations and writing decisions increases the continued provision of timely mediations and hearings will require greater use of suitably qualified sessional members.

Section 11(4)

An area of the Tribunal's operations that requires review is the operation of section 11(4) of the Act. This provision imposes a requirement stipulating the Tribunal be constituted by three parties when dealing with matters brought before it by a vocational regulatory body. In these cases, the Tribunal must be constituted by a legally qualified member, a person who has extensive or special experience in the same vocation as the person affected by the decision or matter, and a person not engaged in that vocation who is familiar with the interests of people dealing with persons engaged in that vocation. This requirement does not apply to directions or other procedural hearings, compulsory conferences or mediations. However, the requirement for a Tribunal of three persons has caused some difficulties for the Tribunal dealing with urgent interim applications in respect to vocational matters.

In particular, it seems appropriate to reconsider the range of bodies and Acts classified by the regulations for the purposes of section 11(4) vocational purposes.

Section 11(4) and security officers and crowd controllers

A regular part of the Tribunal's vocational regulatory work relates to the *Security and Related Activities (Control) Act 1996*. Before the Tribunal was established, disciplinary proceedings in relation to licensed security agents and a single Magistrate in the Court of Petty Sessions conducted crowd controllers. It may well be sensible to enable matters arising under this Act to be dealt with by a single member of the Tribunal.

In the past, there was no involvement of any licensed person or community representative in the way in which section 11(4) now requires.

A number of applications have been received by the Tribunal in relation to licensees under that Act who live and work in regional areas of the State. Previously those people would have been able to have their matter dealt with by the local magistrate. Very often witnesses also come from within the local area.

Under the present arrangements, the Tribunal accommodates applicants from regional areas through telephone or videoconferencing. This alleviates the issue of the Tribunal travelling to regional areas to deal with these matters, which is rendered difficult by the requirement to constitute a Tribunal of three persons. If the *Security and Related Activities (Control) Act 1996* were not an Act prescribed for the purpose of the definition of "vocational regulatory body", it would be possible to utilise local magistrates as *ex officio* members of the State Administrative Tribunal to deal with applications brought by, or in relation to, licensed people in regional areas.

An additional problem in relation to the *Security and Related Activities (Control) Act 1996* has been the identification and appointment of persons within the industry as sessional members. At the time of printing this report, the Tribunal was endeavouring to identify additional people who could fulfil the requirements of section 11(4)(b) of the Act.

Section 11(4) and interim orders

Under a number of vocational Acts, a vocational regulatory body has the power to impose a short-term restriction on the right of practice of a licensed person. In those cases, the body is required to refer the matter to the Tribunal. The Tribunal will often be required to make an order confirming or revoking the interim restriction or extending the period of time of its operation through to a hearing of a substantive application for disciplinary action. It is important that the Tribunal be in a position to deal with those types of applications expeditiously given that a person's livelihood is at stake, even if only for a limited period of time. The obligation to convene a three-person tribunal consisting of appropriately qualified people can affect the timeliness within which the Tribunal can deal with a particular matter. The Tribunal considers that some extension of the occasions where section 11(4) does not apply should be considered for these situations. This could be achieved by giving the President discretion as to the constitution of the Tribunal in these cases.

Section 66 and witness summons

Some uncertainty has arisen in relation to the provisions of section 66 of the Act dealing with summoning witnesses.

Section 66 provides that a summons for the attendance before the Tribunal of any person may be issued on the Tribunal's initiative or at the request of a party. A summons for the production before the Tribunal of any document may be issued on the Tribunal's initiative, but on the face of it no provision is made for those summonses to be issued at the request of a party. That distinction is not easy to understand. Possibly it exists to avoid the risk of abuse of the coercive power of a summons.

It has, however, led to some confusion amongst users of the Tribunal as to how they can cause documents that they consider relevant to the proceedings to be brought before the Tribunal.

This issue having emerged, the Tribunal is developing procedures to deal with the issue of summonses, but it may be that consideration will need to be given to the amendment of section 66 to enable a summons for the production of documents to be issued at the request of the parties rather than only at the Tribunal's initiative.

Limitation of power of President

Under some enabling Act provisions, including the *Town Planning and Development Act 1928*, s66 and *Legal Practice Act 2003*, s250A(2) the President is either the only member who may exercise a power or the President must be part of the Tribunal which makes a decision. There seems no compelling reason why a Deputy President should not be able to exercise all of the powers given to the President by an enabling Act. This change would assist the Tribunal in the timely disposition of its work.

Information Technology

The Tribunal is heavily reliant upon available information technology and in particular the Integrated Courts Management System (ICMS) developed within the Department of Justice. It remains important that the ICMS system should be developed so that it fully supports the work and reporting requirements of the Tribunal during the next 12 months.

Gazettal of Exemption under *Equal Opportunity Act 1984*

The Tribunal believes the requirement that stipulates the Tribunal gazette full details of exemption decisions under section 136 of the *Equal Opportunity Act 1984* is unnecessary in light of the full publication of such decisions on the Decisions Database.

Consequently, the Tribunal would propose the repeal of section 136 in that regard.

Vocational Regulation

Some 38 areas of vocational regulation fall within the Tribunal's jurisdiction. Some of these involved cognate areas, such as those falling within the responsibility of the Minister of Health. Others are more disparate. However, most involve the registration of persons within a profession or vocational area, the supervision of that area and the investigation of complaints and their referral to the Tribunal.

In time it will prove useful to examine the extent to which the regulatory approaches and powers given to vocational regulatory bodies are consistent in their approach and sufficient for their purposes. Most Acts, for example, require a person to be "fit and proper" before being registered, though not all. The extent to which a common regulatory system should operate is something that should be considered in the near future.

APPENDICES

Appendix 1

State Administrative Tribunal, 137 enabling Acts.

| Act | Stream |
|---------------------------------------------------------------|---------------------------|
| <i>Aboriginal Heritage Act 1972</i> | Development and Resources |
| <i>Adoption Act 1994</i> | Human Rights |
| <i>Aerial Spraying Control Act 1966</i> | Commercial and Civil |
| <i>Agricultural Produce (Chemical Residues) Act 1983</i> | Commercial and Civil |
| <i>Agricultural Produce Commission Act 1988</i> | Commercial and Civil |
| <i>Agriculture and Related Resources Protection Act 1976</i> | Development and Resources |
| <i>Animal Welfare Act 2002</i> | Commercial and Civil |
| <i>Architects Act 1921</i> | Vocational Regulation |
| <i>Armadale Redevelopment Act 2001</i> | Development and Resources |
| <i>Associations Incorporation Act 1987</i> | Commercial and Civil |
| <i>Biological Control Act 1986</i> | Development and Resources |
| <i>Births, Deaths and Marriages Registration Act 1998</i> | Commercial and Civil |
| <i>Builders' Registration Act 1939</i> | Vocational Regulation |
| <i>Business Names Act 1962</i> | Commercial and Civil |
| <i>Caravan Parks and Camping Grounds Act 1995</i> | Development and Resources |
| <i>Cemeteries Act 1986</i> | Commercial and Civil |
| <i>Chattel Securities Act 1987</i> | Commercial and Civil |
| <i>Chicken Meat Industry Act 1977</i> | Commercial and Civil |
| <i>Chiropractors Act 1964</i> | Vocational Regulation |
| <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> | Commercial and Civil |
| <i>Community Services Act 1972</i> | Commercial and Civil |
| <i>Competition Policy Reform (Western Australia) Act 1996</i> | Commercial and Civil |
| <i>Consumer Credit (Western Australia) Act 1996</i> | Commercial and Civil |
| <i>Construction Contracts Act 2004</i> | Commercial and Civil |
| <i>Control of Vehicles (Off-road Areas) Act 1978</i> | Development and Resources |
| <i>Co-operative and Provident Societies Act 1903</i> | Commercial and Civil |
| <i>Country Areas Water Supply Act 1947</i> | Development and Resources |
| <i>Country Towns Sewerage Act 1948</i> | Commercial and Civil |
| | |

| | |
|-------------------------------------------------------------------------------|--------------------------------------------|
| <i>Credit (Administration) Act 1984</i> | Commercial and Civil/Vocational Regulation |
| <i>Credit Act 1984</i> | Commercial and Civil |
| <i>Cremation Act 1929</i> | Commercial and Civil |
| <i>Dangerous Goods (Transport) Act 1998</i> | Commercial and Civil |
| <i>Dangerous Goods Safety Act 2004</i> | Commercial and Civil |
| <i>Debt Collectors Licensing Act 1964</i> | Vocational Regulation |
| <i>Dental Act 1939</i> | Vocational Regulation |
| <i>Dental Prosthetists Act 1985</i> | Vocational Regulation |
| <i>Dog Act 1976</i> | Commercial and Civil |
| <i>East Perth Redevelopment Act 1991</i> | Development and Resources |
| <i>Electricity Act 1945</i> | Vocational Regulation |
| <i>Employment Agents Act 1976</i> | Vocational Regulation |
| <i>Energy Coordination Act 1994</i> | Commercial and Civil |
| <i>Equal Opportunity Act 1984</i> | Human Rights |
| <i>Explosives and Dangerous Goods Act 1961</i> | Commercial and Civil |
| <i>Fair Trading Act 1987</i> | Commercial and Civil |
| <i>Finance Brokers Control Act 1975</i> | Vocational Regulation |
| <i>Fire and Emergency Services Authority of Western Australia Act 1998</i> | Commercial and Civil |
| <i>Fire Brigades Act 1942</i> | Commercial and Civil |
| <i>Firearms Act 1973</i> | Commercial and Civil |
| <i>First Home Owner Grant Act 2000</i> | Commercial and Civil |
| <i>Fish Resources Management Act 1994</i> | Development and Resources |
| <i>Fisheries Adjustment Schemes Act 1987</i> | Development and Resources |
| <i>Fishing and Related Industries Compensation (Marine Reserves) Act 1997</i> | Development and Resources |
| <i>Gas Standards Act 1972</i> | Vocational Regulation |
| <i>Gender Reassignment Act 2000</i> | Human Rights |
| <i>Guardianship and Administration Act 1990</i> | Human Rights |
| <i>Hairdressers Registration Act 1946</i> | Vocational Regulation |
| <i>Health Act 1911</i> | Commercial and Civil |
| <i>Heritage of Western Australia Act 1990</i> | Development and Resources |
| <i>Hire-Purchase Act 1959</i> | Commercial and Civil |
| <i>Hope Valley-Wattleup Redevelopment Act 2000</i> | Development and Resources |
| <i>Hospitals and Health Services Act 1927</i> | Commercial and Civil |
| <i>Housing Societies Act 1976</i> | Commercial and Civil |
| <i>Human Reproductive Technology Act 1991</i> | Vocational Regulation |
| <i>Jetties Act 1926</i> | Development and Resources |
| | |

| | |
|-------------------------------------------------------------------|--------------------------------------------|
| <i>Land Administration Act 1997</i> | Development and Resources |
| <i>Land Drainage Act 1925</i> | Development and Resources |
| <i>Land Tax Assessment Act 2002</i> | Development and Resources |
| <i>Land Valuers Licensing Act 1978</i> | Vocational Regulation |
| <i>Legal Contribution Trust Act 1967</i> | Commercial and Civil |
| <i>Legal Practice Act 2003</i> | Vocational Regulation |
| <i>Licensed Surveyors Act 1909</i> | Vocational Regulation |
| <i>Litter Act 1979</i> | Development and Resources |
| <i>Local Government (Miscellaneous Provisions) Act 1960</i> | Commercial and Civil |
| <i>Local Government Act 1995</i> | Development and Resources |
| <i>Maritime Archaeology Act 1973</i> | Development and Resources |
| <i>Marketing of Eggs Act 1945</i> | Commercial and Civil |
| <i>Marketing of Potatoes Act 1946</i> | Commercial and Civil |
| <i>Medical Act 1894</i> | Vocational Regulation |
| <i>Mental Health Act 1996</i> | Human Rights |
| <i>Metropolitan Region Town Planning Scheme Act 1959</i> | Development and Resources |
| <i>Metropolitan Water Authority Act 1982</i> | Development and Resources |
| <i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909</i> | Development and Resources |
| <i>Midland Redevelopment Act 1999</i> | Development and Resources |
| <i>Motor Vehicle Dealers Act 1973</i> | Vocational Regulation |
| <i>Motor Vehicle Drivers Instructors Act 1963</i> | Vocational Regulation |
| <i>Nurses Act 1992</i> | Vocational Regulation |
| <i>Occupational Therapists Registration Act 1980</i> | Vocational Regulation |
| <i>Optical Dispensers Act 1966</i> | Vocational Regulation |
| <i>Optometrists Act 1940</i> | Vocational Regulation |
| <i>Osteopaths Act 1997</i> | Vocational Regulation |
| <i>Painters' Registration Act 1961</i> | Vocational Regulation |
| <i>Pawnbrokers and Second-hand Dealers Act 1994</i> | Commercial and Civil/Vocational Regulation |
| <i>Pearling Act 1990</i> | Development and Resources |
| <i>Perth Parking Management Act 1999</i> | Commercial and Civil |
| <i>Petroleum (Submerged Lands) Act 1982</i> | Commercial and Civil |
| <i>Petroleum Act 1967</i> | Commercial and Civil |
| <i>Petroleum Pipelines Act 1969</i> | Commercial and Civil |

| | |
|-----------------------------------------------------------------------|-------------------------------------------------|
| <i>Petroleum Retailers Rights and Liabilities Act 1982</i> | Commercial and Civil |
| <i>Pharmacy Act 1964</i> | Vocational Regulation |
| <i>Physiotherapists Act 1950</i> | Vocational Regulation |
| <i>Pig Industry Compensation Act 1942</i> | Commercial and Civil |
| <i>Plant Diseases Act 1914</i> | Development and Resources |
| <i>Plant Pests and Diseases (Eradication Funds) Act 1974</i> | Development and Resources |
| <i>Podiatrists Registration Act 1984</i> | Vocational Regulation |
| <i>Poisons Act 1964</i> | Commercial and Civil |
| <i>Professional Combat Sports Act 1987</i> | Vocational Regulation |
| <i>Psychologists Registration Act 1976</i> | Vocational Regulation |
| <i>Public Meetings and Processions Act 1984</i> | Commercial and Civil |
| <i>Radiation Safety Act 1975</i> | Commercial and Civil/Vocational Regulation |
| <i>Rail Safety Act 1998</i> | Commercial and Civil |
| <i>Real Estate and Business Agents Act 1978</i> | Vocational Regulation |
| <i>Retirement Villages Act 1992</i> | Commercial and Civil |
| <i>Rights in Water and Irrigation Act 1914</i> | Development and Resources |
| <i>Road Traffic Act 1974</i> | Commercial and Civil |
| <i>Royal Agricultural Society Act 1926</i> | Commercial and Civil |
| <i>Security and Related Activities (Control) Act 1996</i> | Vocational Regulation |
| <i>Settlement Agents Act 1981</i> | Vocational Regulation |
| <i>Soil and Land Conservation Act 1945</i> | Commercial and Civil |
| <i>State Superannuation Act 2000</i> | Commercial and Civil |
| <i>Strata Titles Act 1985</i> | Commercial and Civil |
| <i>Subiaco Redevelopment Act 1994</i> | Development and Resources |
| <i>Swan River Trust Act 1988</i> | Commercial and Civil |
| <i>Taxation Administration Act 2003</i> | Commercial and Civil |
| <i>Taxi Act 1994</i> | Commercial and Civil |
| <i>Town Planning and Development Act 1928</i> | Development and Resources |
| <i>Transport Co-ordination Act 1966</i> | Commercial and Civil |
| <i>Travel Agents Act 1985</i> | Vocational Regulation |
| <i>Valuation of Land Act 1978</i> | Development and Resources |
| <i>Veterinary Chemical Control and Animal Feeding Stuffs Act 1976</i> | Commercial and Civil |
| <i>Veterinary Surgeons Act 1960</i> | Vocational Regulation |
| <i>Water Boards Act 1904</i> | Development and Resources |
| <i>Water Services Licensing Act 1995</i> | Development and Resources/Vocational Regulation |

| | |
|------------------------------------------------------------|---------------------------|
| <i>Waterways Conservation Act 1976</i> | Development and Resources |
| <i>Western Australian Marine Act 1982</i> | Commercial and Civil |
| <i>Western Australian Meat Industry Authority Act 1976</i> | Commercial and Civil |
| <i>Western Australian Planning Commission Act 1985</i> | Development and Resources |

Appendix 2

Rules Committee membership

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

Members at 24 December 2004 were:

- The Hon Justice Barker;
- His Honour Judge Chaney;
- Murray Allen;
- Alex Watt (community member); and
- Anthea Chambers (community member).

Members at 30 June 2005:

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

Appendix 3

Presentations by members of the Tribunal

| Date | Presenter | Details |
|--------------------|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 5 January | Justice Barker | Keynote address at the launch of the State Administrative Tribunal |
| 17, 18, 19 January | Judicial Members | Induction for full-time non-judicial members |
| 1 February | Judicial Members | Presentation to SAT Information Forum on the Development and Resources stream |
| 16 February | Judicial and Senior Members | Presentation to SAT Information Forum on the Human Rights stream |
| 22 February | Judge Chaney | Presentation to the Institute of Arbitrators and Mediators |
| 22 February | Judge Chaney | Presentation to LEADR mediation meeting |
| 23 February | Judicial and senior members | Presentation to SAT Information Forum on the Commercial and Civil stream |
| 3-5 March | Bertus De Villiers | Presentation to the International Conference on Federalism, Belgium |
| 9 March | Felicity Child | Presentation to the Advanced Care Planning seminar for General Practitioners |
| 9 March | Felicity Child | Presentation to the City of Stirling's Justice of the Peace Meeting |
| 10 March | Murray Allen | Presentation - Mental Health Nurse Students |
| 10 March | Jill Toohey | Presentation - Institute of Public Administration Australia (WA) |
| 16-19 March | Peter McNab, Marie Connor, Felicity Child, Tim Carey | LEADR Training |
| 17 March | Jill Toohey | Presentation to Disability Services Commission sponsored seminar for non-government organisations |
| 17-19 March | Maurice Spillane | IAMA - Mediation and Conciliation Course |
| 18 March | Judge Eckert | Presentation - District Court WA Judges Conference |
| 21 March | Judge Eckert | Presentation - Premiers Office and Attorney Generals Office of Queensland meeting concerning the Tribunal model, Brisbane |
| 1-2 April | Maurice Spillane | IAMA - Mediation and Conciliation Course |
| 20 April | Judge Chaney, Clive Raymond | In-house presentation to members - Role of mediation |
| 27 April | Clive Raymond | Chaired Law Society WA conference on the <i>Construction Contracts Act 2004</i> . |
| 29 April | Judge Eckert | Key note address to the WA Bar Association |
| 5-6 May | Justice Barker | Presentation to NSW Land and Environment Court/VCAT Joint Conference, Canberra |
| 10 May | Belinda Moharich | Presentation to the Planning Institute of Australia (WA) |
| 13 May | David Parry | Presentation - WA Law Society's Law Week |
| 17 May | Judicial and senior members | Presentation to SAT Information Forum on the Vocational Regulation stream |
| 18 May | Judge Chaney | In-house presentation to members on Practice and Procedures |
| 18 May | Judicial and senior members | Presentation to SAT Information Forum on the Vocational Regulation stream |
| 18 May | Murray Allen | Panel Member at IPAA (WA) seminar on Administrative Law |
| 19 May | Judge Eckert, Jill Toohey | Presentation to the Australian Guardianship and Administration Committee Conference, Brisbane |
| 20 May | Clive Raymond | Presentation to the Institute of Spatial Sciences (WA) |

| | | |
|-------------|-----------------------------|----------------------------------------------------------------------------------------------------------------|
| 23 May | Murray Allen | Presentation to the College of Psychiatrists |
| 24 May | Judicial and senior members | Presentation to SAT Information Forum on the Vocational Regulation stream |
| 1 June | Judge Chaney | In-house presentation to members - The new planning legislation |
| 9 - 10 June | Justice Barker | Keynote address to the 8th Annual Australian Institute of Judicial Administration Tribunals Conference, Sydney |
| 9 - 10 June | Judge Chaney | Attendance at the 8th Annual Australian Institute of Judicial Administration Tribunals Conference, Sydney |
| 16 June | David Parry | Seminar paper presentation - WA Community Legal Centres Conference |
| 20 June | Judge Eckert | Presentation to the political and legal studies teachers |

Appendix 4

State Administrative Tribunal Senior Sessional Members and Sessional Members (including non-judicial members appointed under section 117(5))

Sessional Members – Senior

| Member | Areas of Work/Expertise |
|---------------------------|-----------------------------------------------|
| Gillian Braddock SC | Legal Practitioner |
| Kenneth Bradley | Accountant, Former Public Trustee |
| Robyn Carroll | Legal Practitioner, University Academic (law) |
| Dr Roger Clarnette | Medical Practitioner |
| Prof Joan Cole | Physiotherapist |
| Lesley Doherty | Hairdresser |
| Grant Donaldson SC | Legal Practitioner |
| Margaret Duckworth | Occupational Therapist |
| Chris Edmonds SC | Legal Practitioner |
| Dr Dale Evans | Medical Practitioner |
| Dr Louise Farrell | Medical Practitioner |
| Prof Kingsley Faulkner | Medical Practitioner |
| Laurence Foley | Podiatrist |
| Dr Stuart Gairns | Dentist |
| Alexander Gardner | Legal Practitioner, University Academic (Law) |
| Dr Guy Hamilton | Medical Practitioner |
| Catherine (Katie) Hill | Occupational Therapist |
| Dr Eric Isaachsen | Medical Practitioner |
| John James | Medical Practitioner |
| Steven Jongenelis | Psychologist |
| Dr Max Kamien AM CitWA | Psychologist |
| Dr Christine Lawson-Smith | Medical Practitioner |
| Ross Ledger | Accountant |
| Dr Erik Leipoldt | Academic, Community Advocate |
| Hannah Leslie | Legal Practitioner |
| Paul Levi | Optometrist |
| Dr Michael Levitt | Medical Practitioner |
| David Liggins | Real Estate Agent, Licensed Valuer |
| Anna Liscia | Legal Practitioner |
| Dr Richard Lugg | Environmental Health Consultant |
| Dr Michael McComish | Medical Practitioner |
| Dr Alan McCutcheon | Medical Practitioner |

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|--------------------------|--------------------------------------------------|
| Kevan McGill | Engineer |
| Dr Mark McKenna | Medical Practitioner |
| Neil McKerracher QC | Legal Practitioner |
| Diana Newman | Accountant |
| Michael Odes QC | Legal Practitioner |
| Dr David Oldham | Medical Practitioner |
| Dr Anne Passmore | Occupational Therapist, University Lecturer |
| Dr John Penman | Medical Practitioner |
| Dr Pam Quatermass | Medical Practitioner |
| Josephine Stanton | Consultant in Health & Welfare |
| Carolyn Tan | Legal Practitioner |
| Hon Robert Viol | Legal Practitioner, Retired District Court Judge |
| Dr Gary Ward | Medical Practitioner |
| Brigadier A Gerry Warner | Australian Defence Force (Retired) |
| Mark Wiklund | Physiotherapist |
| Dr Peter Winterton | Medical Practitioner |

Sessional Members – Ordinary

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|---------------------------|-------------------------------------------|
| Terry Ackland | Farmer |
| John Adderley | Town Planner |
| Ronald Anderson | Engineering Management (Retired) |
| Miriam Angus | Legal Practitioner |
| Keith Bales | Legal Practitioner |
| John Bray | Registered Builder |
| Elizabeth Brice | Real Estate Agent |
| Donald Brown | Town Planner |
| Charles Brydon | Legal Practitioner (Victoria) |
| Brian Carthew | Bank Manager (Retired) |
| Anna Ciffolilli | Legal Practitioner |
| Nicoletta Ciffolilli | Legal Practitioner |
| Peter Cook | Real Estate Agent |
| Anthony Coulson | Travel Agent |
| Paddi Creevey | Social Worker |
| Peter Curry | Mediator, Agricultural Scientist |
| Paul Druitt | Real Estate Agent |
| Pamela Eaves | Celebrant |
| Mary Elgar | Travel Agent, Nurse |
| Chris Elieff | Accountant |
| Magdeline Fadjar | Legal Practitioner |
| Phil Faigen | Architect, Registered Builder, Arbitrator |
| Dr Robert Fitzgerald PSM | Consultant |
| Caroline Forster | Real Estate Agent |
| Patricia Fowler | Nurse |
| Lloyd Graham | Town Planner |
| Patricia Hills | Indigenous Community Representative |
| Barbara Holland | Trainer |
| Nicholas Hosking | Real Estate Agent, Finance Broker |
| Assoc Prof Bronwyn Jones | University Academic (Nursing) |
| Kenneth Jones | Nurse |
| Barthalamos Kakulas QC | Legal Practitioner |
| Mary Kroeber AM | Nurse |
| Rodney Lane | Accountant |
| Karen Lang | Legal Practitioner |
| Dimitrios (James) Limnios | Real Estate Agent |
| Linley Lord | University Academic (Business) |
| Marilyn Loveday | Legal Practitioner |
| Alexander MacNaughten | Real Estate Agent, Land Valuer |

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|----------------------|-----------------------------------------------|
| Anthony Macri | Accountant |
| Timothy Mather | Veterinary Surgeon |
| Philip McAllister | Architect |
| Mary McComish | Legal Practitioner, University Academic (Law) |
| Jim McKiernan | Senator (Retired) |
| Edward McKinnon | Surveyor |
| Peter Mittonette | Registered Builder |
| Rebecca Moore | Architect |
| Darren Mouchemore | Building Surveyor, Registered Builder |
| Charles Mulvey | University Academic (Economics) |
| Margaret Nadebaum | Consultant (Public Sector Issues) |
| Debbie O'Toole | Research Officer |
| Val O'Toole | Social Worker |
| Robert (Jeff) Priest | Land Valuer, Real Estate Agent |
| Darryll Retallack | Registered Builder |
| Roy Scaife | Pilot (Retired) |
| Robert Smith | Bank Manager (Retired) |
| Jenny Smithson | Town Planner |
| Jane Tomich | Settlement Agent |
| Anthony Vignano | Veterinary Surgeon |
| Paul Wellington | Architect, Legal Practitioner, Arbitrator |
| Janette Wheare | Nurse |
| Paul Wilmot | Consultant (Aged Care) |
| Christina Winsor | Settlement Agent |
| Guy Wright | Anthropologist, Mediator |
| Patrice Wringe | Social Worker, Nurse |

Appendix 5

JUDICIAL MEMBERS

The President and the two Deputy Presidents appear on cases where a senior legal presence is required.

Justice Michael Barker QC

President, State Administrative Tribunal

Justice Michael Barker graduated from the University of Western Australia with a Bachelor of Laws (Honours) in 1972 and was admitted to the WA Bar in December 1973. He first practised law with E M Heenan & Co in Perth between 1972-75. He has chaired the Town Planning Appeal Tribunal of Western Australia and in 1991-92, he was one of the Counsel Assisting the Royal Commission into Commercial Activities Government and Related Activities (WA Inc Royal Commission). In 1996, Justice Barker was appointed Queen's Counsel and was the Chair of the WA Chapter of the Australian Institute of Administrative Law until 2003.

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

Prior to being appointed to the Supreme Court of Western Australia in August 2002, Justice Barker was practising as a barrister at the independent bar.

He was appointed President of the State Administrative Tribunal in November 2004.

Judge John Chaney, SC

Deputy President, State Administrative Tribunal

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

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

Judge Judy Eckert

Deputy President, State Administrative Tribunal

Judge Judy Eckert completed her law degree at the University of Western Australia, graduating with a Bachelor of Jurisprudence in 1979 and a Bachelor of Laws in 1980. Judge Eckert completed her articles of clerkship with Northmore Hale Davy and Leake (now Minter Ellison) and was admitted to practice in December 1981. She became the first female partner of that firm in 1986. In 1991, Judge Eckert joined the Crown Solicitors Office where she practised for nearly 11 years, advising Ministers of the Crown and senior members of the public sector on a wide range of legal and policy issues. She conducted a review of the Legal Aid Commission and assisted in a review of the State Supply Commission. Prior to her appointment to the District Court and the Tribunal on 1 January 2005, Judge Eckert practised as an independent barrister and was closely involved in the development of the legislative package for the Tribunal. Judge Eckert was the former president of the Law Society of Western Australia (1995-1996) and Chair of the Real Estate and Business Agents Supervisory Board (2002-2004). She also taught Commercial Practice and Drafting at the University of Western Australia Law School from 1990 to 2003.

NON-JUDICIAL MEMBERS

Non-judicial members who may be experienced in law, or have experience in or special knowledge of relevant professions, occupations and fields, determine many decisions of the Tribunal.

Senior members

Clive Raymond

Commercial and Civil

Clive Raymond practised for 14 years as barrister at the Bar in South Africa and in Western Australia. As a solicitor, he was a partner in a leading national law firm and, later, a multi-disciplinary practice with an accounting firm.

He has a wide range of commercial litigation experience, with particular expertise in alternative dispute resolution techniques. He is chairman of the Institute of Arbitrators and Mediators Australia (WA Chapter) and for a number of years has been a national councillor or national vice president of the Institute.

David Parry

Development and Resources

David Parry has practised as a lawyer in New South Wales in the areas of planning, environmental, local government and administrative law. He was awarded a British Foreign Office/BTR 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 2000-03. In 2003, he was a founding member of Martin Place Chambers, Sydney, the first specialist planning and environmental barristers' chambers in Australia.

Jill Toohey

Human Rights

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

Murray Allen

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

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

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

Full-time members

Tim Carey

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

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

Felicity Child

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

Marie Connor

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

Donna Dean

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

Bertus de Villiers

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

Jim Jordan

Jim Jordan first worked as a town planning consultant in Queensland and Victoria after graduating with a BA (UWA) and a Master of Urban Studies (UofQld). In 1979 Jim took up a position in Perth with the Minister for Planning's Town Planning Appeal Committee, progressing to Deputy Chairman in 1988 and in 1999 was made Acting Director of the Minister's Planning Appeal Office. In 2003, with the abolition of the Ministerial appeal system, Jim became a member of the Town Planning Appeal Tribunal and then worked with Jackson McDonald. Jim also has an LLB (Bachelor of Laws) from the University of London, a Professional Certificate in Arbitration and Mediation and is an accredited mediator. He is a member of the Planning Institute of Australia and the Institute of Arbitrators and Mediators.

Jack Mansveld

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

Peter McNab

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

Maurice Spillane

Maurice Spillane graduated in Ireland in 1978 and practised law there for 10 years before coming to Perth in 1988. Since then, Maurice has practised principally in the areas of medical law, professional indemnity, planning and local government law with commercial law firms in Perth. For the last four years he has acted as one of the counsel assisting the Medical Board. Maurice has been the chair of the Ethics Committee at Princess Margaret Hospital and the Telethon Institute for Child Health since 1996 and served as the President of the Kids Cancer Support Group for a number of years. He is also a member of the Child Health Research and Education Advisory Council and a board member of MercyCare.

Appendix 6

Arrangements made by the President of the State Administrative Tribunal and the Chief Stipendiary Magistrate under section 116.

1. *From time to time the President of the State Administrative Tribunal may request the Chief Magistrate to advise whether a Magistrate is available to perform a function that a member of the Tribunal may perform, in a place that is prescribed by the regulations under the Act for the purposes of section 116.*
2. *When the President makes any such request the President will endeavour to provide the following information:*
 - (i) *details of the nature of the proceedings in respect of which the request is made;*
 - (ii) *the names of the parties to those proceedings;*
 - (iii) *the likely duration of any hearing of the proceedings;*
 - (iv) *any other information which may be relevant to a consideration of whether or not a particular Magistrate will be available to perform the functions of the Tribunal in relation to the proceeding.*

Upon receiving a request from the President, the Chief Magistrate will endeavour to advise the President as soon as practicable whether a Magistrate is available in a place prescribed by the regulations for the purposes of this section, to perform the functions of a member of the Tribunal in relation to the particular proceedings the subject of the request.

3. *If a Magistrate is available to perform the functions of a member of the Tribunal in relation to the proceedings the subject of the request, the President will take all necessary steps to ensure that the Magistrate is provided with all necessary documents to permit him or her to perform the functions of a member of the Tribunal in relation to the proceedings and will also offer the Magistrate such other advice and assistance as may be helpful to perform the functions of a member of the Tribunal.*
4. *The President and the Chief Magistrate will review the operation of these Arrangements after they have been in operation for a period of six-months.*