

## Annual Report 2000-2001 Chapter 3 Our Divisions and the Appeal Panel

### PRIMARY LEVEL

#### Retail Leases Division

##### Structure and functions

The Retail Leases Division is a successor to the retail leases jurisdiction of the Commercial Tribunal. The Division hears retail tenancy claims from either lessors or lessees arising under the *Retail Leases Act 1994*. A single judicial member hears applications.

A second category of claim, an 'unconscionable conduct claim', is permitted by the legislation, through an amendment to the Act in 1998. It is expected that that jurisdiction will commence towards the end of 2001, following the enactment of relevant federal legislation. The Act provides for a separate procedure in relation to unconscionable conduct claims. They must be heard by a panel of three, including two non-judicial members with lessee or lessor backgrounds.

There has, as yet, been no appointment of a Divisional Head. The President, in conjunction with the Registrar, has undertaken these responsibilities.

##### Case load

The number of applications filed increased to 107 this year, compared to 52 last year. As in previous years, many of the applications were for interim orders arising from circumstances such as lessor lock-outs of the lessee for alleged non-payment of rent.

Often interim orders return possession to the lessee on the basis that they pay the disputed rent with the matter referred for mediation to the Retail Tenancy Unit (a statutory mediation service). Most of these disputes do not return to the Tribunal. This pattern is reflected in the number of final orders made during the year, five based on terms of settlement and 15 after hearing.

##### Early attempts at resolution

There is a strong emphasis on early resolution of tenancy disputes. As soon as the Tribunal receives an application, the Retail Tenancy Unit is notified. If the Unit has not been involved in the matter, wherever practical it is referred to the Unit. An officer of the Unit often attends hearings. During the year most of the preliminary and main hearings were conducted by one of three judicial members, each of whom is a highly experienced practising senior solicitor with expertise in commercial leasing. In most cases, the members actively seek to generate options for early resolution.

##### Significant cases and themes

In the cases where contested hearings occurred leading to written decisions, the Division dealt with some common types of disputes in commercial retail lease relationships, such as:

- scope of exclusivity clauses;
- lock-outs of lessees by lessors for alleged non-payment of rent;
- rights of shopping centre managers to see lessee turnover figures;
- agreements to a new lease and its terms; and
- alleged oral variations to the strict terms of the lease.

Some less common disputes were also dealt with such as:

- the nature of the right of the lessor/shopping centre manager to remove a lessee in good standing in order to undertake demolition works.

### **Legal Services Division**

#### **Structure and functions**

The Legal Services Division is the successor to the Legal Services Tribunal. The Division determines charges alleging professional misconduct or unsatisfactory professional conduct laid against legal practitioners and licensed conveyancers.

Hearings are conducted by three member panels, comprising two eminent legal practitioners and a non-judicial member drawn from the general community.

The information contained on this page is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information on this page is written for people resident in, or affected by, the laws of New South Wales, Australia only.

most recently updated 11 January 2002