

# **ANNUAL REPORT**

**Wes-KaapseHuurbehousingtribunaal  
IcandeloLentshonaKoloniLezindluEziqashweyoUkuzinzisa  
ingxoxo-mpikiswano  
TheWesternCapeRentalHousingTribunal**

**1APRIL2002TO31MARCH2003**

# ANNUALREPORT1APRIL2002TO31MARCH2003

## INDEX

	<u>Page</u>
ForewordbyDeputyChairperson	3
Part1: Generalinformation	4
Part2: HumanResourceManagement	6
Part3: PerformanceoftheTribunal	8
Part4: Status/statisticsofcomplaints	15

## **FOREWORD BY DEPUTY CHAIRPERSON**

In the absence of a Chairperson, I have pleasure in submitting this second annual report, covering the period 01 April 2002 to 31 March 2003, to the Provincial Minister of Housing.

The Western Cape Rental Housing Tribunal was established in terms of the Rental Housing Act, 1999 (Act No 50 of 1999), promulgated in August 2000. The Tribunal members were appointed in June 2001 and are currently in their third and last year of appointment. The Act prescribes that the Tribunal should consist of persons having expertise and exposure to rental housing matters, property management, housing development matters and consumer matters. The present Tribunal members bring with them rich experience in the fields of law, rental housing, property management, property development and consumer matters.

The report period was marred by the first Chairperson, Mr JW Theron, tragically passing away, which meant that the activities of the Tribunal were severely hampered in that formal hearings could not be held for the latter part of the year. At the time of submitting this report, the appointment of a new Chairperson and two Alternate members had not been finalised as yet, due to delays brought about by legislative problems. However, due to extraordinary efforts by the Support Component to resolve disputes by other means, the Tribunal can look back on a year that surpassed the achievements of the previous year. I would like to thank my fellow members for the way in which each contributed in their own way towards building a strong team. I also especially want to thank the Support Staff for their efforts and diligence throughout the year and the way in which they contributed towards making the Tribunal the success that it is.

**Ms MWotini**  
**Deputy Chairperson**

**31 July 2003**

## **PART ONE: GENERAL INFORMATION**

### **1.1 Introduction**

The rental housing field has to date been an area where a lot of disputes arose from ignorance, as well as unlawful and even illegal actions of landlords and tenants. Until the promulgation of the Rental Housing Act, 1999 (Act No 50 of 1999) on 01 August 2000, there was no other legal mechanism to deal with disputes, other than through costly civil litigation. The Rental Housing Act now provides general principles governing conflict resolution in the rental housing sector and also provides for the facilitation of sound relations between landlords and tenants through general requirements relating to leases laid down in the Act. This sets the backdrop against which the Tribunal must function.

The Tribunal is established in terms of section 7 of Act 50 of 1999 and consists of members appointed by the Provincial Minister of Housing. It has no infrastructure, no budget, is not responsible for any expenditure and it therefore has no financial statements. The activities of the Tribunal are funded from moneys appropriated by the Provincial Legislature and the Head of the Department of Housing is the Accounting Officer in respect of moneys appropriated.

### **1.2 Mission statement**

The Western Cape Rental Housing Tribunal seeks to harmonise relationships between landlords and tenants in the rental housing sector.

### **1.3 Legislative framework**

The following legislation provide fundamental principles and guidelines upon which the Tribunal operates:

- The Constitution of the republic of South Africa, 1996 (Act No 108 of 1996);
- The Rental Housing Act, 1999 (Act No 50 of 1999);

- The Unfair Practice Regulations and the Procedural and Staff Duties Regulations published in terms of Act 50 of 1999; and
- The Rent Control Act, 1976 (Act No 80 of 1976).

The functions of the Tribunal are to harmonise relationships between landlords and tenants in the rental housing sector; resolve disputes and unfair practices; inform landlords and tenants about their rights and obligations in terms of the Act; and to make recommendations to relevant stakeholders pertaining to issues related to the rental housing sector.

## **PART TWO: HUMAN RESOURCE MANAGEMENT**

### **2.1 Personnel arrangements**

The Tribunal does not have personnel within its employ. The administrative and technical support functions are performed by the Department of Housing that provides a Support Component in terms of section 11 of Act 50 of 1999. The personnel are appointed subject to the laws governing the Public Service.

### **2.2 Personnel costs and related information**

The members of the Tribunal, appointed in June 2001, are:

<u>Name</u>	<u>Capacity</u>
Mr JW Theron	Chairperson (deceased 05/10/2002)
Ms M Wotini	Deputy Chairperson
Mr P le Roux	Member
Mr M Mdludlu	Member
Ms T vander Hoven	Member

The members of the Western Cape Rental Housing Tribunal remained the same for the reporting period, with the only exception the position of Chairperson becoming vacant due to the passing away of Mr JW Theron on 05 October 2002. Due to anomalies in Act 50 of 1999 pertaining to the filling of a vacancy, a new chairperson could not be appointed within the reporting period. The process to select a new chairperson, as well as two alternate members was, however, started well within the reporting period.

All the initial members still have one year of their terms left and the Tribunal would like to recommend that, given the prescribed processes that have to be followed to appoint members, the necessary steps be taken timeously to prevent the Tribunal again becoming inoperative for an extended period.

## Expenditure

Expenditure in respect of the remuneration of Tribunal members for the financial year is as follows:

2002/2003

R132254

<b>Tribunal members</b>	<b>Hearings/Meetings</b>
Mr JW Theron	37564
Ms MWotini	17335
Mr PleRoux	22458
Ms TvanderHoven	36773
Mr MMdludlu	18123
Total:	132254

## PART THREE: PERFORMANCE OF THE TRIBUNAL

### 3.1 Key objectives

The key objectives of the Tribunal for the period under review, were as follows:

- To promote stability in the rental housing sector;
- To provide mechanisms to deal with disputes in this sector;
- To promote the provision of rental housing property;
- To facilitate, investigate, mediate and conduct hearings to resolve disputes between landlords and tenants;
- To inform landlords and tenants of their rights and obligations should unfair practices arise; and
- To make recommendations to relevant stakeholders regarding issues to be addressed in the rental housing field.

### 3.2 Review of activities

#### 3.2.1 Problems identified in Annual report for 2001/2002

In the previous annual report, the Tribunal noted various problem areas and made certain recommendations. Most of the issues have since been addressed, but due to a variety of reasons, it has to be reported that some problem areas still remain. To provide context, it is necessary to again refer to issues in the previous report and then to report on progress/lack of progress:

- *“The Tribunal has not had the opportunity to interact with Tribunals of the other provinces and it is therefore not possible to resolve problems around the Act in a uniform manner. The Tribunal will endeavour to liaise with the other Tribunals in this regard .”*

To date, only the Western Cape, Gauteng and KwaZulu-Natal Tribunals are operational. The other provinces are in various stages of implementation, but



informal contact has shown that no meaningful liaison will be possible, as they will not have dealt with any cases yet. Due to indications by the National Department of Housing that Act 50 of 1999 is in the process of being amended, the Tribunal has decided to rather wait for the proposals to be distributed first, before consulting with the other Tribunals on possible co-ordination of inputs.

- *“The enforcement of Tribunal rulings were hampered as the South African Police Service and the Public Prosecutors who were approached for specific cases, were not aware of the Rental Housing Act, 1999.”*

Much progress has been made in this regard, due to concerted efforts to inform and educate the SAPS and Magistrate’s Courts of Act 50 of 1999, as well as the existence and functioning of the Tribunal.

- *“In terms of Section 5(3)(d) of the Act, the interest on a deposit must be dealt with in accordance with the Estate Agency Affairs Act, 1976 and thus should be paid over to the Estate Agents Board. The Tribunal recommends that the interest should be refunded to the tenant, even when the landlord is, or has appointed an estate agent”*

Due to concerted efforts and close co-operation with organised bodies representing estate agents, the principle has been accepted by estate agents affiliated to these bodies and is being adhered to. Those not affiliated and still committing unfair practices, are dealt with on the basis of convincing them to comply, or to resolve disputes through formal hearings.

- *“In terms of Section 5(3)(a) a landlord must issue written receipts to the tenant for all payments. The Act is very specific in terms of Section 5(3)(b) on what detail should be on the receipts. Landlords have indicated that these specifications are not always possible (where supermarkets are used as collection points) and are also costly for the*

*landlord, which impacts financially on tenants.”*

This will be dealt with during the proposed amendments to Act 50 of 1999.

- *“The Act compels the landlord to do joint inspections with tenants before they move in and out of a dwelling (Sections 5(3)(e) and 5(3)(f)). The Tribunal is of the opinion that the Act places an obligation on both parties to be part of the inspections and that the costs can therefore not be attributed to the tenant. The Tribunal therefore questions the tendency of landlords/agents to charge the tenant extra for this action.”*

This will be dealt with during the proposed amendments to Act 50 of 1999. If need be, a formal ruling in this regard can also be considered, if not included in the amendments. The Tribunal is now also in the process of obtaining a legal opinion on this.

- *“Section 19 provides for the saving of only Section 28 of the Rent Control Act, 1976 (after the repeal of the rest of the Rent Control Act, and the abolishment of the Rent Board). The implications of this are: The Tribunal does not have any jurisdiction to deal with exemptions, or new determinations where previous determinations are obviously outdated. The Tribunal cannot order increases in rental which will enable landlords to effect much-needed maintenance on rent controlled properties. The National Minister of Housing will have to provide direction on how to further deal with rent controlled properties before August 2003 when the saving regarding rent control is repealed. The Western Cape will especially be affected by this, as there are approximately 3000 such properties that will be affected. The situation will be that, should rent control be retained, landlords will be penalised by not being able to increase rental by more than 10% and will therefore not be able to afford maintenance,*

*which in turn could lead to a decrease in the value of properties. On the other hand, should rent control be abolished, thousands of tenants will lose their homes due to high rental increments, which will flood the Tribunal with complaints regarding excessive increases in rental, leading to a situation where the Tribunal will have to determine what the rentals should be, with no guidelines to use.*

*To accommodate both these scenarios, Section 19(3) of the Rental Housing Act could be used, where the Minister may define criteria based on age, income or any other form or degree of vulnerability that apply to such tenant or group of tenants and amend or augment the policy framework on rental housing, by introducing a special national housing programme to cater for the needs of affected tenants that comply with the criteria. It is imperative that this issue be clarified before the August 2003 deadline, to provide consistency of rulings by all Tribunals”.*

The Tribunal finds it extremely disturbing that no official steps have to date been taken to comply with section 19(2) of Act 50 of 1999. As no steps have to date been taken to monitor or assess the impact of the repeal of the saving on poor and vulnerable tenants, it would appear that no specific action will be taken to alleviate hardship that may be suffered by affected tenants. The Western Cape has a large number of rental stock that fall within the scope of this saving. Should a large volume of complaints by affected tenants be received in a relatively short space of time after 01 August, the Tribunal could be rendered inoperative, given the extremely limited staff available (more fully discussed under 3.2.3).

### **3.2.2 Staffing**

Subsequent to the first Annual report being submitted, the Support Component was reinvestigated and the final report recommending two additional posts, was accepted by the Department. However, the

implementation has now been held back, pending the completion and acceptance of the macro-investigation of the whole Department, which would in all probability only be approved later in the year. The Tribunal wants to express its concern that the Support Component has for the past two years been understaffed and will still be for the foreseeable future.

Given the situation that a sudden increase in complaints due to rental protection being repealed as from 01 August 2003 is anticipated, it could well happen that the integrity of Tribunal will be compromised due to complaints not being dealt with within the prescribed 90 days period. This could lead to cases being taken on review due to non-compliance to the legislative prescripts.

The staff shortage still has a negative ripple effect resulting in a lack of capacity to investigate cases, to prepare documentation for hearings, to provide the necessary support to the members and to effectively embark on an awareness campaign.

The Tribunal would like to recommend that the filling of the newly approved vacant posts at the Support Component be afforded a high priority when the new Departmental structure is implemented.

### **3.2.3 Raising awareness of Tribunal activities**

Raising awareness regarding the Tribunal is the responsibility of the Department of Housing. The Support Component has on three occasions introduced the Tribunal to the rural areas as part of the Provincial minister of Housing's "roadshows". There has also been publicity provided on radio stations and quite a few articles regarding specific cases and contentious issues appeared in newspapers. In addition to this, there is close co-operation with the Institute of Estate Agents regarding an awareness about the Tribunal with its members who act as renting agents. This focused attention has led to various invitations to be part of panel discussions at Annual General

Meetings and other opportunities. The Support Component has also started to educate and inform members of the SA Police Service serving in Community Centers and Clerks of the Civil Courts at various Magistrate's Offices, who now refer complaints to the Tribunal. The Tribunal also features prominently on the Departmental Website and a trend is already seen where queries are received via the Internet. On the Website, direct access is provided to the Rental Housing Act, the Regulations published in terms of the Act, the Complaint Form, and Information Brochures in Afrikaans, English and Xhosa. As the Tribunal is currently the only one in the RSA to be linked to a Website, queries are also received via this medium from affected parties in other provinces.

At the time of completing this report, Rental Housing Information Offices still had not been implemented at the various municipalities. However, discussions with various municipal housing officials have indicated that a dedicated and fully staffed Rental Housing Information Office will in all probability not be implementable at all municipalities, due to practical reasons. The Tribunal has taken note that more concerted efforts will be made in the coming year.

#### **3.2.4 Infrastructure**

A separate venue, with furniture, for the Tribunal's exclusive use has been provided. However, it has now transpired that the arrangement is not a permanent solution, as the Department is in the process of accommodation planning, which will include a larger and more suitable venue for its exclusive use in the immediate area of the Support Component.

Hearings outside of Cape Town are held as close as possible to the point of complaint and the Tribunal is therefore dependent on the infrastructure provided by the local authorities.

### **3.2.5 Amendments to the Rental Housing Act, 1999 (Act No 50 of 1999)**

The passing away of the chairperson during the current reporting year, highlighted but one aspect of Act 50 of 1999 that needed to be addressed through amendments to the Act. The Tribunal would hope that this, as well as other problem areas in Act 50 of 1999, be rectified and cleared up in the near future, with full co-operation and consultation with all other Rental Housing Tribunals and provincial housing departments.

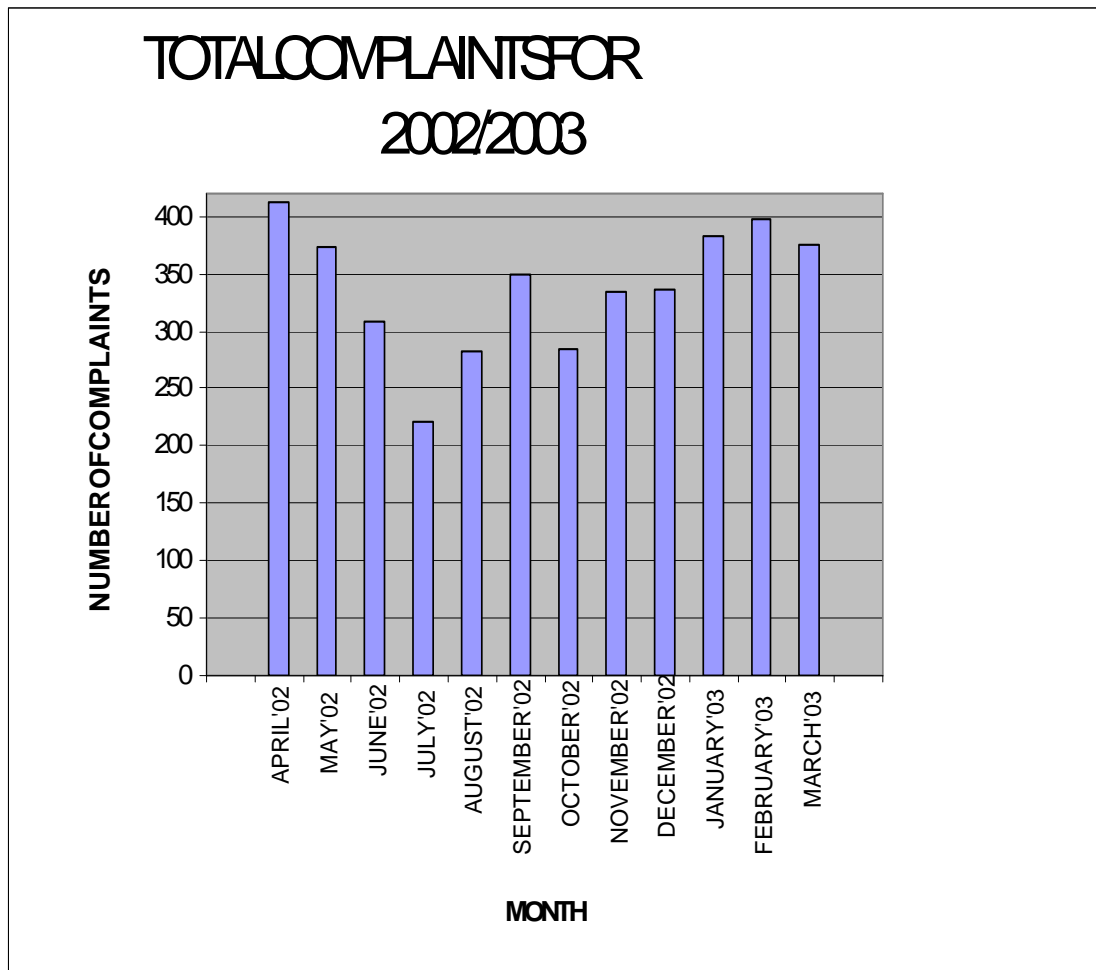
## **PART FOUR: STATUS/STATISTICS OF COMPLAINTS**

### **4.1 Status of complaints**

The following can be reported on an analysis of the complaints received thus far:

- Most of the complaints received by the Tribunal originated from the Cape Metropolitan Area and is more evenly distributed on a geographical basis, than the previous year. However, there are still problems experienced around awareness creation in certain communities. Plans put in place for the coming year will hopefully address this. There was, however, a marked increase in complaints and enquiries from outside of the Metropolitan Area.
- Most of the complaints have been resolved by the support staff through negotiations, of which most were dealt with telephonically.
- Tribunal members have not been made involved in negotiations, to avoid possible perceptions of biasness, should the cases be referred for hearings.
- Twenty six hearings were conducted in the report period, of which five were found in favour of the landlords/agents and nineteen in favour of the tenants.
- None of the rulings made after a formal hearing have to date been referred for review.
- The Support Component submits monthly reports on the status of cases to the National Department of Housing.

## 4.2 Statistics of complaints

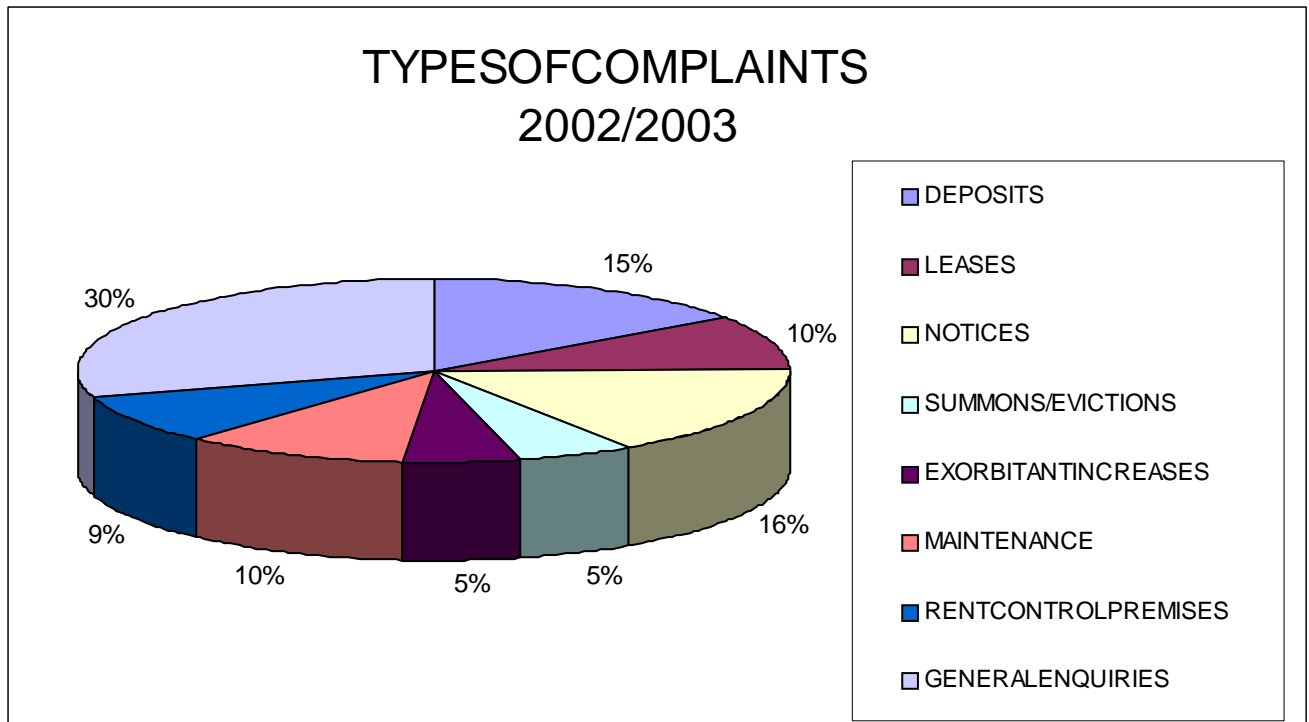


TOTAL COMPLAINTS RECEIVED FOR 2002/2003											
APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR



413	373	308	221	282	350	285	334	336	383	398	375
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

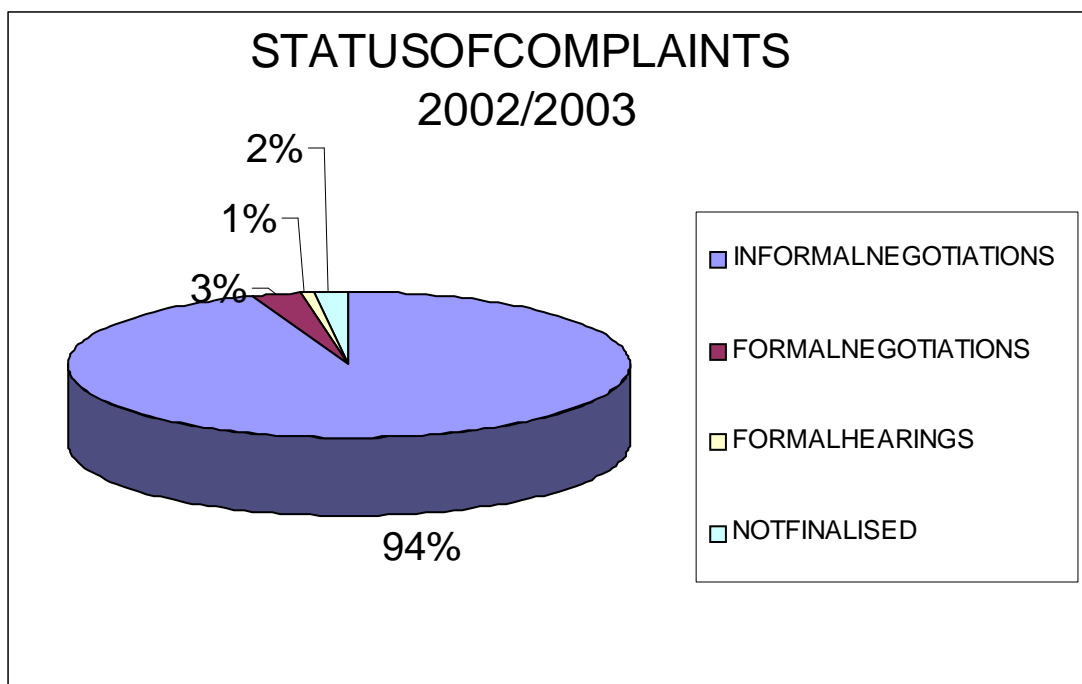
A total of 4058 complaints were received, compared to 2457 in the previous year (a 40% increase, being dealt with by the same number of staff)



The 4058 complaints received for the report period, can be categorised as follows:

- 615 complaints regarding deposits not refunded
- 390 complaints regarding lease agreements not being adhered to
- 654 complaints regarding unlawful notices
- 214 complaints regarding illegal evictions
- 17 215 complaints regarding excessive rental increases
- 412 complaints regarding failure to do maintenance on properties

- 353 complaints regarding rent controlled properties
- 1205 general enquiries regarding the above categories, Common Law and Law of Contracts pertaining to rentals



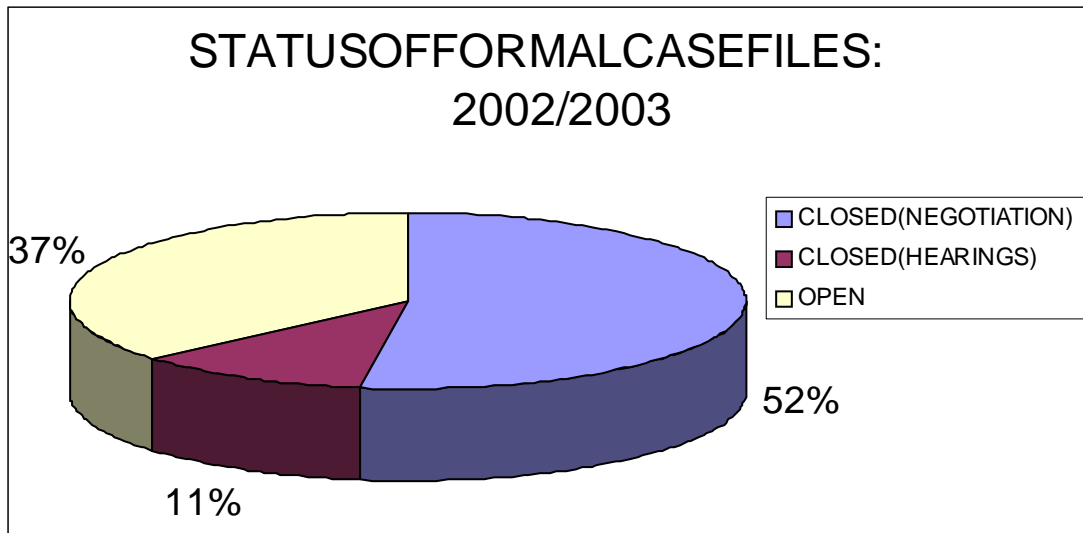
The total of 4058 complaints received in the report period (2457 in 2001/2002), were dealt with in the following manner:

- 3828 by informal negotiations, mostly telephonically (2238 in 2001/2002)
- 120 by formal negotiations (164 in 2001/2002)
- 26 by formal hearings (14 hearings in 2001/2002)
- 84 not yet finalised (mostly because 26 hearings could not be held due to the vacant post of chairperson, parties to the complaint having changed their addresses and were untraceable, requests to pend the cases, and maintenance cases taking longer periods to be completed) (41 in 2001/2002)

A comparison with the figures for 2001/2002 shows the following:

- There was a 40% increase in the number of complaints received.

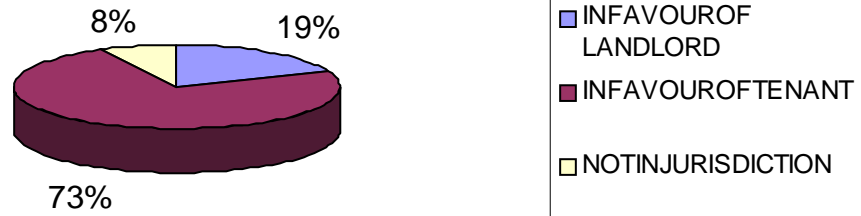
- Therewasamarkeddeclineincomplaintsagainststateagentswhowere affiliatedtoorganisedbodiestargetedforeducation.
- Thenumberofcasesdealtwiththroughformalnegotiationscamedown slightly
- Thenumberofcasesdealtwiththroughinformalnegotiationsshoweda 35%increase,althoughthenumberofstaffinvolvedremainedstatic.



For230ofthe4058cases,complaintformswere received,andformalcase fileswereopenedasprescribedinAct50of1999andtheRegulations.

Ofthe230casefiles,120weredealtwiththroughformalnegotiations,26by formalhearingsand84arestillopen.

**STATUS OF FINDINGS OF HEARINGS:  
2002/2003**



26 formal hearings were conducted, of which 5 rulings were in favour of the landlords/agents, 19 in favour of the tenants, 1 was referred to the Small Claims Court and 1 was found not to be an unfair practice.