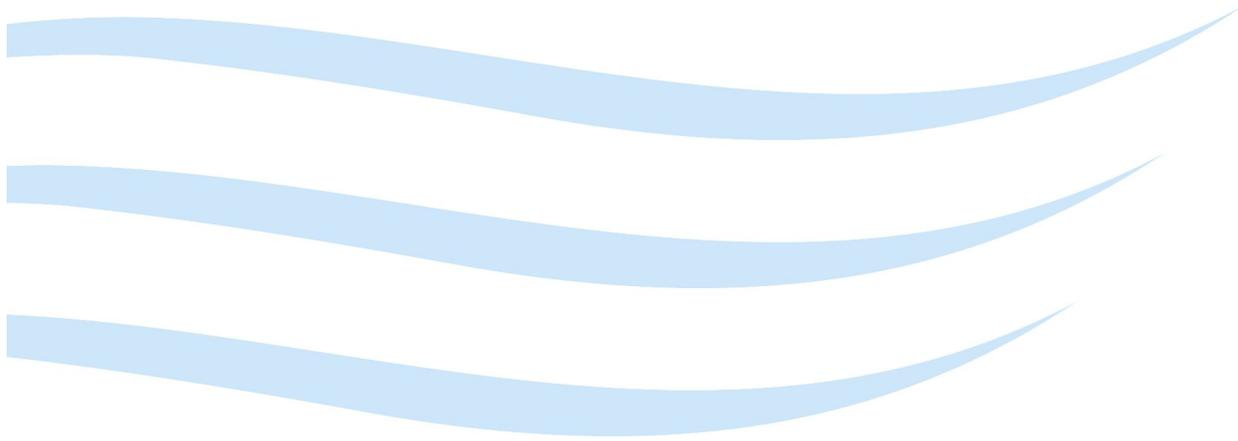


The Anti-Discrimination Tribunal

Annual Report

2016/2017





TASMANIA

ANTI-DISCRIMINATION TRIBUNAL

13 October 2017

The Hon. Elise Archer
Minister for Justice
10th Floor, Executive Building
15 Murray Street
HOBART TAS 7000

Dear Minister

ANTI-DISCRIMINATION TRIBUNAL - ANNUAL REPORT 2016/2017

Although not a requirement under the *Anti-Discrimination Act* 1998 that the Anti-Discrimination Tribunal (ADT) produce an Annual Report, I have taken the opportunity to do so given the ADT is administered by the Workers Rehabilitation and Compensation Tribunal. I attach my report which summarises the operation of the ADT during the financial year commencing 1 July 2016.

The report will be published on the ADT's website in order to provide information to the public about the functions, powers and activity of the ADT.

If you have any queries, please do not hesitate to contact me.

Yours faithfully

R. B. Webster
CHAIRPERSON

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1 Overview

The Anti-Discrimination Tribunal (ADT) is an independent statutory tribunal established¹ under the *Anti-Discrimination Act 1998* (the Act) with responsibility to:

- review decisions of the Anti-Discrimination Commissioner (ADC) to dismiss or reject a complaint made under the Act²;
- review decisions made by the ADC as to applications for exemptions³;
- conduct inquiries on matters referred by the ADC⁴.

In early 2015 the Attorney-General and the Department of Justice requested the then Chief Commissioner (Stephen Carey) of the Workers Rehabilitation and Compensation Tribunal (WRCT) to have that Tribunal assume the administration and operation of the ADT. This occurred with Stephen Carey being appointed the Chairperson of the ADT in July 2015. Since that time the ADT has been co-located with the WRCT and three other tribunals which are supported by the WRCT. The Registry is located at the Hobart premises of the WRCT and the ADT utilises administrative support from the WRCT and its premises consisting of hearing rooms, and conference/meeting rooms in both Hobart and Launceston.

2 Constitution of the Tribunal

The Tribunal may be constituted by one or more members as determined by the Chairperson in respect of a particular matter referred to the ADT and the Chairperson may also determine which of those members is to be the presiding member⁵.

The membership panel of the ADT is currently:

- Mr Robert Webster - Chairperson
- Ms Lucinda Wilkins
- Mr Steven Bishop
- Ms Jennifer Bridge-Wright
- Ms Kate Cuthbertson
- Ms Audrey Mills

1 s12(1)(a)
2 s72
3 s59
4 s78
5 s12(4)

- Mr Robert Winter

Prior to July 2015, the administration and operation of the ADT was undertaken by the Magistrates Court with Magistrates Glenn Hay and Simon Brown continuing in their role with the ADT once its jurisdiction was transferred so they could complete part-heard matters. Magistrate Hay's matters were finalised in this financial year and as a result he resigned from the ADT. Magistrate Brown's matter has been finalised since 1 July 2017 and he has also resigned. I express my appreciation for the work that they have both attended to in this jurisdiction over many years.

In addition, Mr Rod Chandler who was also a member of the ADT until he left the WRCT in March 2016 to take up an appointment as a Coroner, resigned during this financial year. Accordingly, I express my thanks to him for the work he has performed in this jurisdiction.

Finally, Professor Margaret Otlowski and Ms Cathryn McKenzie resigned from the ADT during this financial year. Both members provided many years of dedicated service to the ADT for which I thank them.

3 Membership Requirements

To qualify for appointment as Chairperson of the ADT a person must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner, a magistrate or former judge⁶.

If in any particular matter the ADT consists of only one member, that member must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner, a magistrate or former judge⁷.

If in any matter the ADT consists of two or more members, one of those members must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner. The other members must be persons with the experience and expertise relevant to the inquiry before the ADT⁸.

It is for the Chairperson to determine which member or members will constitute the ADT in any particular matter and if the ADT is constituted by more than one person, then the Chairperson may determine who is to be the presiding member⁹.

4 Summary of Human Resources

The following table provides a summary of the number of Full Time Equivalent staff engaged in the work of the WRCT as at 30 June each year. The ADT is supported by the WRCT and therefore utilises staff of the WRCT.

6 s12(1)(c)
 7 s12(2)
 8 s12(3)
 9 s12(4)

	30 June 2017 Actual	2017 Budget
Full Time Equivalent Staff	7.1	6.5

5 Tribunal Accommodation

The ADT shares accommodation with the WRCT. There are currently four tribunals supported by the WRCT, being the Health Practitioners Tribunal, Motor Accidents Compensation Tribunal, Asbestos Compensation Tribunal and the ADT. Signage at premises in both Hobart and Launceston reflect the colocation of these Tribunals.

The ADT's Hobart premises are located at Level 7, NAB House, 86 Collins Street, Hobart. These premises consist of the registry, office accommodation, two hearing rooms, two conciliation rooms and two meeting rooms. In Launceston the Tribunals moved to new and improved premises at 1/111 St John Street in August 2015. Tribunal staff are based in Hobart and travel as required to the North of the State.

Video conference facilities are available at the premises in Hobart and Launceston.

6 Referrals to the Tribunal 2016/2017

The Tribunal received 41 applications in the 2016/2017 financial year.

Description	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Inquiry	23	77	29	62	24
Review of Rejection	10	8	6	6	15
Review of Dismissal	7	4	4	3	2
Other			1		
Total:	40	89	40	71	41

The Tribunal finalised 28 referrals in the 2016/2017 financial year. Of those 28 referrals, 11 were matters lodged within the 2016/2017 financial year.

Finalisation Period	2016/2017
1 Month	8
1-3 months	4
3-6 months	8

Finalisation Period	2016/2017
6-9 months	6
9-12 months	2
Total	28

7 Tribunal Procedure

The procedure for how matters are dealt with by the ADT was amended when the administration and operation of the ADT was passed to the WRCT. There was initially some confusion to parties who had matters before the ADT at the time of the change over, and some delay in actioning these files by the ADT during this change over while files were physically moved and then assessed by staff who had to become familiar with the files and the procedures applicable.

All matters upon receipt by the ADT are now subjected to active case management by telephone direction conferences conducted by the Registrar and Deputy Registrar during which time action is directed to be undertaken by the parties in order to fully prepare their case. At the conclusion of this preliminary stage a Conciliation conference is conducted once again by the Registrar or Deputy Registrar. The ADT maintains the alternate dispute resolution processes as the primary method of resolving disputes and matters are not advanced to formal hearing until such time as the Registrar or Deputy Registrar conducting the conciliation process determines that a negotiated resolution is unlikely.

The conciliation process provides an avenue for the parties to achieve an acceptable outcome without the risks and costs associated with a formal hearing. It provides the opportunity for parties to settle on terms that the ADT may not have the power to order¹⁰. A conciliation is also held in private as opposed to a hearing which is open to the public¹¹.

8 Appeals to the Supreme Court of Tasmania

A person may appeal to the Supreme Court on a question of law or fact against an order made under s89 (which is made once a complaint has been substantiated after inquiry) or s95 (as to costs). In addition, a person may appeal to the Supreme Court against a decision under s78(4) (where the ADC declines to refer a complaint to the ADT and dismisses it) or a dismissal by the ADT under s99. Finally a person may appeal to the Supreme Court against a determination on a question of law under s86(4)¹².

There was one appeal to the Supreme Court in the 2016/2017 financial year.

¹⁰ The ADT's power to make orders if it finds, after inquiry, that a complaint is substantiated is limited to those set out in s89

¹¹ s85

¹² s100

9 Decisions of the Tribunal

Until the administration and operation of the ADT was transferred from the Magistrates Court in July 2015, decisions of the ADT were only published if specifically authorised by the responsible member or members. After responsibility for the administration and operation of the ADT was transferred, Stephen Carey, the then Chairperson, directed that all written determinations of the ADT be published. All determinations of the Tribunal are in writing and published on <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASADT/> (save for those matters with suppression orders).

Eight decisions were published during the 2016/2017 financial year.

There are, however, a significant number of ADT determinations made before July 2015 that are not published. These may contain discussion on relevant principles and findings of law that would serve as a valuable resource to not only legal practitioners and others with ongoing involvement in this jurisdiction but also to the community generally.

I am pleased to report that since the retirement of the former Chairperson of the ADT, Stephen Carey, in October 2016, he has obtained funding from the Law Foundation to obtain and review copies of all ADT determinations made prior to July 2015 for consideration as to whether or not they contain a discussion of relevant principles that would be of use to the public and those who practise or appear in this jurisdiction. He is part of the way through this task and once the useful determinations have been isolated and reformatted they will be published on Austlii. I understand this project may be finalised by May 2018. I thank Mr Carey for devising this project, seeking the funding and performing the work required. I also thank Eve Marriott for providing the administrative support required for this project in her own time.

10 Report on Financial Statement

As reported in the Annual report of the Magistrates Court for 2014/2015 no separate budget allocation was made for the ADT but rather all administrative and running costs of the ADT were absorbed in the overall Magistrates Court budget. This is an issue for the WRCT as it is funded by the Workers Compensation Fund (non-consolidated revenue) and there needs to be a proper accounting for the value of services provided by WRCT and costs incurred by the ADT. Accordingly in 2015/2016 funding from consolidated revenue of \$90,000.00 was allocated by the Department of Justice to operate the ADT. This figure has increased slightly to \$92,169.00 for 2016/2017.

Since the beginning of the 2016-2017 financial year, time of all staff including Tribunal Members on matters is being recorded so that there can be a proper accounting for the cost of operating the ADT. This does not, however, include the cost of premises, equipment or vehicles and the like.

In addition the Department of Justice has engaged KPMG to conduct an audit of the funding and accounting of the various tribunals overseen by the Chief Commissioner of the WRCT. The audit will consider the application of and accounting for the funds provided to support the various activities of the tribunals under the responsibility of the Chief Commissioner, to ensure that such funds are being applied in compliance with current policies and legislative requirements of the various tribunals. Work on the audit commenced in August 2017.

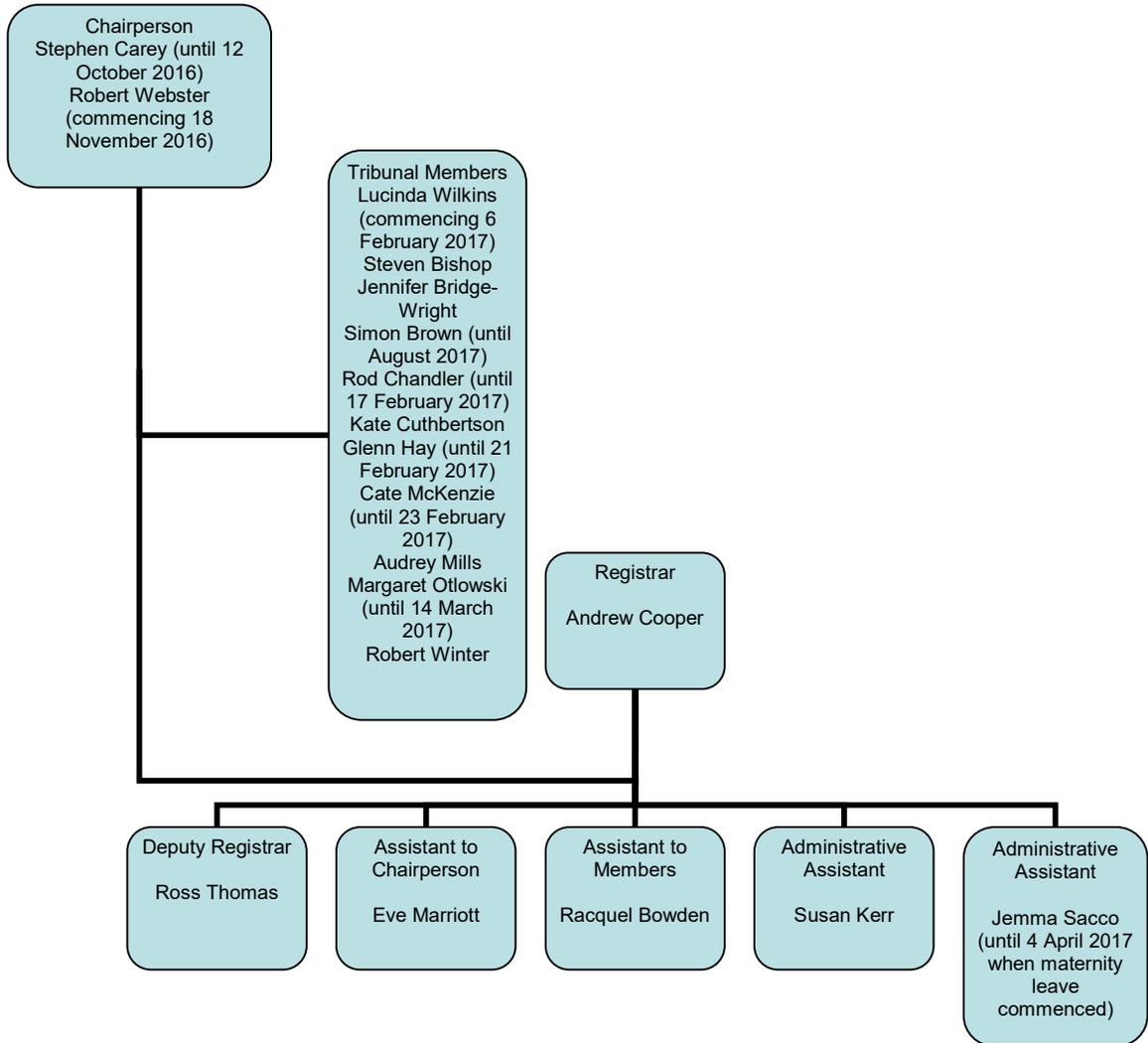
11 Intent for 2017/2018

Discuss with the Department of Justice the findings of the KPMG audit. The result should be the provision of a transparent allocation of funding to operate the ADT which will ensure funds provided to operate the WRCT are not used to operate the ADT.

I intend to discuss with the Department of Justice some legislative proposals I have which are designed to improve the operation of the Act. The proposals concern issues which I have encountered since I commenced my appointment.

12 Members of Tribunal & Staff

The members of the ADT and its staff are detailed below. I thank them for the work they have done and the support and assistance they have provided to me since my appointment.



R. Webster
Chairperson