

**THE LEGAL PRACTITIONERS'
DISCIPLINARY TRIBUNAL**

**REPORT FOR THE PERIOD
1 JULY 2004 – 31 DECEMBER 2004**

**5TH FLOOR
KINGS BUILDING
533 HAY STREET
PERTH WA 6000**

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

This is the thirteenth Report of the Legal Practitioners' Disciplinary Tribunal (the Tribunal). It is also the final report to be submitted for the Tribunal. It is submitted pursuant to S.31G(1)(b) of the *Legal Practitioners Act 1893* and S.174 of the *Legal Practice Act 2003* (the new Act) which came into effect on 1 January 2004.

The Legal Practitioners Disciplinary Tribunal was established under the amendments to the *Legal Practitioners Act 1893* which came into existence on 1 February 1993. Part IV of the *Legal Practitioners Act* contains the professional conduct and discipline provisions.

Following proclamation of the new Act the Legal Practitioners Disciplinary Tribunal was established. Section 168(1); Part 12, Division 2 of the 2003 Act contains the relevant provisions for the Legal Practitioners Disciplinary Tribunal.

The function of the Disciplinary Tribunal was to hear and determine formal References made to it by the Legal Practitioners Complaints Committee or pursuant to Section 28C(2)(b) of the *Legal Practitioners Act 1893* and Section 181(2) of the new Act.

A feature of the legislation is that non-lawyer Representatives of the Community have been sitting as members of the Tribunal since its inception. The former Barristers Board had urged this development for over 12 years in the interests of greater public accountability and credibility of the disciplinary system. The Community Representatives available to sit on the Tribunal during the period under review were Mrs V Rivalland, Ms B Holland, Mr I Flack and Dr K Spillman. The Community Representatives were appointed for a 12 month term expiring on 31 December 2004 or on the commencement of the State Administrative Tribunal (the SAT), whichever occurred first.

During the course of this reporting period, the present Government announced significant changes which it proposed in relation to administrative appeals. These came to fruition with the proclamation of the *State Administrative Tribunal Act 2004* (the SAT Act) on 1 January 2005. The State Administrative Tribunal commenced on 1 January 2005.

During a period of significant change the Tribunal's work continued. There were four part heard matters which were commenced in 2003 and the Hon. Mr BW Rowland QC, Chairperson of the Tribunal to 31 December 2003, continued to deal with these matters until they were completed in 2004. This was pursuant to Schedule 2 Part C 4(b) of the *Legal Practitioners Act 1893*. The *Legal Practice Act 2003* continued this practice.

Following final hearings in relation to References against 2 practitioners, in July and November 2004 the Tribunal submitted 2 Reports to the Full Court of the Supreme Court recommending that each of these practitioners be struck off the Roll of Practitioners. Publication occurred for the matter of Mr David Ernest Eley on 9 July 2004 and for Mr Andrew Cecil Thorpe on 12 November 2004.

It is noted that the workload on Tribunal members increased over the last few years. This does not necessarily indicate that more practitioners are offending. Rather it indicates that the hearings are becoming more complex and developing more into full scale trials with much of the interlocutory process that goes with a normal Court hearing. To a great extent this was difficult to avoid if we were to give natural justice to those who appear before the Tribunal.

References

During the period under review 9 new References were made to the Tribunal by the Legal Practitioners Complaints Committee. Whilst these 9 References concerned only 6 practitioners, in 2 instances there were multiple References against the one practitioner.

During the current reporting period, as noted previously, References lodged in earlier years as well as some lodged in this reporting period have been dealt with. Urgent matters were given priority and dealt with as expeditiously as possible.

The formal References to the Tribunal were usually from the Law Complaints Officer of the Legal Practitioners Complaints Committee. However, there is provision for a complainant to make his or her own Reference under Section 28C(2)(b) of the *Legal Practitioners Act 1893* and S181(2) of the new Act if that complainant is aggrieved by

the Complaints Committee's Decision not to institute formal proceedings. There have been no such complainant References to December 2004.

Hearings

Hearings were conducted and concluded by the Tribunal on References initiated by the Law Complaints Officer against 4 practitioners during the period under review. A summary of these hearings and the outcome of each is **attached**.

It is to be noted in the attached summary that publication was ordered in all matters but one when allegations were proven.

Hearings were conducted in part against 13 practitioners during the year under review. These relevant files were transferred to the State Administrative Tribunal on 20 December 2004 and 4 March 2005 and accordingly do not appear on the attached table of 'Concluded Matters'.

The Tribunal conducted hearings over a total of 26 days throughout the period of review. Considerable additional time was then spent in meetings on Decisions when a Decision was reserved, and preparing and finalising Reasons for Decision and Reports of Decisions.

In general terms, it is my view, based on the small number of serious allegations that came before the Tribunal that the profession generally remains in good standing within the Community.

References forwarded to the State Administrative Tribunal (SAT)

As noted previously the SAT came into force on 1 January 2005 and consequently the following matters have been transferred. A number of those matters were conducted in part and in some a Directions Hearing was held.

REFERENCE NUMBER	DATE FORWARDED TO SAT
R36/02	4 March 2005
R37A/02	4 March 2005
R37B/02	4 March 2005
R37C/02	4 March 2005
R37D/02	4 March 2005
R1A/03	4 March 2005
R1B/03	4 March 2005
R5/03	4 March 2005
R8A/03	4 March 2005
R8B/03	4 March 2005
R17/03	20 December 2004
R18A/03	4 March 2005
R18B/03	4 March 2005
R22A/03	4 March 2005
R22B/03	4 March 2005
R22C/03	4 March 2005
R22D/03	4 March 2005
R25/03	4 March 2005
R26/03	20 December 2004
R31/03	4 March 2005
R32/03	4 March 2005
R33A/03	4 March 2005
R33B/03	4 March 2005
R33C/03	4 March 2005
R33D/03	4 March 2005
R33E/03	4 March 2005
R33F/03	4 March 2005
R1/04	20 December 2004
R2/04	20 December 2004
R3A/04	4 March 2005
R3B/04	4 March 2005
R3C/04	4 March 2005

REFERENCE NUMBER	DATE FORWARDED TO SAT
R6A/04	20 December 2004
R6B/04	20 December 2004
R7/04	4 March 2005
R8/04	20 December 2004
R10/04	4 March 2005
R11/04	20 December 2004
R12A/04	4 March 2005
R12B/04	4 March 2005
R13/04	20 December 2004
R14/04	20 December 2004
R15/04	20 December 2004
R16/04	20 December 2004
R17/04	4 March 2005
R18/04	20 December 2004
R19A/04	20 December 2004
R19B/04	20 December 2004
R20/04	20 December 2004
R21/04	20 December 2004
R22/04	20 December 2004
R23/04	4 March 2005
R24/04	20 December 2004
R25A/04	20 December 2004
R25B/04	20 December 2004
R25C/04	20 December 2004
R26/04	20 December 2004
R27/04	20 December 2004
R28/04	4 March 2005
R29/04	20 December 2004

Information Statement

Pursuant to Part V of the *Freedom of Information Act 1992*, the Tribunal is required to publish an information statement. The Attorney General has approved, in accordance with Section 97(1) of the said Act, publication of the statement by incorporation in an Annual Report. Accordingly, the information statement of the Tribunal is at the end of this Report. It has been prepared in accordance with the requirements of Section 94 of the said Act.

Accounts

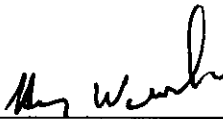
The Disciplinary Tribunal does not administer any funds. Hence no accounts are provided with this Report.

Acknowledgments

The Tribunal depended for its membership and effective functioning on the voluntary services of all Queen's Counsel, Senior Counsel and the elected members of the Legal Practice Board (except those who are members of the Legal Practitioners Complaints Committee). The extent and value of these services is usually unnoticed.

The willing cooperation and constructive contribution of the representatives of the Community has been universally respected and welcomed. The value of this combined contribution is to the ultimate benefit of the Community, the standing of the law as an institution, and the legal profession.

The Disciplinary Tribunal has again been ably assisted during this year by the work of the administrative staff. I should not close without noting with gratitude and appreciation the great support obtained from our Registrar Ms M-A Paton, BA (Hons) (UWA), DipEd (ECU), MA (UWA), Clerk of Court, Mrs T Brodie and other staff who have so ably assisted the Tribunal.



H Wallwork QC

Chairman

December 2005

MATTERS CONCLUDED 01.07.04 – 31.12.04

FILE NO.	REF NO.	PRACTITIONER	NATURE OF HEARING	ALLEGATION	HEARING DATE/S	FINDING
14/03	R14A/03	S28(C)1	Unprofessional Conduct	03.09.2003 15.12.2003 17.12.2003 18.12.2003 27.08.2004	Dismissed.	
14/03	R14B/03 R14C/03 R14D/03	Mr AC Thorpe S28(C)1 S28(C)1 S28(C)1	Unprofessional Conduct Unprofessional Conduct Unprofessional Conduct	03.09.2003 15.12.2003 17.12.2003 18.12.2003 27.08.2004	Report to the Full Court. Suspension pending outcome of Report. Costs: to be taxed unless otherwise agreed. Publication ordered. Appeal lodged at Supreme Court.	
15/03	R15A/03 R15B/03 R15C/03	Mr AC Thorpe S28(C)1 S28(C)1 S28(C)1	Unprofessional Conduct Unprofessional Conduct Unprofessional Conduct	03.09.2003 15.12.2003 17.12.2003 18.12.2003 27.08.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: to be taxed unless otherwise agreed. Publication ordered. Appeal lodged at Supreme Court.	
15/03	R15D/03	S28(C)1	Unprofessional Conduct	03.09.2003 15.12.2003 17.12.2003 18.12.2003 27.08.2004	Dismissed.	
24/03	R24A/03 R24B/03	Mr AC Thorpe S28(C)1	Unprofessional Conduct Unprofessional Conduct	15.12.2003 17.12.2003 18.12.2003 27.08.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: to be taxed unless otherwise agreed. Publication ordered. Appeal lodged at Supreme Court.	

FILE NO.	REF NO.	PRACTITIONER	NATURE OF HEARING	ALLEGATION	HEARING DATE/S	FINDING
24/03	R24D/03	S28(C)1	Unprofessional Conduct	15.12.2003 17.12.2003 18.12.2003 27.08.2004	Dismissed.	
27/03	R27/03	S28(C)1	Unprofessional Conduct	15.12.2003 17.12.2003 18.12.2003 27.08.2004	Dismissed.	
28/03	R28/03	Mr AC Thorpe	Unprofessional Conduct	15.12.2003 17.12.2003 18.12.2003 27.08.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: to be taxed unless otherwise agreed. Publication ordered. Appeal lodged at Supreme Court.	
29/03	R29A/03 R29B/03 R29C/03 R29D/03	Mr DE Eley	Neglect Unprofessional Conduct Unprofessional Conduct Unprofessional Conduct	05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: \$30,000 Publication ordered.	

FILE NO.	REF NO.	PRACTITIONER	NATURE OF HEARING	ALLEGATION	HEARING DATE/S	FINDING
30/03	R30/03	Mr DE Eley	S28(C)1	Unprofessional Conduct	05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: \$30,000. Publication ordered.
4/04	R4/04	Mr DE Eley	S28(C)1	Neglect/Undue Delay	05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: \$30,000. Publication ordered.
5/04	R5A/04 R5B/04	Mr DE Eley	S28(C)1	Neglect/Undue Delay Unprofessional Conduct	05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: \$30,000. Publication ordered.
5/04	R5C/04	S28(C)1	Unprofessional Conduct		05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Dismissed.

FILE NO.	REF NO.	PRACTITIONER	NATURE OF HEARING	ALLEGATION	HEARING DATE/S	FINDING
9/04	R9/04	Mr DE Eley	S28(C)1	Unprofessional Conduct	05.05.2004 24.05.2004 28.05.2004 28.06.2004 29.06.2004 09.07.2004	Proved. Report to the Full Court. Suspension pending outcome of Report. Costs: \$30,000. Publication ordered.
10/03	R10/03	Mr KM Penkin	S28(C)1	Unprofessional Conduct	19.05.2004 13.08.2004	Proved. Reprimanded. Costs: \$2,000. Publication ordered.
19/03	R19/03	Mr KM Penkin	S28(C)1	Unprofessional Conduct	19.05.2004 13.08.2004	Proved. Reprimanded. Costs: \$2,000. Publication ordered.
23/03	R23/03	Mr KM Penkin	S28(C)1	Unprofessional Conduct	09.05.2004 13.08.2004	Proved. Reprimanded. Costs: \$2,000. Publication ordered.
20/03	R20/03		S28(C)1	Unprofessional Conduct	14.06.2004 30.07.2004	Dismissed.

FREEDOM OF INFORMATION ACT 1992 (FOI ACT)

Information Statement

Legal Practitioners Disciplinary Tribunal

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the FOI Act and relates to the Legal Practitioners Disciplinary Tribunal (Disciplinary Tribunal). The structure of the Disciplinary Tribunal was set out in Section 28E of the *Legal Practitioners Act 1893* (which Act is now repealed) (the 1893 Act) and Section 169 and Section 171 (*sections repealed*) of the *Legal Practice Act 2003* (the 2003 Act)).
2. The Legal Practitioners Disciplinary Tribunal was abolished and replaced by the State Administrative Tribunal on 1 January 2004.
3. The function of the Disciplinary Tribunal was to hear and determine all matters referred to the Tribunal for hearing and to make and enforce such orders in respect of those matters as seemed appropriate to the Tribunal. The functions are set out in Section 28D of the *Legal Practitioners Act 1893* and Section 172 of the *Legal Practice Act 2003*.
4. In the performance of its functions Representatives of the Community were members of the Disciplinary Tribunal and were appointed by the Attorney General after consultation with the Minister responsible for Consumer Affairs. Members of the public who made a complaint to the Complaints Committee and who were aggrieved by the determination of the Complaints Committee, were able to initiate their own proceedings against a legal practitioner before the Disciplinary Tribunal pursuant to Section 28C(2)(b) of the *1893 Act* and Section 181(2) (*section repealed*) of the *2003 Act*. Under Section 28C(3) of the 1893 Act and Section 181(4) (*section repealed*) of the 2003 Act if the Complaints Committee in its reasons for the determination found the complaint:
 - (a) to be trivial unreasonable vexatious or frivolous;
 - (b) to relate to conduct or events too remote in time to justify investigation; or
 - (c) to be a matter in which the complainant did not have a sufficient interest to justify that complaint,no Reference initiating proceedings before the Disciplinary Tribunal was to be made and if made would not be given effect, unless with the consent of the Attorney General.
5. The kinds of documents that were usually held by the Disciplinary Tribunal comprised its Reference file, which contained correspondence,

memoranda and the pleadings relating to the Reference, Decisions and the Report for Publication if publication was ordered, together with any newspaper reports where printed of such matters. The Disciplinary Tribunal had a set of notes for complainants wishing to make their own Reference under Section 28C(2)(b) of the *1893 Act* and Section 181(2) (section repealed) of the *2003 Act* explaining the procedure to be followed.

There is no written law other than the FOI Act whereunder any of these documents may be inspected.

There is no law of practice whereunder any of these documents may be purchased. Copies of the above-mentioned notes for complainants may be inspected or obtained from the Registrar of the Tribunal free of charge. Copies of the said set of notes are available at the office of the Disciplinary Tribunal at 5th Floor, 533 Hay Street, Perth to any person who calls at that office or who otherwise contacts the Tribunal with an enquiry concerning such References. Mary-Anne Catherine Paton of 5th Floor, 533 Hay Street, Perth, is the Officer to whom initial enquiries as to access to documents may be made and who has been directed to make Decisions under the FOI Act.

6. Access applications under the FOI Act may be made to the Legal Practice Board of Western Australia in person at the address or by letter to 5th Floor, 533 Hay Street, Perth or by telephone 9325 1311 or by facsimile message 9325 2743.
7. The Disciplinary Tribunal had no procedures for amending under Part 3 of the FOI Act personal information in its documents. Any application for amendment would be dealt with in accordance with Part 3.
8. The Disciplinary Tribunal had no "internal manual" as defined in Section 95 of the FOI Act. None of its functions affect or were likely to affect rights privileges or other benefits or obligations penalties or other detriment's to which members of the public are or may become entitled, eligible, liable or subject.