



**ACT Department of Justice & Community Safety**

# **Options for reform of the structure of ACT tribunals**

**Discussion Paper**

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## 2 EXECUTIVE SUMMARY

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1. This discussion paper has been prepared by the ACT Department of Justice and Community Safety with a view to preparing options for Government for the reform of the structure of ACT tribunals. This paper provides an analysis of options for reform of the structure of ACT tribunals, following the 2006 budget announcement that the “government will review tribunal structures, with a view to increasing efficiency and cost-effectiveness”.
2. The paper considers 18 ACT tribunals and considers six options for reforming the structure of these tribunals. The six options range from consolidation of tribunal secretariats and establishing common tribunal legislation through to consolidation of all ACT tribunals.
3. This paper identifies the preferred option of the Department of Justice and Community Safety, which is to consolidate ACT tribunals and secretariats, with one exception. In the preferred option, the ACT Remuneration Tribunal would not be consolidated.
4. The views of the ACT community are being sought on options for the structure of ACT tribunals, including any additional options for altering the structure of tribunals and reasons for favouring alternatives. Comments should be provided to Tribunals Review, Legal Policy Division, Department of Justice and Community Safety, PO Box 158 CANBERRA ACT 2601.

Please provide comments on the options for reform of the structure of ACT tribunals by Monday 20 August 2007 to:  
Tribunal Review  
Legal Policy  
Department of Justice and Community Safety  
PO Box 158  
CANBERRA ACT 2601

### 3 INTRODUCTION

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5. This discussion paper canvases possible options for reform of the structure of tribunals in the ACT. The structure of tribunals includes the composition, make-up and form of tribunals<sup>1</sup>. This paper was prepared following the announcement in the 2006 Government budget papers that the “government will review tribunal structures, with a view to increasing efficiency and cost-effectiveness”. Following public consultation, options will be put to government for consideration as to whether the structure of tribunals should be reformed.

6. This paper examines the role of ACT tribunals generally and how they are currently structured, looks at recent changes to tribunal structures in other jurisdictions, considers options for increasing efficiency and cost-effectiveness of tribunal structures and puts forward different options for improving tribunal structures.

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<sup>1</sup> Definition of structure from Shorter Oxford English Dictionary, 5<sup>th</sup> ed., Volume 2, 3071 is “the arrangement and mutual relation of the constituent parts of a whole: composition, make-up, form”.

## 4 GUIDING PRINCIPLES FOR EXAMINING THE STRUCTURE OF ACT TRIBUNALS

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7. In examining options for tribunal structures, the following principles for tribunals, taken from the Chief Minister's speech on the Future directions for tribunals in our Territory in 2004<sup>2</sup>, were considered:

- tribunals should be independent, open, fair and impartial
- tribunals should be accessible to users
- tribunals should have the needs of users as their primary focus
- tribunals should offer cost-effective procedures
- tribunals should be properly resourced and organized, and
- tribunals should be responsive to the needs of all sections of society.

8. In examining the structure of ACT tribunals, the Department of Justice and Community Safety also acknowledged the uniqueness of some tribunals which may not lend themselves to consolidation. Some of the unique differences between ACT tribunals are necessary to ensure that the needs of stakeholders in different jurisdictions are met.

9. Any structure for ACT tribunals would need to be consistent with the *Human Rights Act 2004*. In particular, section 21 of the *Human Rights Act 2004* provides that everyone has the right to have criminal charges, legal rights and obligations decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

10. Finally, the Department of Justice and Community Safety recognises that any reform of ACT tribunals should not lose sight of the value of tribunals as being "flexible, responsive bodies whose accessibility to the community stands in contrast to the court system"<sup>3</sup>.

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<sup>2</sup> Chief Minister Jon Stanhope MLA, Speech to Council of Australasian Tribunals, Future directions for tribunals in our Territory, 20 July 2004.

<sup>3</sup> Chief Minister Jon Stanhope MLA, Speech to Council of Australasian Tribunals, Future directions for tribunals in our Territory, 20 July 2004.

## 5 GENERAL INFORMATION ON TRIBUNALS

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11. A useful starting point for considering what tribunals are, is the definition in the Osborn's Concise Law Dictionary, which defines tribunals as "bodies with judicial or quasi-judicial functions set up by statute and existing outside the usual judicial hierarchy".<sup>4</sup>

12. This general definition of tribunals sets out three specific tests for determining when an entity is a tribunal. Firstly, does the tribunal exercise judicial power or exercise quasi-judicial functions? "The general hallmark of judicial power is the power to make a binding and authoritative decision on a matter involving rights (this generally means existing rights, not the determination of rights to be enjoyed in future which is usually regarded as executive power)."<sup>5</sup>

13. Quasi-judicial functions are "executive functions which involve the exercise of a discretion, but require a part of the decision-making process to be conducted in a judicial manner."<sup>6</sup> That is not to say that a Tribunal must only exercise judicial or quasi-judicial functions. Tribunals may also exercise non-judicial functions, such as providing education, managing a trust fund, investigating complaints and issuing licences. Tribunals that exercise these non-judicial functions are often called boards or councils.

14. The second test is whether the entity is established by legislation, either by an Act or Regulation made by Parliament or the Executive. The legislation will usually establish the entity and how it is constituted, specify the powers of the entity, who can apply to the entity, what decisions the entity may make, what powers the entity has, how decisions are enforced and what appeals may be made.

15. The third test is whether the entity operates outside of the traditional judicial hierarchy. Although tribunals operate outside of the judicial hierarchy, they do have judicial oversight. In Australia, tribunals are overseen by the courts, through complex questions of law being referred to the courts and ultimately through appeals to a superior court. Tribunals may

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<sup>4</sup> Rutherford and Bone, Osborn's Concise Law Dictionary, 10<sup>th</sup> ed., 2005, 406.

<sup>5</sup> Northern Territory University, Separation of Judicial Power under the Constitution, [http://www.cdu.edu.au/law/apl/Constitutional\\_Law/separationofjudicialpower.htm#What%20is%20judicial%20power](http://www.cdu.edu.au/law/apl/Constitutional_Law/separationofjudicialpower.htm#What%20is%20judicial%20power)?

also have members or a president who are part of the judiciary, and may share court resources such as hearing rooms and libraries.

16. Tribunals tend to be established outside of the judicial hierarchy where the needs of a particular jurisdiction are such that they are not fully met by the courts. Lord Pearce in *Anisminic v Foreign Compensation Commission* [1969] 2WLR 964 noted that tribunals are established for “speed, cheapness and expert knowledge”.<sup>7</sup> For example, some tribunals are established due to a need for expert knowledge of a particular industry or jurisdiction, such as the Liquor Board or Mental Health Tribunal. Other tribunals are established for informality, such as tribunals dealing with people suffering hardship or disputes where the parties will have an ongoing relationship after the dispute is resolved. For example, the Essential Services Consumer Council and the NSW Consumer, Trader and Tenancy Tribunal. Other tribunals are established to provide speedy resolution of a dispute, such as the Residential Tenancies Tribunal.

17. Tribunal members tend to be appointed by the Executive or a particular Minister. Unlike Magistrates or Judges, members do not have tenure, but are appointed for a particular period of time.

18. Tribunals generally complement the courts by providing an accessible and affordable alternative access to justice.

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<sup>6</sup> Rutherford and Bone, *Osborn's Concise Law Dictionary*, 10<sup>th</sup> ed., 2005.

<sup>7</sup> Rutherford and Bone, *Osborn's Concise Law Dictionary*, 10<sup>th</sup> ed., 2005.

## 6 GENERAL INFORMATION ON TRIBUNALS IN THE ACT

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19. The ACT *Legislation Act 2001* defines a tribunal as including any “entity that is authorised to hear, receive and examine evidence”. The ACT has 18 entities which clearly fall within this definition. A list of ACT tribunals is at [Attachment 1](#). There is also a number of other entities which may exercise tribunal-like powers which could be considered for future examination. One example is the ACT Medical Board.

20. The 18 tribunals considered in this paper can be classified into four categories based on the type of matter with which the tribunal primarily deals. The four categories include: civil disputes; adjudication of rights; occupational discipline; and administrative review.

21. The ACT tribunals dealing with civil disputes include the:

- Residential Tenancies Tribunal
- Credit Tribunal, and
- Essential Services Consumer Council.

22. The ACT tribunals dealing with rights include the:

- Mental Health Tribunal
- Guardianship and Management of Property Tribunal
- Discrimination Tribunal
- Sentence Administration Board, and
- Remuneration Tribunal.

23. The ACT tribunals dealing with occupational review include the:

- Consumer and Trader Tribunal
- Health Professionals Tribunal
- Legal Profession Disciplinary Tribunal
- Liquor Licensing Board of the ACT
- Racing Appeals Tribunal
- ACT Architects Board
- Commissioner for Surveys
- Registrar of Motor Vehicle Dealers, and the

- Construction Occupations Registrar.

24. The Commissioner for Surveys, Registrar of Motor Vehicle Dealers and the Construction Occupations Registrar have been included in the review because all of these statutory positions can act as a tribunal. All of these positions can conduct an inquiry into disciplinary matters (and disputes for the Registrar of Motor Vehicle Dealers). When holding an inquiry, the Commissioner and Registrars are acting as a tribunal, as they can hear, receive and examine evidence. The paper only considers these positions in their capacity as a tribunal.

25. The ACT tribunal dealing with internal review is the Administrative Appeals Tribunal.

26. The review does not consider the structure of the Small Claims Court. A number of jurisdictions have consolidated their small claims jurisdiction into a consolidated tribunal, such as the NSW Consumer, Trader and Tenancy Tribunal. The Small Claims Court has not been considered in this discussion paper, as a review of the Small Claims Court was conducted in 1997, when the Court was included as part of the ACT Magistrates Court. In addition, any review of the operation of the Small Claims Court would need to be considered in the context of the operation of the Magistrates Court as a whole. In the future, there may be benefit in considering whether the jurisdiction for small claims should be located outside of the Magistrates Court, or whether small claims could be heard by two different entities, similar to Victoria.

27. Details of the 18 tribunals, including jurisdiction, members, number of matters dealt with and costs, are at [Attachment 2](#). The table at [Attachment 3](#) provides a comparison of the tribunals.

28. The 18 tribunals listed in [Attachment 2](#) cumulatively dealt with approximately 10,000 matters last financial year. The tribunals cost the ACT Government about 2 million dollars to run per annum, with approximately half that amount going towards remuneration of the 130 members, and the other half covering staffing costs and other costs such as rental accommodation. The tribunals are supported by 28 staff (although some of the staff work for tribunals is on a part-time basis).

29. The table at [Attachment 3](#) illustrates the differences between the 18 tribunals. Some of the tribunals sit frequently, while others sit so infrequently that they may not hear a matter

each year. For example, the Residential Tenancies Tribunal sits a number of days each week, whereas the Commissioner for Survey has not heard a matter in the past eighteen months. Some tribunals hear complex matters with large impacts on government or the community, such as the Administrative Appeals Tribunal, whereas other tribunals hear matters that affect only one individual and may take only minutes to finalise at hearing, such as the hardship matters heard by the Essential Services Consumer Council.

30. The ACT has one full time tribunal member, the President of the Administrative Appeals Tribunal. The other 129 members hear matters on an 'as-needs' basis or are judicial officers. The judicial officers are either Magistrates or the Master of the Supreme Court. These judicial officers receive remuneration as full-time judicial officers and they hear tribunal matters on a part-time basis. Some non-judicial members come from a variety of backgrounds, but they usually fit into one of three categories: lawyers, community representatives or industry representatives. The non-judicial members may be appointed to more than one tribunal and sit on a weekly basis, whereas other members are yet to be called to sit on a matter.

31. A number of tribunals are co-located within the ACT Magistrates Court and include members of the judiciary, such as the Mental Health Tribunal and the Discrimination Tribunal. The Consumer and Trader Tribunal and the Essential Services Consumer Council have some common members and share registry services.

32. Although there are many differences between the 18 tribunals, there are also many similarities. For example, all of the tribunals are established by legislation, carry out the same type of function (hearing, receiving and examining evidence), require specific skills and training to be able to examine evidence, need to be able to read and interpret the law, and all of the tribunals make decisions which may require enforcement and may be subject to review.

## 7 ISSUES IN THE CURRENT STRUCTURE OF ACT TRIBUNALS

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33. Examination of the 18 ACT tribunals demonstrates that the tribunals generally operate well and perform a valuable service to the ACT community. That said, examination of the tribunals has revealed that there is no single structure for all ACT tribunals and no single model for how a tribunal should be established. Rather, ACT tribunals have been developed on an 'as-needs' basis over time, often based on local or interstate equivalents, with little regard to the overarching structure of ACT tribunals.

34. Table 1 shows some similarities between ACT tribunals but overall, there is no apparent overarching structure for tribunals. With the current tribunal structure, there is no single President responsible for managing ACT tribunals, nor is there a single agency responsible for policy, administration or management of the tribunal secretariats. There are also no formal links between the tribunals in the current structure. Rather, each tribunal is established as its own entity, with its own legislation, members, president and registry or secretariat. Over recent years, some links have been developed between the different tribunals, primarily through co-location of tribunal registries and cross-appointment of some members.

35. Having no single structure for ACT tribunals causes five main problems:

1. the structure does not promote access to justice
2. the structure does not reduce the cost of justice
3. the structure does not support members
4. the structure does not support officers in registries or secretariats, and
5. the legislation for the current structure of tribunals is somewhat deficient.

### **Access to justice**

36. The structure of ACT tribunals could be improved to have greater regard for promoting access to justice. Access to justice has a number of key elements. Firstly, it requires ease of physical access to tribunals, including hearing rooms, registry and public waiting areas, tribunal facilities that are appropriate to ensure participation and observation (including adequate lighting and acoustics and facilities for participants with special needs), the ability to access the tribunal remotely, such as by 'phone or email and sufficient security for the

participants and tribunal members to feel secure<sup>8</sup>. Some of the ACT tribunals have facilities that promote access to justice, such as the Architects Board, Construction Occupations Registrar and Commissioner for Surveys. These tribunals operate out of conference rooms outside the court buildings, which have hearing augmentation and wheel chair access. Tribunals located in the Magistrates Court have access to public waiting areas, tribunal facilities that ensure participation and observation and security. However, tribunals located in the court buildings can be intimidating to parties. It is important to note that not all ACT tribunals have the same facilities.

37. Secondly, access to justice also requires tribunals to be capable of communicating with users and the public. This includes having available public information about the tribunal and its processes and information available to users of the tribunal on specific aspects of the tribunal, such as when costs will be awarded and how tribunal decisions are enforced.

38. Thirdly, in the ACT, there is no single entry point for the public to access tribunals. There is no single secretariat or registry for tribunals, and there are no standardised forms, procedures, rules or website for tribunals. In the ACT, there is neither a standard layout for a hearing room nor standard facilities for tribunals. Tribunal hearings may be heard in conference rooms across the ACT or in the ACT Magistrates Court. Having tribunals located in a court building has impacts on the accessibility of tribunals. Having to attend a court building can be intimidating for some applicants and can give an impression that the tribunal will be run in a legalistic and formal manner<sup>9</sup>.

39. Finally, access to justice requires the tribunal system to be flexible. In some cases involving the delivery of specialist services, tribunals often benefit from multi-member panels including members with specialist knowledge (eg, a medical disciplinary matter might benefit from a tribunal panel consisting of legal, community and medical specialist members). In other cases, such as those involving people with a mental illness, a tribunal must be capable of addressing the needs of the person before the tribunal (eg, more time may be needed for communication, breaks in proceedings might be needed to address anxiety or stress, and the participants need to clarify process and progress as necessary). A number of tribunals need to be able to deal with urgent matters – often with little notice.

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<sup>8</sup> Client Services in Local Courts, Principles, Standards and Benchmarks, <http://www.uow.edu.au/law/crt/clientsservices/access/index.html>

<sup>9</sup> Australian Law Reform Commission, Reform Issue 73 Spring 1998, <http://www.austlii.edu.au/au/other/alrc/publications/reform/reform73/06.html>

In some cases, it is convenient or necessary for tribunals to convene at a particular location (for example, a health facility).

### **Cost of justice**

40. The structure of tribunals should ensure an efficient use of ACT resources. In particular, tribunal secretariats should be fully utilised, registry processes should be streamlined and efficient, and hearing rooms should be shared between tribunal jurisdictions and have a high level of utilisation. Currently, some of these resources may not be fully utilised.

41. This is particularly the case where tribunal resources are utilised based on factors outside of the control of the tribunal, such as the number of applications received. Bringing the tribunals together under one roof would reap significant benefits, including a reduction in the duplication of resources and better utilisation of staff, tribunal members and hearing rooms. These financial benefits are more likely from the consolidation of the high volume tribunals, rather than the sole person tribunals (such as the Commissioner for Surveys) which do not have dedicated facilities or a registry and which have other duties when not operating as a tribunal.

42. Half of the current cost of tribunals is paid in the remuneration of tribunal members. With the current structure, some tribunal members may be under-utilised and some tribunal members may receive a yearly retainer, in addition to their per diem remuneration. This retainer is not linked to the frequency of the member sitting.

43. Currently, a number of tribunals include judicial officers as members. These members are remunerated as full time judicial officers and receive a small allowance to take into account the additional work they undertake for tribunals. In the Chief Minister's speech on the *future directions for tribunals in our Territory in 2004*, he raised the question of whether judicial officers should sit on tribunals. Judicial officers already receive a significant amount of remuneration and there is an argument that these resources should be utilised in hearing more complex matters, rather than relatively simple tribunal matters, which could be heard by a non-judicial member.

44. Instead of appointing all Magistrates to tribunals or to a couple of tribunals, it may be more efficient to have a consolidated tribunal system of primarily non-judicial members. This would free up Magistrates to work on court matters.

45. A number of tribunals currently sit as a panel of members. Many of the tribunals that sit as a panel of members have industry representatives or consumer representatives as members of the panel. For example, the Sentence Administration Board sits as a panel of three members and the Liquor Board requires a quorum of three members. Although it may be necessary for this number of members to sit at some hearings, it is often the case that one member sitting alone is more than adequate to determine many of these matters. It would be necessary to ensure that those industry representatives sitting on tribunals were not actively engaged in the marketplace, as this could raise direct and indirect conflicts of interest where industry members on tribunals could be in competition with some of the people appearing before them. A single member Tribunal model could always call on expert evidence to assist the Tribunal in its determinations.

46. Having a panel of members for a tribunal increases the cost of hearings. A single tribunal member could hear many of these matters sitting alone.

47. The savings that would result from these cost-saving initiatives could be passed on to the ACT community through lower application fees.

### **Support for members**

48. The current tribunal structure does not fully support the needs of tribunal members. It has differences in remuneration for tribunal members, differences in training offered to members, limited opportunity for members to further their experience, and differences in the number of hearings each member conducts.

49. There is also some disparity in the current tribunal system in terms of remuneration. Most of the ACT tribunal members are paid per sitting day, although some tribunal members are unpaid. Some tribunal members, such as members of the Administrative Appeals Tribunal, receive a yearly retainer in addition to their per diem remuneration. Some tribunal members have also raised concerns over the different rates of remuneration for the different classes of tribunals.

50. There is also some evidence to suggest that the ACT has too many tribunal members for the number of matters currently dealt with in the ACT. For example, some ACT tribunals sit infrequently and many members hear matters only once or twice a year. These

members may have specialist or expert knowledge or represent a particular industry. Members who sit infrequently do not gain experience and may require additional training or hearing time to ensure that they are capable of hearing a matter.

51. The current ACT tribunal structure does not permit tribunal members to gain experience in more than one tribunal jurisdiction. To gain experience in additional jurisdictions, tribunal members must be formally appointed to sit on additional tribunals. This structure provides limited opportunity for career progression for tribunal members.

52. There is currently no standard training for tribunal members, nor a standard practice manual for tribunal members. Some tribunals are members of the Council of Australasian Tribunals and have access to training run through the Council and materials provided by the Council. Many new tribunal members only receive on the job training, which may be insufficient for the challenges that the tribunal member may face.

53. Any changes to the structure of tribunals should ensure that all tribunal members are fully supported.

### **Support for officers**

54. Currently, there is no standard regime for supporting officers in tribunal registries or secretariats. There is also no standard training offered for officers and some officers may be isolated from other tribunals. In addition, officers working for tribunals located outside of the Magistrates Court may not have an opportunity to work for more than one tribunal jurisdiction.

55. The structure of tribunals should provide opportunities for career advancement, training and expansion of skills, as officers work across more than one tribunal jurisdiction. The tribunal structure should also promote job satisfaction for tribunal members.

### **Legislative deficiencies**

56. Currently, there is no standard legislation for the establishment or management of ACT tribunals. In fact, with the establishment of tribunals over time, little regard has been paid to ensuring that each tribunal has all of the legislative provisions necessary to deal with the challenges that tribunals face.

57. In examining the efficacy of the legislative framework for creation and management of tribunals, four questions should be asked.

58. Firstly, is the tribunal constituted so that it can operate effectively and independently? For example, does the legislation give the power to the president to assign matters for hearing and does the legislation provide rules of continuance to deal with the death or resignation of a member?

59. Secondly, is the jurisdiction of the tribunal cast effectively in legislation? The legislation should clearly set out whether the tribunal's jurisdiction is de-novo or review and whether the tribunal is to act in an inquisitorial or adversarial environment. Legislation should also set out whether the rules of evidence apply and should clearly set out the jurisdiction of the tribunal.

60. Thirdly, are the governance arrangements for the tribunal clearly set out? For example, does the legislation allow for active management of the tribunal by the president? Can the tribunal make quality referrals of matters that fall outside of the tribunal's jurisdiction? Can the president review decisions made by a tribunal member – or do they go on appeal to the Supreme Court?

61. Finally, does the legislation contain all of the provisions and powers necessary for the tribunal to operate effectively and expeditiously? For example, does the tribunal have the power to make the full range of orders necessary to deal with the matters before it? Does the tribunal have the power to compel witnesses? Can the tribunal deal quickly with vexatious or unmeritorious matters?

62. The table at [Attachment 4](#) provides a comparison of legislative provisions across a number of ACT tribunals. Some of the tribunals included in the table have more developed legislative frameworks than others, and have been created and amended at or since the time of ACT self-government.

63. In comparing the information in the table at [Attachment 4](#), it is evident that the legislation for the five tribunals differs. In addition, it is apparent that each piece of legislation governing the five tribunals does not contain all of the provisions necessary for good governance of a tribunal. That is not to say, that the Tribunals cannot operate or are

fundamentally flawed rather than that there are opportunities to improve the legislation to ensure more efficient running of the tribunals and to limit the opportunity for challenge of tribunal decisions.

64. Across the 18 ACT tribunals, it is evident that the legislation governing these tribunals has the following common deficiencies:

- legislation seldom details the role of members (including the president of the tribunal); seldom provides for an oath of office; sometimes provides for disclosure of interests of members, but may provide for people who may have a conflict of interest to be members of the tribunal;
- legislation seldom details the role or powers of the tribunal registry, or the relationship between the registry and the tribunal<sup>10</sup>;
- legislation often requires a tribunal to apply the rules of natural justice and to act with expedition (it is possible to do either, but not both, in every circumstance);
- legislation often displaces the rules of evidence and requires the tribunal to act informally, but seldom indicates what rules apply in place of the rules of evidence, whether a party must satisfy a burden of proof or what the standard of proof will be;
- legislation often requires a tribunal to conduct hearings in public, but sometimes provides for evidence to be taken outside hearings or permits the tribunal to close the hearings or suppress reporting of the hearings;
- legislation often gives a tribunal the power to investigate, but seldom clarifies whether this implies a duty for the tribunal to investigate (eg, can a party simply raise a matter in the expectation that the tribunal will then determine what is the truth of the matter<sup>11</sup>);
- legislation seldom provides for the filtering of matters coming before the tribunal, nor provides mechanisms for active case management;
- legislation often provides sharp jurisdictional boundaries, seldom permitting all issues in dispute between the parties to be addressed. This means that parties may need to access other courts or tribunals to resolve a number of related matters – and these different jurisdictions are likely to have different processes;

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<sup>10</sup> For example, both the *Guardianship and Management of Property Act 1991* and the *Consumer Credit (Administration) Act 1996* provide that the registrar may delegate powers, but only the *Consumer Credit (Administration) Act 1996* sets out the powers of the registrar (viz, Serve notices, summons, Seek report, Extend times, Certify orders)

<sup>11</sup> The implications of the High Court decision in *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 72 are still unclear on the issue of whether the power to

- legislation often provides for appeals on questions of law to the Supreme Court. The constitutional powers of the Supreme Court may permit a wider class of matters to be reviewed by the Supreme Court, but in any event, no attempt is made to reconcile the very different way in which the court, on appeal, might approach evidential or process issues; and
- the legislative framework for the Commissioner for Surveys, Registrar of Motor Vehicle Dealers and the Construction Occupations Registrar does not provide for decisions to be made independently of the investigation of a complaint.

65. An analysis of similar provisions in other Australian tribunals suggests that the ACT is not unique in having these problems with the structure of tribunals and tribunal legislation.<sup>12</sup> There is every reason to suspect that these problems will become more acute as the courts explore the governance structures.<sup>13</sup>

66. New legislation should seek to address each of these issues. Tribunals should have straightforward and transparent processes and should deliver consistent, effective and robust decisions.

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conduct an inquiry implies the duty to do so in every case.

<sup>12</sup> Inquisitorial processes in Australian Tribunals, Bedford and Creyke, AIJA, 2006 - note that while more extensive than the table included in Bedford and Creyke, the table included in this review has been structured to facilitate comparison with federal tribunals considered in their report.

<sup>13</sup> eg *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 72

## 8 STRUCTURAL IMPROVEMENTS TO TRIBUNALS IN OTHER JURISDICTIONS

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67. Faced with similar problems to the ones identified in the previous chapter, some jurisdictions have chosen to co-locate tribunals near to the legal precinct but outside of the court buildings. Some jurisdictions have also:

- provided training for tribunal members and support staff;
- provided a single point of access to tribunals for the public;
- established standard application forms; and
- established information packs on what it means to be a party to a tribunal hearing.

68. A number of jurisdictions have improved the structure of their tribunals. In particular, structural improvements have been made in Victoria and New South Wales and have been proposed in the United Kingdom.

### Victoria

70. In 1998 the Victorian Government established the Victorian Civil and Administrative Tribunal (VCAT). This Tribunal amalgamated 15 boards and tribunals to offer a 'one-stop shop' dealing with a range of disputes. The Tribunal provides Victorians with access to a civil justice system that is modern, accessible, efficient and cost effective. VCAT deals with disputes about:

- purchase and supply of goods and services;
- discrimination;
- domestic building works;
- guardianship and administration;
- legal profession services;
- residential and retail tenancies;
- consumer credit; and
- disputes between people and government (such as in planning and land, business licences and taxation).

71. There is no monetary limit on the civil claims regarding goods and services that can be

heard in VCAT. Small claims under \$10,000 have a low lodgment fee and are heard by the Tribunal without first using alternative dispute resolution mechanisms. Civil claims can also be heard in the Victorian Magistrates Court. If a party files in the Magistrates Court, the consumer can request that the matter be referred to VCAT. For small matters, the fees are substantially less in VCAT than in the Magistrates Court and parties usually bear their own costs. Larger claims have a higher fee, usually require a conference, and are referred to the Deputy President for allocation.

72. The Tribunal is established by the Victorian *Civil and Administrative Tribunal Act 1998*, although the jurisdiction of the tribunal is dealt with in separate legislation covering each jurisdiction. For example, the jurisdiction of the Tribunal over residential tenancies is governed by the Victorian *Residential Tenancies Act 1997*.

73. The Tribunal allocates matters into one of three divisions (civil, administrative and human rights) and within these three divisions, there are different sections or lists that specialise in particular types of cases. Each list has different governing legislation and processes, and each list was previously a Tribunal. Each list has elements necessary for the effective running of the jurisdiction or to meet the needs of the particular jurisdiction. Variations in how cases are resolved depend on the nature of the cases brought to each list. Some cases may take only minutes to resolve, while others may need a day or week for hearing, due to the complexity of the case.<sup>14</sup>

74. On creation, VCAT maintained numerous different forms, processes, members and IT systems. Over time, these have been streamlined to ensure efficiency. VCAT still has two IT systems (as the separate system for residential tenancies has been retained due to the high number of cases). On creation, all members of the previous Tribunals had their membership transferred over to VCAT. Note that the Mental Health Review Board was not consolidated under VCAT, although decisions of the Board are appealable to VCAT.

75. The jurisdiction of VCAT has changed since its creation in 1998. The jurisdiction was recently expanded to include jurisdiction for disputes relating to the legal profession. VCAT does not have jurisdiction over essential service matters (as these are dealt with by an Ombudsman in Victoria), racing appeals or remuneration.

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<sup>14</sup> Victorian Civil and Administrative Tribunal website, [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

76. The *Civil and Administrative Tribunal Act 1998* provides that the President of the Tribunal must be a judge of the Supreme Court and Vice Presidents must be judges of the County Court. These judges hear matters and allocate work. Judges are appointed as President and Deputy President as they have tenure and the Executive cannot remove them for making negative findings against government. This is seen as particularly important for administrative review matters. In addition, it gives VCAT status in the justice system and large civil matters can be heard in VCAT.

77. VCAT has permanent members and also sessional members. Sessional members are not paid a retainer and are paid on a per diem basis. Remuneration for the members is determined by the Governor-in-Council rather than a Remuneration Tribunal.

78. Decisions from VCAT are appealable to the Supreme Court on questions of law (for members' decisions) or to the Appeals Court for review of decisions by Judicial officers on the Tribunal.

79. The procedural rules for VCAT are developed by a Rules Committee. This ensures that the rules across the different lists and divisions are standardised, where possible.

### New South Wales

80. In 2002 New South Wales established the Consumer, Trader and Tenancy Tribunal (CTTT). This tribunal replaced the Fair Trading Tribunal and the Residential Tribunal. The CTTT is a specialist dispute resolution forum for consumer, trader and tenancy matters throughout New South Wales<sup>15</sup>. The CTTT has eight divisions, which deal with different types of matters. The divisions are:

- Home building;
- Residential parks (eg caravan parks);
- Motor vehicles;
- Retirement villages;
- Tenancy disputes;
- Strata and community schemes (eg unit titles and community title disputes);
- General; and

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<sup>15</sup> <http://www.fairtrading.nsw.gov.au/cttt/corporate/aboutus.html>

- Commercial.

81. The CTTT has eight regional and metropolitan Registries and conducts hearings in over 85 locations throughout NSW. CTTT hearings are conducted by tribunal members who are appointed by the Governor of NSW on a full-time or part-time basis. Matters may be heard by a single member, and that member may hear matters from the different divisions on the same day.

82. Assessors can be appointed by the CTTT to assist in specialised areas of dispute. Assessors are specialists who can inquire into an issue raised in the proceedings or can assist the member in the proceedings (but not adjudicate). Assessors can be appointed by the Tribunal, with the consent of the parties.<sup>16</sup> This avoids the need for the CTTT to have numerous members with specialist knowledge or representing industry. Assessors are also used to assist Tribunals in a number of other jurisdictions, such as the United Kingdom (UK) and India.

83. New South Wales has not consolidated its Mental Health Review Tribunal (which handles 9,000 matters a year), the Guardianship Tribunal (which handles 7,000 matters a year) and the Administrative Decisions Tribunal (which handles 1,100 matters a year)<sup>17</sup>.

84. The Administrative Decisions Tribunal (ADT) has a unique feature that may be useful for adoption in the ACT. The ADT has an appellate tier, where appeals from tribunal decisions are heard by a member of the Tribunal prior to appeal to the Supreme Court. This has decreased the rate of appeals to the Supreme Court and ensures that appeals can be conducted quickly. This also ensures that the President of the Tribunal is aware of any issues with decisions or queries over the jurisdiction of the tribunal and that these can be rectified before incorrect decisions are used as a precedent in other matters.

### United Kingdom

85. The United Kingdom recently reviewed the structure of its courts and tribunals. At the time of developing this discussion paper, the United Kingdom had developed legislation to

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<sup>16</sup><http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/B135D7C99E9FF0F5CA256ECF00084FE5>

<sup>17</sup> Judge Kevin O'Connor, Presentation to AIAL/COAT ACT Joint Seminar 'The Review of ACT Tribunal Structures', 22 September 2006, p 1

alter the structure of its courts and tribunals (the Tribunals, Courts and Enforcement Bill 2006), but the bill was yet to be debated.

86. The Tribunals, Courts and Enforcement Bill 2006 creates “a new, simplified statutory framework for tribunals, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions and new appeal rights”<sup>18</sup>. The Bill superimposes a new Senior President above all existing tribunals and creates a robust new structure for tribunals. The Bill establishes two new tribunals, the First-tier tribunal and the Upper tribunal. It is anticipated that the First-Tier tribunal will consolidate existing tribunals, except for employment tribunals and any specifically excluded by Parliament (such as devolved tribunals within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly). The Upper tribunal is established as a superior court of record (like the UK High Court or the ACT Supreme Court) and will hear appeals from the First-tier tribunal and may also hear some initial matters. The jurisdiction of the two new tribunals will ultimately be determined by the Lord Chancellor, who is given power to transfer the jurisdiction of existing tribunals into the two new tribunals (subject to some legislative constraints – at this stage no timeframe has been set for the consolidation of some of the tribunals, including that dealing with mental health issues).

87. The tribunals will include members of the judiciary as well as non-judicial members. The jurisdictions of the two tribunals will be organised to ensure that members only sit on the jurisdictions for which they are qualified and that similar work is combined. This organisation will initially reflect the current jurisdictional boundaries, although the legislation will enable flexibility in reorganising jurisdictions as workload changes and as members develop skills in additional areas.

88. A Senior President of Tribunals will head the tribunals and will be responsible for assigning work. The legislation also provides for Presidents to head each division of the tribunal.

89. The Bill creates the Tribunal Review Committee, which will develop procedural rules for the new tribunals. This will ensure that the procedures in the different tribunals are standardised.

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<sup>18</sup> Explanatory notes for the Tribunals, Courts and Enforcement Bill, 5.

## 9 POSSIBLE OPTIONS FOR REFORM OF ACT TRIBUNAL STRUCTURES

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90. The Department of Justice and Community Safety has identified six basic options for reform of ACT tribunal structures. The options include:

- Option 1 - consolidation of Tribunal secretariats/registries;
- Option 2 - provide common legislative provisions or common rules;
- Option 3 – cross-appointment of members of tribunals;
- Option 4 – establishment of a Senior President responsible for all tribunals;
- Option 5 – partial consolidation of Tribunals; and
- Option 6 – consolidation of all Tribunals.

91. None of these options is intended to diminish the capacity of the legal system to respond to urgent matters or cases that require particular treatment. The needs of people coming before the tribunal may require the tribunal to constitute itself in a particular way (and sometimes with specialist members), to convene at a particular location (eg, a health facility), to convene urgently or to be ready to deal with communication issues, anxiety or stress.

### Option 1 – Consolidation of tribunal secretariats/registries

92. Consolidation of tribunal secretariats and registries would improve the structure of tribunals, by enabling improvements and efficiencies in the secretariat. For example, the registry processes and procedures could be streamlined as well as the development of standardised forms and information for applicants. Consolidation of secretariats would improve access to justice by providing one point of access for all tribunals. Consolidation of tribunal secretariats and registries would also enable officers to work in more than one jurisdiction and may create opportunities for career advancement.

93. However, the streamlining of registry processes and procedures would be constrained by the different legislation for the different tribunals and the different procedures developed by the Presidents of the different tribunals.

94. In the ACT, a consolidated tribunal secretariat could report to the Courts Administrator or could be a stand-alone secretariat located in the Department of Justice and Community Safety. A consolidated secretariat should only have tribunal functions. This may mean that other existing functions carried out by a secretariat or registry would need to be hived off, so that the secretariat only carried out tribunal functions. For example, investigations carried out by the Essential Services Consumer Council registry would need to be relocated to the Department.

#### Option 2 – provide common legislative provisions or common rules

95. Providing common legislative provisions or common rules for tribunals would assist in improving the structure of tribunals, by improving the legislation for each tribunal and providing common rules and procedures where possible. This could be similar to the recent development of joint rules for the Small Claims Court, Magistrates Court, Supreme Court and Court of Appeal. The development of common rules would not require all rules to be identical, rather, it would involve simplifying all rules and considering where different rules are required for different jurisdictions.

96. This option would assist the community by providing simplified robust rules for all tribunals and would assist legal practitioners who work in more than one tribunal. Providing common legislative provisions and rules would enable registry and tribunal processes to be improved and would enable members and officers in the secretariat to move between jurisdictions more easily.

97. This option would facilitate future consolidation of tribunals, however, alone it does not address the problems with the current structure identified in chapter five. In addition, there would only be minimal savings from this option.

#### Option 3 – cross-appointment of members of tribunals

98. Cross-appointment of members to the different tribunals would improve the structure of ACT tribunals by providing greater links between the tribunals. This option would provide greater support for members by enabling members to have experience in sitting in more than one jurisdiction. This option could also reduce the cost of justice by enabling members to deal with matters from different jurisdictions in the one hearing. However, under the current legislation, this would be a decision for the President of each Tribunal. Some cross-appointments have already occurred in the ACT, in particular between members of the

Residential Tenancies Tribunal, Consumer and Trader Tribunal and the Essential Services Consumer Council.

99. This option could be improved by appointing one person as the President of all of the tribunals and by streamlining the legislation, tribunal rules and procedures. These additional changes would enable the President to allocate matters to members across the tribunals without the need for members to undergo significant training in each of the jurisdictions. However, cross appointments alone would not solve the problems identified with the current structure of tribunals.

#### Option 4 – establish a Senior President responsible for all tribunals

100. The UK option for the consolidation of tribunals superimposes a new Senior President above all existing tribunals. The Senior President would be responsible for the tribunal secretariats and registries and these would probably be consolidated over time.

101. This option would be more costly than consolidating some or all tribunals, as it involves creating a new position, while not abolishing any other positions. To be effectual, the legislation and processes of the tribunals to be included in the new tribunal structure should be streamlined and members should be able to sit in different jurisdictions.

#### Option 5 – Partial consolidation of tribunals

102. Partial consolidation of tribunals would be similar to the consolidation undertaken in New South Wales. All tribunals that deal with industry regulation or retail consumers would be consolidated, along with their secretariats.

103. The consolidation could build on the existing ACT Consumer and Trader Tribunal, which provides for review of licensing decisions and industry discipline. The consolidated tribunal could absorb the consumer jurisdictions currently heard by the:

- Residential Tenancies Tribunal;
- Credit Tribunal;
- Consumer and Trader Tribunal;
- Health Professionals Tribunal;
- Legal Profession Disciplinary Tribunal;
- Liquor Licensing Board of the ACT;

- Racing Appeals Tribunal;
- ACT Architects Board;
- Commissioner for Surveys;
- Registrar of Motor Vehicle Dealers; and the
- Construction Occupations Registrar.

104. The legislation governing these jurisdictions would be streamlined to ensure that efficiencies could occur in both the tribunal and the secretariat. This consolidation would improve the structure of ACT tribunals by consolidating similar tribunals. The consolidation would provide an opportunity to improve the legislation, rules and procedures for all of these jurisdictions.

105. To reduce the costs of the tribunal, the consolidated tribunal would have an emphasis on single member hearings. Where there is a perceived need for industry knowledge on the tribunal, the tribunal could appoint an assessor to assist the member. The parties to the hearing would be able to challenge the appointment of a particular assessor. The assessors would not be paid members of the tribunal. To reduce the incidence of appeals to the Supreme Court, and to ensure that the President of the Tribunal could manage the consolidated jurisdictions, the legislation should provide for internal review of tribunal decisions by the President of the Tribunal.

106. Under this option, the partial consolidation might not include the Health Professionals Tribunal and/or the Mental Health Tribunal – which are established under legislation presently undergoing separate review.

- The Mental Health Tribunal is established under the *Mental Health (Treatment and Care) Act 1994*. This Act is currently undergoing an extensive consultation and review process. The consultation and review process is unlikely to conclude in the near future – a question arises whether a decision on the Mental Health Tribunal should be deferred until the completion of that review.
- In relation to the Health Professionals Tribunal, national work is currently underway under the auspices of the Council of Australian Governments (COAG) to establish national registration and accreditation of health professionals. This work will include establishment of new legislative frameworks for registration and accreditation of health professionals, which will include the legislation covering the current Health

Professionals Tribunal. A question arises whether the Health Professionals Tribunal should be deferred until after completion of the COAG work.

107. While it is proposed that only the listed tribunals would be consolidated under this option, there would be potential value in establishing close working relationships with the partially consolidated tribunal and other tribunal secretariats. This matter would be further considered after the establishment of a partially consolidated tribunal.

#### Option 6 - Consolidation of all Tribunals

108. Under this option, the ACT would consolidate a range of tribunals to create a new and responsive environment. It is not intended to simply replicate existing tribunals within a new larger tribunal. Under this option, all tribunals would be consolidated, even where legislation establishing the tribunal is under review elsewhere.

109. The consolidated tribunal would have a number of different divisions, reflecting the different matters heard in the current ACT tribunals. The divisions could be civil disputes, adjudication of rights, occupational discipline, and administrative review – but might also include specialist divisions necessary to deal with the needs of particular client groups (eg, those people with a mental illness).

110. New legislation would be needed to create the consolidated tribunal and to remove the current provisions establishing the tribunals and provide for governance of the tribunal. The legislation governing the current jurisdictions would be streamlined to ensure that efficiencies could occur in both the tribunal and the secretariat. The reorganisation of resources would enable appropriate registry structures to be developed so as to be responsive to the needs of different client groups (eg, providing training to registry staff and ensuring continuity of those staff working with particular client groups), providing an environment conducive to resolving issues coming before the tribunal (eg, providing a balance of formal and informal hearing rooms), and ensuring confidentiality of client information.

111. Unique differences in the legislation would remain, where this is necessary for a particular jurisdiction – particularly where there is a need to respond to urgent or specialist matters. The tribunal would be constituted so as to ensure that it is not simply a generalist jurisdiction where any case could be considered by any member – it will include specialists

for the various jurisdictions and priority systems for urgent cases (eg, to cater for disciplinary proceedings dealing with, say, nurses, the panel would include members who were midwives, registered and enrolled nurses – these people would be able to serve as community members in relation other jurisdictions of the tribunal). It is intended to provide that the tribunal will convene at a particular location (eg, a health facility) where it is convenient, and to include members on a division with specialist knowledge (eg, particularly involving the delivery of specialist medical services) where that has proven useful in the past. In particular, such as cases involving people with a mental illness, the tribunal must be capable of addressing the needs of the person before the tribunal (eg, more time may be needed for communication, breaks in proceedings might be needed to address anxiety or stress, and the participants need to clarify process and progress as necessary).

112. This consolidation would improve the structure of ACT tribunals by consolidating like tribunals into divisions. The consolidation would provide an opportunity to improve the legislation, rules and procedures for all of these jurisdictions.

113. To reduce the costs of the tribunal, the consolidated tribunal would have an emphasis on single member hearings, particularly in relation to civil proceedings. The President would be able to appoint a larger panel of members to hear a matter where the interests of justice demand a larger panel, where the matter requires specialists or where the matter is complex. It would be expected that multi-member panels would be constituted to hear matters requiring specialist knowledge (eg, involving the delivery of specialist medical services).

114. To ensure that the tribunal can satisfy an occasional (rather than reoccurring need) for specialist knowledge (and to improve the timeliness, efficiency and responsiveness of the consolidated tribunal), provision would be made for the tribunal to appoint assessors. Assessors would provide the tribunal with expert information or information on a particular industry or issue. The parties to the hearing would be able to challenge the appointment of a particular assessor. The assessors may not be paid members of the tribunal.

115. The tribunal would have a common pool of members, and members would be assigned to hearings by the President – noting that some jurisdictions of the tribunal would have a continuing reliance on specialist members. Deputy Presidents would head the divisions of the Tribunal. To reduce the incidence of appeals to the Supreme Court and to ensure that

the President of the Tribunal could manage the consolidated jurisdictions and members, the legislation would provide for internal review of tribunal decisions by the President of the Tribunal.

116. The new structure for the tribunal would force a reconsideration of levels of remuneration across the jurisdictions. This may result in an increase in the remuneration of some members. This additional cost could be offset by a reduction in costs by limiting the use of multiple-member panels and efficiencies in the consolidated registry and members being fully utilised. Unpaid assessors could be utilised if expert evidence or information is needed by the Tribunal.

117. The legislation governing the consolidated tribunal would specifically deal with the following issues:

- Role of members - the legislation should provide for a president, presiding members, and sitting members. Members might be further divided into voting and non-voting members (assessors). The function of each type of member should be articulated, and the relationship between members spelt out. Provisions should be included for an oath of office, which is complemented by provisions dealing with disclosure of interests. Only the president should have the capacity to select the members to sit on a particular matter, and the president should have the power to make appropriate substitutions in the event of the death of a member or disability.
- Membership – the legislation should provide for tribunal members to be appointed by the Executive. The President should be a lawyer with at least five years experience. The Deputy Presidents and members must have the experience or expertise to exercise the functions of a Deputy President or member. For example, the tribunal may need an expert member in planning and building matters or mental health. Assessors should be appointed by the President of the Tribunal and should have the experience or expertise to assist the tribunal. For example, assessors may be appointed to provide specialist information on a particular industry, such as surveyors, or a specialist topic such as tree preservation.
- Role of Registry - the legislation should set out the role and powers of the tribunal registry, and the relationship between the registry and the tribunal.
- Natural justice - the tribunal should apply the rules of natural justice. The president and members might be required to act swiftly, but this must not be at the expense of justice.

- Evidence - the legislation might displace the rules of evidence in a limited number of circumstances (specifically those involving smaller financial risks) and enjoin members of the tribunal to act informally. The legislation should provide that where the rules of evidence don't apply, a party must satisfy a burden of proof and that the ordinary civil standard of proof applies.
- Hearings - the legislation should provide that hearings are conducted in public. Only limited exceptions might be made on a public interest basis.
- Location – the legislation should provide for the President to determine where the tribunal hearings will occur. The consolidated tribunal would be able to sit in remote locations if necessary, for example the Mental Health Tribunal currently sits once a week in the Canberra Hospital. The consolidated tribunal should be able to hear matters in a variety of hearing rooms depending on the needs of each jurisdiction. The hearing rooms should include informal meeting rooms for hardship matters in the Essential Services Consumer Council jurisdiction and formal hearing rooms for AAT hearings.
- Investigative powers - the legislation should specify, according to the type of case involved, whether the tribunal has a duty to discover the truth through investigation, or whether the tribunal has a more limited duty to assist the parties to better identify the issues in issue between them.
- Pre-trial dispute resolution - the legislation should provide for the reference of disputes, where appropriate, to alternative dispute resolution without recourse to the tribunal (these might include credible schemes designed to resolve minor building or service complaints on an industry basis).
- Active case management - the legislation should permit the tribunal to conduct case management conferences and undertake other active case management processes.
- Ancillary matters - while the jurisdiction of the tribunal should be clear, the tribunal might be permitted to make related orders with consent, or where it is otherwise convenient.
- Appeals - the first tier of appeal should be within the tribunal itself – the second tier outside the tribunal to the Supreme Court. This process might be designed to ensure proper internal governance by the president of the tribunal, and to ensure decisions reached are sound. While a two-stage process might also go some way to reconciling the way in which the court on appeal might approach evidential or process issues, provisions should be included to specify the approach that the court

should take in such an appeal. This may have the effect of reducing the number of avenues for appeal in some jurisdictions. For example, there are currently three avenues for appeal of decisions made by the ACT Construction Occupations Registrar, being internal review, the AAT and the Supreme Court.

118. The consolidated tribunal should not include any functions that are not judicial or quasi-judicial. Additional functions should remain with the responsible department. For example, the Essential Services Consumer Council performs an investigative role and educational role. The investigative and educational role should be moved to the Office of Regulatory Services and the tribunal function should be consolidated.

119. The consolidation of the Commissioner for Surveys, Registrar of Motor Vehicle Dealers and the Construction Occupations Registrar would not affect the non-tribunal functions of these office holders. The consolidation would provide for the office holders to apply to the consolidated tribunal for disciplinary action to be taken against a licensee. In these circumstances, the office holders would act as a prosecutor. The legislation would not prevent the office holders from investigating complaints or from having informal discussions with licence holders where the conduct does not warrant formal disciplinary action.

120. Like in Victoria, it would be ideal if the consolidated tribunal and its secretariat were located in a separate building to the courts. This will guard against community perceptions that the tribunal process may be legalistic and inaccessible.

## 10 PREFERRED OPTION FOR THE ACT

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121. There are significant benefits in consolidating tribunals (option six) – but the Department of Justice and Community Safety for the ACT recognises that there may be reservations about including particular tribunals in the consolidation (option five). Reservations might be based on a number of matters – such as a fear that consolidation might lead to a generic approach to dispute resolution.

122. In this regard, it is useful to compare the strengths and weaknesses of a relatively small stand alone tribunal as opposed to a larger consolidated tribunal. A particular strength of a small tribunal is that it can be purpose built and staffed by people with appropriate skills. The staff of a small tribunal will, of necessity, provide continuity of service to clients, and can be subject to confidentiality requirements.

123. However, these features are not unique to small tribunals – a consolidated tribunal operating through divisions can deliver these same outcomes, often within a more robust and user-friendly environment. Simply because a consolidated tribunal may have more staff members would not preclude assigning staff and members to particular divisions, and applying strict protection in relation to the confidentiality of information provided to staff members.

124. In addition, a consolidated tribunal may deliver a number of benefits not available to a small tribunal. For example:

- A consolidated tribunal can offer a two-tier hearing system, allowing for a first appeal within the tribunal itself;
- A small tribunal may have very few registry staff. Small tribunals are vulnerable to staff absence occasioned by leave or longer-term staff movement. In a larger registry, provision can be made to back fill positions or train replacements in anticipation of staff movements;
- A consolidated tribunal may offer a wide range of training options to registry staff and members simply not available to small tribunals. Training may be pitched at both core areas of learning need (eg, best practice process, decision writing, hearing

practice) and can address specialist areas (eg, hearing involving people with a mental illness, or disciplinary matters); and

- A consolidated tribunal may offer greater member support (eg, broader collegiate resources, just in time training, electronic resources) often not available to small tribunals. For example, instead of matters coming before the Mental Health Tribunal, these might instead come to a specialist division of a consolidated ACT tribunal. The Division would be chaired by a specific Deputy Chair of the consolidated tribunal, who would be able to appoint specialist and community members to multi-member hearings. Depending on the needs of a client, the Division might hear matters in either a formal or informal setting – and where necessary, urgently. The case work of the Division would be supported by specific registry staff, ensuring continuity of service, who would be subject to confidentiality requirements. The Division would enjoy all the benefits noted above of being located within a larger tribunal (two tier structure enabling simple appeals, greater staff resources, training, and support) – and in addition, would be able to develop specific procedural responses to the needs of people with a mental illness (eg, more time may be needed for communication, breaks in proceedings might be needed to address anxiety or stress, and the participants need to clarify process and progress as necessary).

125. The preferred option of the Department of Justice and Community Safety is option six. This option would involve the consolidation of all ACT tribunals and secretariats, with one exception: the Department believes that any consolidation should exclude the ACT Remuneration Tribunal (this tribunal should remain as a stand-alone tribunal as it requires independence from other tribunals so that it can determine remuneration for tribunal members).

126. The Department of Justice and Community Safety believes that the existing tribunal members (excluding serving judicial officers) should be considered for transition across to the new tribunal. This would ensure some continuity while the new tribunal processes are developed.

**ACT Tribunals considered in this review**

Residential Tenancies Tribunal  
Credit Tribunal  
Mental Health Tribunal  
Guardianship and Management of Property Tribunal  
Discrimination Tribunal  
Consumer and Trader Tribunal  
Administrative Appeals Tribunal  
Health Professionals Tribunal  
Remuneration Tribunal  
Legal Profession Disciplinary Tribunal  
Sentence Administration Board  
Liquor Board of the ACT  
Essential Services Consumer Council  
The Racing Appeals Tribunal  
ACT Architects Board  
Commissioner for Surveys  
ACT Construction Occupations Registrar  
Registrar of Motor Vehicle Dealers

**Details of Tribunals considered as part of this review**

**Civil disputes**

**Residential Tenancies Tribunal**

The Residential Tenancies Tribunal was established by the *Residential Tenancies Act 1997* which commenced operation on 26 May 1998. It resolves disputes between parties to residential tenancies and occupations in the Australian Capital Territory.

The Tribunal consists of:

- President: Mr R.J. Cahill
- Deputy President: Mr P.G. Dingwall
- Members: Ms Jann Lennard  
Mr Allan Anforth  
Ms Jennifer David  
Ms Marion Reilly

The Tribunal is supported by the Tribunal Registrar and Deputy Registrars working out of the Magistrate’s Court.

**2005-2006**

<b>OVERALL TOTALS</b>	
Applications – First Lodgement	685
Applications – Subsequent Lodgement	131
Applications – Withdrawn	42
Applications – Closed	827
Matters listed for conference	447
Matters listed for hearing	754
Endorsements Lodged	2896
Endorsements Granted	2885
Eviction Warrants Executed (AFP)	46

Written Reasons for Decision	29
<b>APPLICATION BREAKDOWN</b>	
Applications by Lessors	618
Applications by Tenants	140
Applications by ACT Housing	208
<b>APPLICATION CATEGORIES</b> *parties may apply for multiple categories on the one application*	
Termination by lessor	241
Termination by tenant	26
Rental Bond disputes	126
Rental Arrears	172
Rent Review	11
Rent Reduction	6
Compensation: lessor	59
Compensation: tenant	30
Access to conduct inspection	52
Miscellaneous/other	22

### **Credit Tribunal**

The Australian Capital Territory Credit Tribunal hears and determines disputes about credit contracts between borrowers and financial institutions such as banks, building societies and other finance providers. The *Credit Act 1985*, the *Consumer Credit (ACT) Code 1996*, the *Consumer Credit Act 1995* and the *Consumer Credit (Administration) Act 1996* prescribe the jurisdiction, powers and procedural requirements of the Credit Tribunal.

Some of its powers include power to:

- Re-open unjust transactions which can result in the restructuring, variation or setting aside of contracts and mortgages;
- Reduce / impose civil penalties;
- Authorise entry onto premises to repossess mortgaged goods;
- Postpone enforcement proceedings;

- Change terms of contracts as a result of hardship;
- Review unconscionable interest and other charges;
- Award compensation for contravention of a key or other requirement;
- Award damages to a debtor against both supplier and linked credit provider.

The Tribunal consists of:

Chairperson: Mr Michael Some

Deputy Chairs: Mr R Cahill  
 Mr M Peedom  
 Ms M Doogan  
 Ms K Fryar  
 Ms L Campbell  
 Mr S Madden  
 Mr J Burns  
 Mr P Dingwall

There were no new applications lodged in the Credit Tribunal in 2005-6. One Consent Order made for a case previously lodged.

### **Essential Services Consumer Council**

The Essential Services Consumer Council (the Council) is established under Part 11 of the *Utilities Act 2000* (the Act). The Council commenced operations on 1 July 2001, taking over and expanding upon the functions of the former Essential Services Review Committee (the ESRC).

The Council has four broad activity streams:

- managing client hardship cases to ensure continuity of utility supply;
- assisting in the resolution of issues and complaints raised by customers and consumers of utility companies;
- adjudicating complaints by customers and consumers against utilities; and
- addressing systemic issues and problems in the relationship between utilities and their customers/consumers, and proposing remedial courses of action to Government, the ICRC or the utilities.

**Members**

Chairperson: Peter Sutherland

Deputy Chairperson: Patricia McDonald

- Members:
- Gil Anderson
  - Allan Anforth
  - Jarrold Jeremiah
  - Di Lucas
  - Bill Pearcy
  - Maurice Sexton
  - Liisa Wallace
  - Trish Walsh
  - Athol Williams

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## Rights

### Mental Health Tribunal

The Mental Health Tribunal was established by the *Mental Health (Treatment and Care) Act 1994* which commenced on 6 February 1995.

The Tribunal hears applications for the treatment and care of people suffering mental illness or mental dysfunction. Before the conduct of a hearing, the Tribunal will invariably direct a person subject to an application to undergo a psychiatric or psychological assessment. Additionally, the Tribunal considers: applications for the release of people involuntarily detained; applications for the administration of Electro-Convulsive Therapy; referrals from the Supreme Court and Magistrates Court to determine whether a person charged with an offence is mentally ill or mentally dysfunctional, and/or whether a person is fit to enter a plea and/or make recommendations on how the person should be dealt with. If required, the Tribunal may also make orders for their treatment and care.

The Tribunal consists of:

President: Mr Ron Cahill  
Deputy Presidents: Mr Michael Somes  
Mr Peter Dingwall  
Mr John Burns  
Ms Karen Fryar  
Mr Shane Madden  
Ms Beth Campbell  
Ms Maria Doogan  
Mr Grant Lalor  
Mr Michael Peedom

Psychiatric Members:

Dr M Bennett  
Dr W Mickleburgh  
Dr M Tennant

Psychological Members:

Dr C Barreda-Hanson  
Dr D Byrne  
Ms A McDonald  
Mr N Woodger  
Dr B Schwarzer

Community Members:

Ms S Dadge  
Ms M Gath  
Ms L Steeper  
Mr R Walker

**1 JULY 2005 – 30 JUNE 2006**

Lodgments

Alert	1
Application for release from emergency detention	31
Medical application for community care order	3
Notification of contravention of community care order	1
Community care order determination	1
Children's court request for forensic mental health report	30
Court requested assessment for mental health report	84
Court order for removal (s309 crimes act 1900)	30
Respondent deceased	2
Orders discharged	2
Application for electro-convulsive therapy	39
Emergency detention notification	495
General application	38
Application for treatment order (self)	0
Medical application for psychiatric treatment order	230
Notification of breach action	19
Psychiatric treatment order determination	260
Referral by children's court	9
Referral by magistrates court	39
Referral by supreme court	3
Application to revoke restriction order	1
Review of order	386
Application to revoke order	1
Review of restriction order	5
Medical application for restricted community care order	0
Medical application for restricted psychiatric treatment order	3
Notice of appeal to the supreme court	4
Application to vary	0
Total	1726

## Emergency Detention Notifications

Edn received	7 Day Extensions	No further action
495	242	376

## Persons Who Made Applications Before the Mental Health Tribunal

Australian Federal Police	0
Care Coordinator	1
Case Manager	22
Chief Psychiatrist	4
Court	175
Doctor	1005
Mental Health Tribunal	272
Office of the Public Advocate	1
Other	59
Relative	3
Self	3
Solicitor	8

## Results Recorded

Application for release granted	0
Assessment order	166
Application dismissed	12
Supreme Court appeal dismissed	2
Application withdrawn	48
Application refused	20
Community care order	3
Community care order continued	6
Community care order (with restrictions)	0
Community care order (with restrictions) continued	1
Deceased	2
Discharged	6
Emergency detention (following order under s309 crimes act 1900)	5
Electro-convulsive therapy	34
Involuntary psychiatric treatment order	274

Involuntary psychiatric treatment order continued	246
Involuntary psychiatric treatment order (with restrictions)	4
Invol. psychiatric treatment order (with restrictions)continued	4
No further action	376
No orders made	42
Miscellaneous	2
Restriction order to continue	4
Restriction order revoked	1
Orders revoked	26
Stood over generally	1
Warrant issued for purposes of assessment	10

#### Results Relating to Court Referrals

Mental dysfunction	12
Mental illness	17
No mental illness or mental dysfunction	4
Recommendations made	10

#### Mental Health Hearings and Conferences

	Hearings	Pre- hearing conferences
Number	581	4
Hours*	456	4

### **Guardianship and Management of Property Tribunal**

The Guardianship and Management of Property Tribunal was established by the *Guardianship and Management of Property Act 1991* and commenced operation in 1992.

The Tribunal hears applications for the appointment of guardians and financial managers of adults with decision-making impairments. The Tribunal also has jurisdiction to provide substituted consent for a range of prescribed medical procedures, as set out in the Act.

These include:

an abortion; reproductive sterilisation; a hysterectomy; a medical procedure concerned with contraception; or removal of non-regenerative tissue for transplantation to the body of another living person; treatment for psychiatric illness; electro- convulsive therapy;

psychiatric surgery or any other medical or surgical procedure prescribed for the purposes of this definition.

Under the Act, the Tribunal may conduct proceedings with as little formality and legal technicality and form as the circumstances of the case permit. Nevertheless, the legislation also requires that the Tribunal observe the rules of natural justice. It also provides that the Tribunal may obtain information on any matter in such a manner as it thinks fit.

The Tribunal consists of:

President: Mr Ron Cahill

Deputy Presidents: Mr Michael Some

Mr Peter Dingwall

Mr John Burns

Ms Karen Fryar

Mr Shane Madden

Ms Beth Campbell

Ms Maria Doogan

Mr Grant Lalor

Mr Michael Peedom

Members: Sheena Dadge

Margaret Gath

Jane Greagg

Margo Hodge

Janice Konstantinidis

Ann Procter

Phillip Thompson

Ross Walker

Robert Wedgwood

Harold Hird

Jann Lennard

Sharon Rowe

Derya Koc

<b>Applications Received</b>	
Directions	6
Emergency Guardianship	238
Emergency Management	392
Emergency Guardianship & Management	126
Emergency Medical Consent Only	105
Emergency Discontinued	154
Guardianship	22
Management	28
Guardianship and Management	99
Reviews in Chambers	384
Reviews of Orders	23
Warrant for Removal	1
Interstate Registered Orders	3
Prescribed Medical Procedure	1
Total	1588
Number of Hearings	1585
Number of Emergency Orders	862
Number of Orders	1585
Number of Prescribed Medical Procedure Orders	7
Number of Cases Withdrawn	8

### **Discrimination Tribunal**

The Discrimination Tribunal is established under the *Discrimination Act 1991*. The Tribunal is required to hear matters referred to it by the Discrimination Commissioner, or following a decision of the Commissioner to dismiss a complaint, the complainant may request the Commissioner to refer the matter to the Tribunal for hearing.

A party is not entitled to representation at a hearing unless the Tribunal consents to such representation. After a hearing, the Tribunal can:

- make an order that the respondent not repeat or continue the unlawful conduct;
- order the respondent to perform any reasonable act to redress any loss or damage suffered by a person as a result of the unlawful conduct by the respondent; or
- order the respondent to pay to a person a specified amount by way of compensation for any loss or damage suffered by the person as a result of the unlawful conduct by the respondent.

The Tribunal consists of:

President: Mr Ron Cahill

Acting Presidents: Mr Michael Somes

Mr Peter Dingwall

Mr John Burns

Ms Karen Fryar

Mr Shane Madden

Ms Beth Campbell

Ms Maria Doogan

Mr Grant Lalor

Mr Michael Peedom

There were 26 new matters referred from the Human Rights Office to the Discrimination Tribunal for hearing in 2005. 20 were closed during the year. Five of those were finalised within three months, five were finalised within six months and six were finalised within 12 months. The remaining matters took longer to settle for a variety of reasons. As at 30 June 2006, there were 46 matters outstanding. Of these, 24 have been with the Tribunal for more than one year. Eleven of these matters are complex and are being heard together.

### **Sentence Administration Board**

The Sentence Administration Board replaced the Parole Board. The Board was formed in 2001 with the introduction of the *Rehabilitation of Offenders (Interim) Act 2001*. The Board is now governed by the *Sentence Administration Act 2005*.

The functions of the Board are to:

- consider the release on parole of sentenced offenders for whom a court has set a non-parole period;

- decide additional conditions of parole orders;
- monitor parole orders;
- decide the consequences of sentenced offenders failing to comply with their obligations under parole orders;
- provide advice to the Minister about sentenced offenders at the Minister's request; and,
- exercise any other function given to the Board under the Act or any other Territory law.

Recently the Board was given the additional function of managing periodic detention orders and breaches of these orders. It is anticipated that this will be a substantial new function for the Board.

The Board consists of:

Chairperson – Mr Phillip Lee  
 Deputy Chairperson – Elizabeth Symons  
 Members - Ms Jilpia Nappaljari Jones  
 Mr Ross Maxwell  
 Mr Steven Mewburn  
 Ms Salli-Anne Willings

### **Remuneration Tribunal**

The ACT Remuneration Tribunal was established by the *Remuneration Tribunal Act 1995*, which commenced on 21 December 1995.

The Tribunal is required to inquire into and determine the remuneration, allowances paid and other entitlements to be granted to persons holding a wide range of full-time and part-time public offices.

The Tribunal consists of:

Mr A Kerr AM (Chair) appointed until 31 January 2007;  
 Ms R McRae OAM appointed until 30 June 2007; and  
 Ms Jill Greenwell appointed until 31 January 2007.

The Tribunal holds five major reviews each year plus ad hoc reviews as needed (eg for new offices created during the year or changes to the role of existing offices). The Tribunal made 16 determinations of remuneration in 2006 (some of these determinations include multiple office holders).

## Occupational

### Consumer and Trader Tribunal

The Consumer and Trader Tribunal (CATT) is established under the *Consumer and Trader Tribunal Act 2003* and commenced operation on 9 October 2003. The CATT replaced the Agents Board and the five dispute resolution bodies for the security industry, and hears disciplinary matters and appeals against licensing and registration decisions related to the agents and security industries.

The CATT hears applications for review of licence decisions made by the Office of Fair Trading and makes decisions about disciplinary action against licensees brought before it by the Commissioner for Fair Trading.

The Tribunal consists of:

President: Allan Anforth

Members: Jennifer David  
Jann Lennard  
Sarah Todd

New Matters – a total seven new matters came before CATT in 2005-06.

Disciplinary Matter	1	1
Appeal against Licence/Registration Decision	2	3

Matters Heard – the CATT heard a total of seven matters during 2005-06. Four of these matters were determined at a Directions Hearing while the remaining three were determined at full Hearing.

## Health Professionals Tribunal

The Health Professionals Tribunal was established by the *Health Professionals Act 2004*.

The Tribunal is required:

- (a) to decide applications made to the tribunal about whether a registered health professional has met the required standard of practice or satisfies the suitability to practise requirements;
- (b) to make emergency orders if required;
- (c) to hear applications for review of decisions of health profession boards and professional standards panels; and
- (d) to hear applications from health profession boards to suspend or cancel the registration of health professionals.

A party to a proceeding may, at the hearing of the proceeding, appear personally or by an agent and be represented by a lawyer. The Health Professions Tribunal has power to:

- (a) counsel, caution or reprimand the person;
- (b) require the person to undergo stated medical, psychiatric or psychological assessment, counselling or both;
- (c) impose on the person's registration any condition that the tribunal considers appropriate to protect the public;
- (d) require the person to take part in a review of the person's professional practice;
- (e) require the person to complete a stated educational or other stated professional development course;
- (f) require the person to report on the person's practice at stated times, in the way stated and to a named person;
- (g) require the person to seek and take advice from a stated entity about the management of the person's practice;
- (h) require the supervision, monitoring or reporting about the effect of something the person is required to do by the tribunal;
- (i) accept a voluntary undertaking from the person;
- (j) require the relevant health profession board to suspend the person's registration for a stated period.
- (k) cancel the person's registration;
- (l) if the person is not registered—declare that, if the person had been registered, the tribunal would have found that the person had contravened the required standard of

practice or did not satisfy the suitability to practice requirements.

The Tribunal consists of:

President: Mr Ron Cahill  
Acting Presidents: Mr Michael Somes  
Mr Peter Dingwall  
Mr John Burns  
Ms Karen Fryar  
Mr Shane Madden  
Ms Beth Campbell  
Ms Maria Doogan  
Mr Grant Lalor  
Mr Michael Peedom

In the 2005/2006 financial reporting period five cases were lodged with the Tribunal. All of these matters related to registration issues originating from the ACT Medical Board. Three matters were interim order applications, and two were applications for review.

### **Legal Profession Disciplinary Tribunal**

The Legal Profession Disciplinary Tribunal was established on the commencement of the *Legal Profession Act 2006* (the Act) on 1 July 2006.

The Tribunal is required to hear any disciplinary matters arising under the Act. The Tribunal replaces the Professional Conduct Board for all new disciplinary matters arising under the Act from 1 July 2006. The Tribunal consists of a Chair and Deputy Chair appointed by the Attorney General, three barristers nominated by the Bar Association, three solicitors nominated by the Law Society and three lay members selected by the Attorney General.

As at the date of the preparation of this paper the Tribunal has not heard any matters. It is anticipated that this tribunal will hear a low number of matters.

## Liquor Licensing Board of the ACT

The Liquor Licensing Board of the ACT is established under the *Liquor Act 1975*. The functions of the board are to:

- consider and determine applications or other matters referred to it under the Act;
- to conduct inquiries, including hearings, in relation to applications or other matters referred to it under the Act; and
- to advise the minister, as required, on matters of policy and administration; and to perform such other functions and duties as are conferred on it by or under the Act or another Act.

### Membership

Mr Allan O'Neil

Mr Peter Conway

Mr Brian McDonald

Ms Robyn Davies

Mr Tony Brown

### Summary of Liquor Board hearings for 2006

No. of board meetings in 2006 to date (Mtgs no. 151 – 160)	10
No. of sitting days:	10
No. of licensees referred to board to date: (ON: 14, OFF: 0, GEN 0)	14
No. of applications - for directions: 10, for suspension: 2, for cancellation	
No. of applications dismissed (under s 84(2)(c) after holding a hearing)	1
One charge also dismissed under s 84(2)(c)	
No. of applications carried over from 2005	
for directions: 3, for suspension: 1, for cancellation 1	5
No. of applications not completed as at 16/11/06	1
Nos of times all 2006 matters before the board for hearing	23
Nos of breaches proven:	15
S 122 Premises closed	1
S 126(1) Food not available	2
S 135(a) Breached conditions for holding an ON lic	1

S 148	Exceeded the occupancy	
loading		4
S 152(1)	Sold liquor to underager/s	1
S 157(1)	Underager/s in the bar-room	4
C 20 LSM	Firedoor/exit blocked	1
C 39 LSM	Underage function requirements	
breached, insufficient security		
staff		1
No. of penalties:		15
No. of directions issued		11
Monetary penalties		8
Other orders		17
No. of reprimands issued:		1
No. of lic suspensions		2
1 suspension set aside		
No. of lic cancellations		1
Representation by legal practitioner:		4

## **The Racing Appeals Tribunal**

Section 38 of the *Racing Act 1999* (the Act) establishes the Racing Appeals Tribunal to hear and determine appeals from persons aggrieved by a decision of a controlling body, an approved racing organisation or another person conducting a race meeting in the ACT.

The Tribunal consists of:

President: Magistrate Grant Lalor

Deputy President: Mr Robert Cook

Members: Ms Tracey Fitzpatrick

Ms Rachel Lewis

Ms Linda Webb

Mr Philip Drever

These appointments will expire on 29 August 2007.

This Tribunal only handles a small number of matters each year. In 2005-06 the Tribunal heard two matters. The cost of this Tribunal in 2005-06 was \$10,893 and these costs were met from the Racing Development Fund.

## **ACT Architects Board**

Section 64 of the *Architects Act 2004* provides for the establishment of the Architects Board.

The principal functions of the Board are:

- To register architects;
- To investigate complaints about registered people and people who have been registered;
- To take disciplinary action where necessary;
- To consider and report to the Minister about issues referred to the Board by the Minister;
- To advise the Minister in relation to the practice of architecture;

- To further a common legislative approach through cooperation with other jurisdictions;
- To accredit courses of study in architecture; and
- To provide general advice to consumers about the professional conduct and standards of competence expected of registered architects.

The Board acts like a Tribunal when holding an inquiry prior to taking disciplinary action. Witnesses may be called at an inquiry and the ACT Architects Board may appoint a lawyer to examine witnesses and advise on matters relating to the inquiry.

The Board has five members:

- One member must be nominated by a representative body – Catherine Townsend;
- One member must be, or have recently been an academic architect - vacant - Nino Bellantonio's appointment expired 31 August 2006;
- One member must be a registered architect - Meredith (Tooe) Elliott;
- One member must be a commercial lawyer - Robert Clynes; and
- One member is to represent community interests, and must not be a registered architect – vacant - Julian White's appointment expired 31 August 2006.

In 2005-06, the Board had no complaints against the conduct of architects. As such, the Board held no inquiries in 2005-06.

### **Commissioner for Surveys (discipline - surveyors)**

Section 33 of the *Surveyors Act 2001* provides for the Commissioner for Surveys to hold an inquiry where a disciplinary notice has been issued to a surveyor. At the completion of the inquiry the commissioner must decide whether each ground stated in the notice is established. If the commissioner is satisfied that a disciplinary ground is established, the commissioner may reprimand the surveyor, or suspend or cancel a surveyors registration.

For the purpose of an inquiry the Commissioner may administer an oath or affirmation to anyone appearing as a witness before the Commissioner. Under section 33 the Commissioner is not bound by legal procedures or the rules of evidence, but may inform himself or herself in any way the Commissioner considers appropriate, provided natural

justice is observed.

When holding an inquiry the Commissioner is acting as a tribunal, as he or she can hear, receive and examine evidence. The Commissioner has not held any inquiries in the past 18 months.

### **Registrar of Motor Vehicle Dealers (discipline - car sellers)**

Part 7 of the *Sale of Motor Vehicles Act 1977* provides for the Registrar of Motor Vehicle Dealers to hold inquiries into the grant of licences, disputes about the purchase of motor vehicles and any other matters under the Act.

When holding an inquiry the Registrar is acting as a tribunal, as he or she can hear, receive and examine evidence. The *Sale of Motor Vehicles Act 1977* permits the Registrar to take evidence on oath or affirmation, and for that purpose may administer an oath or affirmation. The Registrar also has power to summons witnesses.

### **Construction Occupations Registrar (discipline - construction occupations)**

Under Division 5.3 of the *Construction Occupations (Licensing) Act 2004* the ACT Construction Occupations Registrar can conduct an inquiry into a licensee or former licensee. The purpose of the inquiry is to determine whether any of the disciplinary grounds stated in a disciplinary notice are valid and to inform the Registrar as to what disciplinary action should be taken.

At an inquiry, the Registrar may take evidence on oath or affirmation and the Registrar is not bound by the rules of evidence. The Registrar may require a person to appear before an inquiry to give evidence. When holding an inquiry the Registrar is acting as a tribunal, as he or she can hear, receive and examine evidence.

The Registrar holds approximately six inquiries a year.

## Independent review

### Administrative Appeals Tribunal

The Administrative Appeals Tribunal was established by the *Administrative Appeals Tribunal Act 1989*. It reviews administrative decisions of government. The Tribunal presently has jurisdiction to review administrative decisions of Ministers, statutory authorities and Territory officials under approximately 100 Acts and Regulations.

Decisions made under the *Land (Planning & Environment) Act 1991*, the *Heritage Act 2004* and the *Tree Protection Act 2005* are dealt with in the Land & Planning Division of the Tribunal. All other matters (such as revenue, housing assistance, licensing, professional and occupational registration and discipline and freedom of information requests) are dealt with in the General Division.

Tribunal membership comprised

President Mr M H Peedom,

Senior Members Ms P O'Neil,

Dr E McKenzie

Mr B Hatch

Part-time Members Dr D McMichael,

Mr B Raison,

Mr R Nichols,

Mr J Ashe,

Mr T Chadwick,

Mr S Herrick

Ms A Boyle.

### Number of applications lodged with the AAT by jurisdiction

	2001-02	2002-03	2003-04	2004-05	2005-06
<b>GENERAL DIVISION</b>					
Housing	32	22	25	18	17
Rates/Valuation	3	3	1	3	2
Motor Vehicle	2		3	3	3

FOI	3	1	1	6	8
Land Tax	1	3	2	1	5
Payroll Tax				2	
Liquor Licence	2			2	3
Gun Licence	2	1	1	5	1
Rates defer/rem'n					
ACT Construction Occupations Registrar <sup>19</sup>	6	2	1	5	3
Pollution	3				
Dog Contol					
Dang. Goods		1	10	3	
Qualifications					
Lease					
Environment					
Medical	2		17	2	
Chiropractic	1				
Miscellaneous	7	4	6	4	11
Remitted from Supreme Court					
Tree	18	6	11	9	6
<b>TOTAL</b>	<b>82</b>	<b>43</b>	<b>78</b>	<b>63</b>	<b>59</b>

	2001-02	2002-03	2003-04	2004-05	2005-06
<b>LAND &amp; PLANNING DIVISION</b>					
Assets betterment	11	5	2		2
Heritage		2		2	
Land & Planning	72	88	69	42	41
Rent	2			2	2
Miscellaneous				1	
Tree *					8
Remitted from Supreme Court				1	1
<b>TOTAL</b>	<b>85</b>	<b>95</b>	<b>71</b>	<b>48</b>	<b>54</b>

<sup>19</sup> Prior to 1 September 2004 parts of this function were vested in the now redundant 'Building Controller' and the redundant Electricians Board and Plumber, Drainers and Gasfitter Board.

\* Changes to legislation see Tree matters taken out of General Division and placed into the Land & Planning Division of the Tribunal

	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>
<b>GENERAL DIVISION</b>	82	43	78	63	59
<b>LAND &amp; PLANNING DIVISION</b>	85	96	71	48	54
<b>TOTAL</b>	<b>167</b>	<b>139</b>	<b>149</b>	<b>111</b>	<b>113</b>

## Comparison of tribunals

Tribunal	Co-located with the Courts	Includes members of the Judiciary	Has non-judicial members	Frequency of hearings*	Shared registry or secretariat with another tribunal	1 or more member is cross-appointed to another tribunal	Carries out other non-tribunal functions	Perceived need for specialised knowledge or industry representatives on tribunal	Funded through a statutory fund or ICRC	Can sit as a single member
Residential Tenancies Tribunal	✓	✓	✓	High	✓	✓			✓	✓
Credit Tribunal	✓	✓	✓	Low	✓	✓		✓		✓ - at option of parties
Essential Services Consumer Council			✓	High	✓	✓			✓	
Mental Health Tribunal	✓	✓	✓	High	✓	✓		✓		✓ - on limited matters
Guardianship and Management of Property Tribunal	✓	✓	✓	High	✓	✓		✓		✓ - on limited matters
Discrimination Tribunal	✓	✓		Medium	✓					✓
Sentence Administration Board			✓	High				✓		✓ - on limited matters
Remuneration Tribunal			✓	Low						
Consumer and Trader Tribunal			✓	Low	✓	✓		✓	✓ - part	✓
Health Professionals Tribunal	✓	✓	✓	Low	✓	✓		✓		✓ - on limited matters

<b>Legal Profession Disciplinary Tribunal</b>		✓	✓	Low				✓	✓	✓
<b>Liquor Licensing Board of the ACT</b>			✓	Medium			✓	✓		
<b>Racing Appeals Tribunal</b>		✓	✓	Low		✓		✓	✓	✓ - for minor matters
<b>ACT Architects Board</b>			✓	Low			✓	✓		
<b>Commissioner for Surveys</b>	N/A	N/A	N/A	Low		N/A	✓	Must have specialised knowledge to be appointed, but no need for industry representation.		✓
<b>Registrar of Motor Vehicle Dealers</b>	N/A	N/A	N/A	Low		N/A	✓	Must have specialised knowledge to be appointed, but no need for industry representation.		✓
<b>Construction Occupations Registrar</b>	N/A	N/A	N/A	Low		N/A	✓	Must have specialised knowledge to be appointed, but no need for industry representation.		✓
<b>AAT</b>	✓		✓		✓	✓		✓		✓

\* High frequency of hearings means that the tribunal has hearings most weeks. Medium frequency of hearings means that the tribunal has hearings most months.

Low frequency of hearings means that the tribunal sits less than once a month.

## A comparative analysis of legislative provisions across a number of ACT tribunals

Tribunal	Credit Tribunal	Guardianship and Management of Property Tribunal	Administrative Appeals Tribunal	Residential Tenancies Tribunal	Consumer and Trader Tribunal
<b>Legislation governing tribunal</b>	<i>Consumer Credit (Administration) Act 1996, Part 4, 5</i>	<i>Guardianship and Management of Property Act 1991.</i>	<i>Administrative Appeals Tribunal Act 1989</i>	<i>Residential Tenancies Act 1997</i>	<i>Consumer and Trader Tribunal Act 2003</i>
<b>Duty to inquire</b>	Part 5	33			
<b>Ability to inform itself</b>	74	38, 39, 41	32	94,	27
<b>Power to compel witnesses</b>	86	41	32	96	33
<b>Power to compel documents</b>	86	41	32	96	33
<b>Discretion to determine own procedure</b>	75		32	120	23
<b>Informality of hearings</b>	74	34, 37	32	121	21, 23
<b>Absence of obligation to abide by rules of evidence</b>	74	38	32, 38	83, 121	27, 29, 30
<b>Requirement to provide fair process</b>	74	37	3A	121	22
<b>Decision on papers</b>					31
<b>Proceedings to be reasonably prompt</b>	74		32	121, 77	21
<b>Absence of burden of proof</b>	Code 83				
<b>Standard of proof</b>				57	
<b>Legal representation</b>	80, 83	36	31	82, 83, 95	29
<b>General powers of review</b>				115B	
<b>Membership</b>	62,63,64	59, 60, 61	5, 6	112	Div 2.2
<b>Functions of president</b>		66A	10, 18, 20	112, 116, 118	8, 24
<b>Single or multi member (Constitution)</b>	71	66	18, 19A	112	8
<b>Outside employment</b>					
<b>Oath of office</b>					
<b>Leave, retirement, resignation, disclosure of interests</b>					<b>37</b>

<b>Absence or death of a tribunal member</b>	71	66	18, 22		
<b>Protection of members, practitioners, parties</b>	98	66C	51	123	60
<b>Duty of secrecy</b>		66D	58		59
<b>Appoint assessors</b>				116	
<b>Adjourn proceedings</b>	89			81, 92	38
<b>Reasons</b>	93	45	26	106	49
<b>Presentation of case and submissions</b>				83, Div 6.4	
<b>Procedure in absence or party</b>	84		40	91	32
<b>Penalty for non-compliance by witness</b>	97	41A		97	53
<b>Procedural powers</b>					
<b>Investigatory powers</b>	Part 5 40	38, 39, 41			
<b>Public or private hearings</b>	85	37, 66D	34	90,	31
<b>Direct preliminary conference</b>				Div 6.3	20
<b>Decision on papers</b>					
<b>Hearing type eg oral, video</b>			34A,	96A	34
<b>Costs</b>	91	47	49E	100	36
<b>Questions of law</b>	77, 78	66B	20A, 42, 44	124, 83,	50
<b>Registry</b>	69	65	57	114	12,13
<b>Functions of registry</b>	69, 82, 86, 88, 92, 137,	65	40,	114, 117, 72	
<b>Divisions</b>					7
<b>Frivolous/vexatious proceedings</b>	47		43A	102	44
<b>Contempt</b>				121	
<b>May refer</b>	39 36A			104A	
<b>Tie break decisions</b>					39