



**CTTT**  
Consumer, Trader &  
Tenancy Tribunal

Consumer, Trader and Tenancy Tribunal

# **Annual Report**

**2008 - 2009**

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The Hon Virginia Judge MP  
Minister for Fair Trading  
Level 36, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister,

I am pleased to present the Annual Report for the Consumer, Trader and Tenancy Tribunal for the year 2008-2009.

This report reflects the organisational and reporting arrangements of the Tribunal for the reporting period 1 July 2008 to 30 June 2009.

This report has been prepared to fulfil the statutory requirements of the Chairperson under section 84 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'KR', written over a horizontal line.

Kay Ransome  
**Chairperson**  
**Consumer, Trader and Tenancy Tribunal**

# Minister's Foreword



I am pleased to introduce the 2008-2009 Annual Report of the Consumer, Trader and Tenancy Tribunal.

The Tribunal resolves disputes about the supply of goods and services, and issues relating to residential property. Its accessible, quick and cost-effective dispute resolution service helps to build a better and fairer marketplace in this State.

Regardless of where you live, it is possible to lodge an application online and receive immediate advice about when and where your dispute will be heard. The cost of applying is low and there are concessions available for pensioners and students.

The Tribunal uses hearing venues located across New South Wales to bring its services into the community. If a person in a regional area is two or more hours travel time away from a hearing venue, then a telephone hearing can be an option.

Hearings are informal and tailored to sorting out everyday disputes about an item or service you have purchased, or a problem relating to your home. Legal representation is generally not required. Tribunal Members are used to dealing with a broad cross section of the community about a range of disputes.

The Tribunal has an excellent website that contains information about each step in the dispute resolution process.

This report highlights the many activities and projects undertaken by the Tribunal during 2008-2009. I congratulate the Chairperson, Tribunal Members and staff for their efforts throughout the year.

Virginia Judge  
**Minister for Fair Trading**

# Chairperson's Review



## **2008-2009 – A year of change for the Tribunal**

There were a number of changes to the Tribunal during the year brought about by legislative initiatives. The Social Housing Division, the first new Division to be introduced since the Tribunal began in 2002, commenced on 1 October 2008. A Professional Practice and Review Committee was established to bring an external and independent perspective to professional development and performance building for Tribunal Members. From 1 September 2008, appeals from Tribunal decisions on a matter of law are heard by the District Court rather than the Supreme Court. In addition, the Tribunal continued to focus upon improving the way we deliver our services across New South Wales.

## **Implementing legislative change**

The start of the Social Housing Division, which deals with tenancy disputes in social housing premises, followed a consultation process involving key stakeholders which assisted the smooth implementation of this new Division. Promotion of the Division included information sessions for social housing providers, tenancy advocates and Fair Trading staff, and presentations by experienced Deputy Registrars and Tribunal Members at various events involving social housing tenants and others throughout the year. Information resources were distributed and also made available from the Tribunal's website. In its first nine months of operation to 30 June 2009, the Division handled just over 10,000 applications. A review of progress with the Social Housing Division is scheduled to be undertaken in consultation with key stakeholders towards the end of 2009.

Jurisdiction for appeals from a Tribunal decision on a matter of law transferred from the Supreme Court to the District Court from 1 September 2008 as a result of the *Courts and Crimes Legislation Amendment Act 2008*. This change, which reduces the cost of appeals for parties, required adjustments to long standing processes at the Tribunal.

## **New technology**

The Tribunal's implementation of new technologies continued during the year. Digital sound recording on laptops enables Tribunal Members in regional areas to record hearings. The availability of laptops and the

introduction of wireless technology also facilitates increased use of *InCourt* which enables Tribunal Members to produce Tribunal orders by typing them directly into the case management system at the hearing no matter where the Member is located. This significantly reduces turnaround time for the production and dispatch of Tribunal orders to people who bring disputes to the Tribunal. The Tribunal, by developing and adopting new technologies, remains at the forefront of tribunals in Australia. The Tribunal's Business Development Unit received its second NSW Department of Commerce Service and Excellence Award for the sound recording project.

Use of online lodgement remains steady, with 42% of all applications lodged electronically through the Tribunal's website portal in 2008-2009. More applications were lodged online in the General, Home Building and Motor Vehicles Divisions compared to 2007-2008. Online lodgement saves time and can easily be used after hours. By lodging online, the application is automatically registered and, where possible, a hearing date is allocated instantly.

Other jurisdictions have expressed interest in the Tribunal's use of technology in assisting the delivery of an accessible and timely service. This year, Victorian Civil and Administrative Tribunal Members and the Registry Manager at the ACT Law Courts and Tribunals visited us to see *InCourt*, our Case Management System and online lodgement in action. The Chair of the Landlord and Tenant Board in Ontario, Canada, also visited to learn more about *InCourt* and to observe Tribunal hearings.

## Improving access

On 1 December 2008, the Tribunal's Penrith Registry and hearing rooms started operating at new purpose-built premises at the Penrith Government Office Building. This new central location includes a Fair Trading Centre, and offers a one-stop-shop for people who want information and assistance with consumer and tenancy disputes.

Work on the co-location of the Tribunal's Wollongong Registry with the Fair Trading Centre commenced towards the end of the 2008-2009 financial year. The refurbished Wollongong Registry will improve facilities for Tribunal clients. The Tribunal continues to sit at over 70 locations across New South Wales and also conducts hearings by telephone for parties in regional locations.

## Stakeholder engagement

Since commencing in 2002, the Tribunal has held Consultative Forums in each Division as a way of gathering feedback, staying on top of consumer issues and providing information about the Tribunal to peak organisations. As these groups have been in operation for some time, the Tribunal undertook a review of its Consultative Forums to examine how it could better use this resource. The review confirmed the importance of these Forums as a two-way information channel with key stakeholders, and an opportunity to encourage the exchange of views and concerns about operational and policy issues.

Forum members had an opportunity to comment on the review recommendations about Forum membership, meeting attendance, and the types of topics discussed at Forum meetings. Based on the review outcome, feedback from Forum members and further consideration of stakeholder engagement issues, various improvements to the operation of the Consultative Forums, including more structured meetings with enhanced feedback and follow-up, were implemented from April 2009. In addition, 12 issues of the e-newsletter *CTTT Forum Update* were distributed to keep Forum members informed about Tribunal issues.

The first meeting of the new Aboriginal Consultative Forum was held in Sydney on 1 September 2008, where an undertaking was given to hold future meetings of this Forum in regional areas. As a result, the second Forum meeting was convened in Dubbo to coincide with an Outreach event for the local Aboriginal community to help promote awareness about the Tribunal at the local level.

## Raising our profile and new resources

Throughout the year we continued to receive requests for guest speakers to address groups interested in the Tribunal's services. Our experienced Deputy Registrars and Tribunal Members attended and spoke at 54 events during 2008-2009, including information sessions held in Shellharbour, the Central Coast, Auburn and Sydney for various audiences, and Aboriginal Outreach events in Nowra and Dubbo. Our proactive guest speaker and information session program ensures information about the Tribunal's cost effective and accessible dispute resolution

service is delivered face-to-face to thousands of people across the State.

Continued implementation of the *CTTT Communications Strategy 2008-2010* led to the development of new resources to explain the process involved in bringing a dispute to the Tribunal. The *Communications Strategy for Aboriginal Communities 2009-2011* and the first two resources developed under that Strategy were prepared in consultation with the Tribunal's Aboriginal Consultative Forum members. The Strategy and the new brochure *Getting a Fair Go at the CTTT* were launched by the Minister for Fair Trading, Virginia Judge, at the Tribunal's Aboriginal Outreach event in Dubbo in May 2009. Production of a second resource for Aboriginal consumers, a DVD that features two dramatised scenarios involving Aboriginal actors, was nearing completion by the end of the year. The DVD will be released early in 2009-2010.

The range of Tribunal publications that can be downloaded from our website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au), allows people ready access to information about the Tribunal's services. Visits to the website increased by a significant 43% during the year with more than 263,420 individual visits recorded. Information on the website is under constant review to ensure it continues to meet user needs.

## Statistical trends

We experienced a slowdown in the number of applications lodged in the Tribunal's Tenancy and Social Housing Divisions during the year. Overall, the number of applications lodged across all Divisions was the lowest in six years with 58,670 applications received - a 9% reduction over the previous financial year.

Applications in the Tenancy and new Social Housing Divisions were 13% down on applications received in 2007-2008. Anecdotally, the reasons for the reduction have been attributed to the general cooling in the property market and the uncertainty in the financial market. At the same time, there was an increase in applications in the Motor Vehicles, Commercial and General Divisions during the year under review.

This report documents the Tribunal's achievements in meeting its legislative objectives of being accessible, conducting efficient and effective proceedings that are informal, expeditious and inexpensive, and with decisions

that are fair and consistent. These achievements have only been possible because of the hard work, skill and dedication of all Members and staff.

Kay Ransome  
**Chairperson**

# 2008-2009 Year in review

## 58,670 Applications lodged

- ▶ 9% decrease from last year
- ▶ 42% of all applications were lodged online
- ▶ \$2.2 million application fees collected

## 72,992 Hearings held

- ▶ 24 days average time between lodgement and first hearing
- ▶ Over 70 venues across New South Wales used for Tribunal hearings

## 61,568 Applications finalised

- ▶ 74% of matters finalised prior to or at the first hearing
- ▶ 66% of matters finalised within 35 days

## 85,843 Orders made

- ▶ 85% of final orders issued within 4 days after hearing finalised

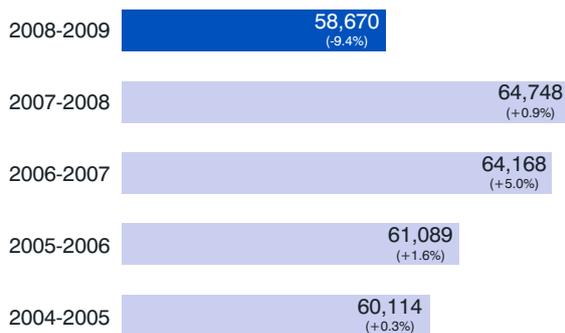
## 70 Community consultative and information sessions held

- ▶ 16 Divisional, Aboriginal and community consultative forums held for stakeholder groups
- ▶ 54 community information and education sessions convened or participated in by Tribunal officers and/or Tribunal Members

## 263,420 Website visits

- ▶ 43% increase from last year
- ▶ Most popular website pages were Tribunal application forms and the hearing schedule pages
- ▶ 8,294 email enquiries received

## Applications - 5 year comparison



## Applications by Division

Division	Applications	%
Tenancy	34,223	58.3%
Social Housing	10,106	17.2%
General	6,436	11.0%
Home Building	3,571	6.1%
Residential Parks	1,345	2.3%
Strata and Community Schemes	1,338	2.3%
Motor Vehicles	1,259	2.1%
Commercial	341	0.6%
Retirement Villages	51	0.1%
<b>Total</b>	<b>58,670</b>	<b>100%</b>

## Applications by Tribunal Registry



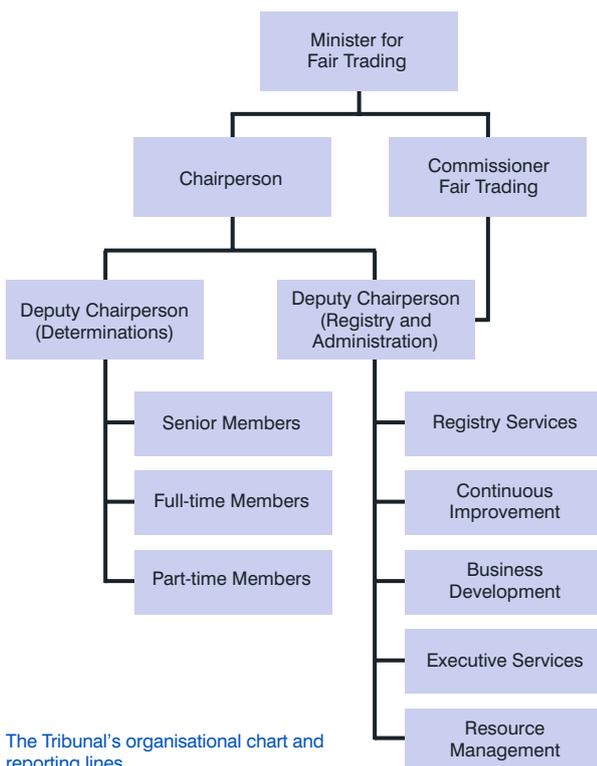
# Our Organisation

The Consumer, Trader and Tenancy Tribunal is an independent decision making body. Its primary function is to resolve disputes about the supply of goods and services and issues relating to residential tenancy. Its powers, functions and procedures are set out in the *Consumer, Trader and Tenancy Tribunal Act 2001* (the Act) and the *Consumer, Trader and Tenancy Tribunal Regulation 2002*.

The 18 pieces of legislation listed in Appendix 1 give the Tribunal jurisdiction to resolve disputes brought to its nine Divisions - Tenancy, Social Housing, Home Building, General, Residential Parks, Strata and Community Schemes, Motor Vehicles, Commercial, and Retirement Villages.

The Tribunal's objectives, as set out in section 3 of the Act, are to ensure that:

- ▶ the Tribunal is accessible
- ▶ its proceedings are efficient and effective
- ▶ proceedings are determined in an informal, expeditious and inexpensive manner
- ▶ decisions are fair and consistent.



The Tribunal's organisational chart and reporting lines



## Kay Ransome Chairperson

Chairperson since September 2002, Kay has extensive experience working in tribunals and related fields and is presently the Chair of the Council of Australasian Tribunals. The Chairperson is responsible to the Minister for Fair Trading for the efficient and effective operation of the Tribunal and the management of the Tribunal's work. This includes Member management and performance, the application of a Code of Conduct for Tribunal Members and issuing Chairperson's Directions to ensure that the procedures of the Tribunal are fair, informal and as speedy as practicable.

*'This year has seen a significant enhancement to the transparency of Tribunal proceedings with the roll out of digital sound recording technology via laptops. This is particularly beneficial for parties in regional areas where, until now, the Tribunal has not had the facilities to record hearings. It is important to me that parties across the State are offered an equitable service by the Tribunal and the new sound recording technology is one step in that direction. We also welcomed on board a number of new Members this year including locally based part-time Members in several regional areas'.*



## Nick Vrabac Deputy Chairperson (Determinations)

Deputy Chairperson (Determinations) since February 2002, Nick has had extensive experience as a legal practitioner in both the private and public sectors. The Deputy Chairperson (Determinations) is responsible for the Tribunal's adjudication function and assists the Chairperson in the management of the Membership.

*'The Tribunal is compelled to assist parties to conciliate in each matter. The purpose of conciliation is to come to an expedient and mutually satisfactory agreement. The parties in this process save time, cost and angst of litigation. We have done considerable work over recent times to assist parties to participate effectively in this process.'*



**Garry Wilson**  
**Deputy Chairperson**  
**(Registry and Administration)**

Deputy Chairperson (Registry and Administration) since October 2008, Garry

has had extensive experience in the Commonwealth and State Government sectors. Garry is also a part-time teacher with NSW TAFE. Garry has a Masters Degree in Commerce and a Graduate Certificate in Management.

*'It has quickly become apparent to me that the Tribunal is a great place to work. We have been working on many initiatives to improve on the way we support Tribunal Members and help parties more easily use our system. I wish to thank everyone for their efforts throughout the year as we embark on an even more challenging year to further improve on the delivery of our services.'*

## Tribunal Members

Tribunal Members are independent statutory officers who make decisions according to law on the basis of the evidence presented before them. Members attempt to bring parties to a mutually agreeable settlement through conciliation. When finalising a matter, Tribunal Members make orders that are legally binding.

Senior Members hear more complex cases and assist the Chairperson and the Deputy Chairperson (Determinations) in Member professional development and mentoring.

All Tribunal Members, except for the Deputy Chairperson (Registry and Administration) are appointed by the Governor on either a full-time or part-time basis.



Tribunal Senior Members  
From left: Graeme Durie, Margaret Balding, Christine Paull and Reg Connolly (John Bordon and Richard Buckley not pictured)

As at 30 June 2009, the Tribunal's Membership, in addition to the Chairperson and two Deputy Chairpersons, comprised 6 Senior Members, 12 full-time Members and 62 part-time Members. A full list of Members is provided at Appendix 2.

## Registry and Administration

The Deputy Chairperson (Registry and Administration) is a non-sitting Member of the Tribunal and is responsible for the Tribunal's financial, administrative and registry functions. The Deputy Chairperson (Registry and Administration) is responsible to the Commissioner for Fair Trading.

The Deputy Chairperson (Registry and Administration) and Tribunal staff are employees of the Office of Fair Trading which is within the NSW Department of Commerce. Staff are employed under the provisions of the *Public Sector Employment and Management Act 2002*.

At 30 June 2009 there were 125 staff positions attached to the Tribunal's Registry and Administrative units.

The Tribunal's Registry and Administrative units consist of the following five key areas of performance and accountability:

- ▶ **Registry Services:** Responsible for the case management of matters and management of the eight Registry offices, over 70 venues, staff and conciliators
- ▶ **Continuous Improvement:** Education and information services, policy and program development, quality assurance and performance reporting, legal support and library services
- ▶ **Business Development:** Delivery of technological solutions for improved service delivery, performance reporting and support to Members and staff
- ▶ **Executive Services:** High level support to the Minister, Chairperson, Commissioner for Fair Trading and the Tribunal executive; responding to complaints and media enquiries
- ▶ **Resource Management:** Management of human resources, financial resources and administrative services, and compliance with the Department of Commerce's governance and general operating requirements.

# Our Clients

The Tribunal's clients represent a broad cross section of the community. A range of service initiatives, along with innovation and commitment to excellence in quality service delivery, assist the thousands of people who bring disputes to the Tribunal each year.

## Accessing the Tribunal

The Tribunal is committed to providing an accessible service to the widest possible audience. The Tribunal has eight Registries located across the State. Matters are allocated to the Registry nearest to where the goods and services were provided, or in the case of residential disputes, the location of the premises. This provides a local focus for the case management of matters.

Applications to the Tribunal can be lodged at a Tribunal Registry, any Fair Trading Centre, or any NSW Local Court. Fair Trading Centres can also provide clients with information about the Tribunal, including the steps in lodging an application, and options available for resolving disputes. Most Tribunal applications can also be lodged online at [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au).

Hearings are conducted in various metropolitan and regional locations ensuring our services are accessible across New South Wales. During 2008-2009, the Tribunal conducted hearings at over 70 venues, including the hearing rooms at the eight Registries and the Tribunal's other permanent hearing rooms at Blacktown, Campbelltown, Dubbo, Gosford, Lismore, Queanbeyan and Wagga Wagga.

To further enhance the Tribunal's services in regional New South Wales, 40% of Tribunal Members are regionally



Lodging an application at a Tribunal Registry

located. The high number of part-time Members also allows for greater flexibility in allocating Members to hearings according to demand.

The Tribunal also regularly hears matters by telephone, providing access to parties who are not located near, or unable to travel to, the hearing venue. During 2008-2009 the Tribunal conducted 819 telephone hearings.

On 1 December 2008, the Tribunal's Penrith Registry and hearing rooms started operating in new purpose-built premises at the Penrith Government Office Building. This central location includes a Fair Trading Centre, offering a one-stop-shop for people who want information and assistance with their disputes.

Work on the co-location of the Tribunal's Wollongong Registry and the Fair Trading Centre commenced towards the end of the 2008-2009 financial year. The refurbished Wollongong Registry will improve facilities for Tribunal clients in that region.

## Promoting Tribunal services

The Tribunal delivers information to consumers and traders to raise awareness about the Tribunal and its dispute resolution services. This assists in improving access to justice for people who have a dispute they cannot resolve themselves.

The Tribunal's *Communications Strategy 2008-2010* was developed as an overarching framework to guide the development of a range of integrated educational resources to increase community awareness about the Tribunal and its services.

## Information delivery

The Tribunal is committed to ensuring that members of the community are informed about its dispute resolution services. In 2008-2009, the Tribunal's participated in 54 community education events. These events included:

- ▶ 7 Tribunal information sessions conducted across New South Wales, including sessions targeting Indigenous and culturally and linguistically diverse communities
- ▶ 27 functions and events arranged by the Tribunal's key industry stakeholders and various community organisations where Tribunal Members and staff participated as guest speakers



Tribunal Member Kim Rosser and Deputy Registrars (Case Management) Louise Clegg and Debbie House presenting a Tribunal information session conducted during Law Week

- ▶ 14 Office of Fair Trading Community and Regional Access Programs at various locations throughout New South Wales.

In addition, the Tribunal conducted training sessions for Fair Trading staff (including Aboriginal Customer Service Officers) to update their knowledge of the Tribunal and its services.

## Publications

Tribunal publications are kept under review. Several new and updated publications were issued during 2008-2009, including:

- ▶ *Getting help* fact sheet
- ▶ *Making a complaint* fact sheet
- ▶ *Social Housing Division* fact sheet
- ▶ *What CTTT Registry staff can and cannot do* information sheet.

## Website

The website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au) is an important communication tool for the Tribunal, and is regularly reviewed to ensure it meets client information needs. The website offers online application lodgement and easy to understand information, including how to lodge your application, Chairperson's Directions and the types of orders the Tribunal can make to resolve disputes about goods, services and tenancy issues.

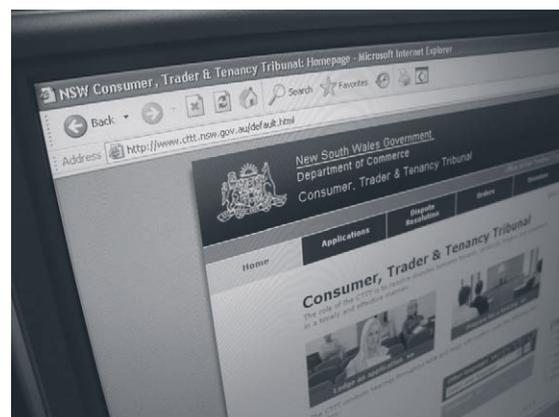
The website features the Tribunal's videos *Get it sorted* and *We're talking your language*. New interactive elements

added to the website during the year enable direct 'real time' access to all hearing lists. This enables applicants, respondents and support organisations to check when and where hearings are scheduled. Any changes to hearing arrangements are automatically reflected on the hearing lists web pages as they occur.

During 2008-2009 the Tribunal recorded its highest ever number of website visits - a record 263,420 visits. This was a significant 43% increase over website visits the previous year.

Consumers and traders can lodge an application online in most Divisions via the Tribunal's website. The online lodgement facility offers 24 hour access, and a Notice of Hearing may be generated automatically. The progress of an application can also be monitored online.

In 2008-2009 42% of all applications to the Tribunal were lodged online.



Tribunal website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au)

## Stakeholder involvement

The Tribunal continues to consult its key stakeholders about a range of issues, procedural changes and new publications. A review of the Tribunal's Consultative Forums was undertaken during the year. Recommendations from that review have been implemented and new meeting arrangements will be evaluated in consultation with Forum members at the end of 2009.

A regular e-newsletter ensures Forum members are kept up to date about Tribunal practices and procedures, and new developments.

## Additional needs

The Tribunal helps people in identified communities to access its services by meeting their information needs and through tailored facilities.

## Aboriginal communities

During 2008-2009, there were new initiatives aimed at increasing and encouraging Aboriginal communities to access the Tribunal's services.

In September 2008, the Tribunal's Aboriginal Consultative Forum met for the first time. The Forum's membership includes representatives from peak Aboriginal organisations.

It has the important role of advising the Tribunal on service delivery to Aboriginal communities and organisations, and is assisting the Tribunal to develop culturally appropriate information products for Aboriginal people.

The Tribunal delivered two outreach events to Aboriginal communities in 2008-2009. This program takes information into communities to encourage Aboriginal consumers and organisations working with Aboriginal consumers to learn more about the Tribunal and its services.

In July 2008, the first outreach event was held in Nowra. The second outreach program was held in Dubbo in May 2009 followed by an Aboriginal Consultative Forum meeting. The Minister for Fair Trading, Virginia Judge, launched the Tribunal's *Communications Strategy for Aboriginal Communities 2009-2011* at the Dubbo outreach event.

The Communications Strategy, developed in consultation with the Aboriginal Consultative Forum, provides a framework for the delivery of Aboriginal resources and promotes an ongoing partnership with peak organisations. The first publication developed under this Strategy, a brochure titled *Getting a fair go at the CTTT*, was also launched at the Dubbo event. This brochure guides the reader through each step of the Tribunal's dispute resolution process. During the year work commenced on the production of a DVD that will complement this brochure.



The Tribunal's inaugural Aboriginal Consultative Forum meeting held on 1 September 2008

Top row: Douglas Kirk, Michael Kirk, Brad Anderson, Kelvin Brown, Lesley Turner, Donald Jenner, Trent Lynwood

Bottom row: Ruth Simon (DeCosta), Gerry Moore, Kay Ransome - Chairperson, Jim Allen, Nick Vrabac - Deputy Chairperson (Determinations)

The new Communication Strategy, publications and further information for Aboriginal communities can be downloaded from [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au).

## **Culturally and linguistically diverse communities**

The Tribunal continues to work and engage with culturally and linguistically diverse (CALD) communities.

Professional interpreters are arranged by the Tribunal free of charge to assist parties during hearings, and to provide language services via telephone when requested. During 2008-2009, 2,524 requests for interpreter services were received with the most common languages being Mandarin, Arabic, Cantonese, Korean, Vietnamese, Spanish and Greek.

The Tribunal's CD-ROM *We're talking your language* and website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au) also provides information about the Tribunal's services in a range of community languages. The CD-ROM is available for download from the website, and copies are available from Tribunal Registries.

The Tribunal also continues to deliver information to CALD communities through its information sessions and participation in Office of Fair Trading events and presentations.

A CALD communications strategy is currently being developed to provide a framework for future activities aimed at increasing awareness about the Tribunal and its services within CALD communities.

## **Disabled access and facilities**

The Tribunal provides Auslan interpreters on request and free of charge, for people who are hearing impaired. The Tribunal's CD-ROM *We're talking your language* also provides information in visual format. A TTY telephone and hearing loop service is also available.

Further information about disabled access and facilities at Tribunal Registries is available on the Tribunal's website, along with clear information about Registry locations.

# Our Processes

The Tribunal plays a vital role in determining disputes in New South Wales. During 2008-2009 the Tribunal received 58,670 applications and held 72,992 hearings at more than 70 locations.

The Tribunal uses a range of dispute resolution methods to deal with its workload. The Tribunal also continues to refine its processes and maximise the use of technology. A flowchart illustrating the Tribunal process is at Appendix 3.

## Alternative dispute resolution

The Tribunal has an obligation to use its best endeavours to bring the parties to a dispute to a settlement that is acceptable to all using a range of alternative dispute resolution methods.

All Members of the Tribunal and some staff have recognised qualifications or experience in alternative dispute resolution.

### Conciliation

Conciliation is a process which brings the people in dispute together to talk about their issues in an informal, confidential meeting to try and reach an agreement. The conciliation process is closely linked to the hearing process, rather than as a separate step in dispute resolution.

The Tribunal offers a range of conciliation services. They vary from those in regional areas where parties may be directed to engage in settlement discussion with limited active involvement by the Member, to those matters where there is a Conciliator specifically assigned to assist parties in resolving their dispute.



Conciliation

Conciliation is used extensively in the Tenancy, Social Housing, General, Home Building and Motor Vehicles Divisions. It is also an integral part of dispute resolution in matters involving multiple applications about the same dispute, for example in residential park and retirement village matters.

The Tribunal's publication *Ten Top Tips for Conciliation* is issued with every first Notice of Hearing to inform parties about conciliation to maximise their participation and satisfaction with the outcome.

### Conclaves

In large complex home building matters the Tribunal may also conduct expert conclaves. This is a consensual process which involves a meeting between the experts engaged by the applicant and respondent, facilitated by a Tribunal Member. The meeting is usually held on-site. The experts discuss issues on which they have prepared reports with a view to clarifying matters in dispute and reducing, as far as possible, the issues to be determined at hearing.

### Mediation

In larger disputes the Tribunal may also list a matter for formal mediation as a way to resolve some or all of the issues in dispute. Formal mediations are conducted by an experienced Tribunal Member.

## Hearing

The Tribunal lists matters for hearing according to the type of application and nature of the dispute. All Tribunal hearings are open to the public.

### Group lists

Where the amount in dispute is less than \$25,000\*, the first hearing is listed in a 'group list'. This means that a number of cases are listed together at the same time before a Tribunal Member. The majority of Tribunal applications are listed in a group list for first hearing. When both parties appear they are encouraged to resolve their dispute through conciliation. If conciliation is unsuccessful, or if only one party appears, the case proceeds directly to hearing.

\* On 1 July 2009 this amount was increased to \$30,000.



Tribunal hearing

## Directions hearings

Directions hearings are used to prepare for the formal hearing. They are used in complex matters where there may be a need to establish jurisdiction, identify issues in dispute, set a timeframe for the hearing, or make directions for the exchange of evidence. All parties are required to attend directions hearings and must comply with procedural directions or the matter may be dismissed.

## Formal hearings

Formal hearings are listed for a specific length of time where the issues in dispute will be finally determined and a decision made. These hearings can run over a few hours or several days depending on the complexity of the issues in dispute.

## Adjudications on the papers

In the Strata and Community Schemes Division, all adjudications are determined 'on the papers'. That is, parties make written submissions which are considered by the Adjudicator, generally a Tribunal Member, who makes a written determination on the basis of those submissions. Applications for a rehearing under section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001* are also managed in this way.

## Telephone hearings

The Tribunal continues to explore ways of harnessing technology to improve service delivery. The Tribunal's increased use of telephone hearings during 2008-2009 improved access to hearings without parties having to incur

the costs related to excessive travel to a venue. Telephone hearings also allow the Tribunal to conduct hearings in a timely way.

## Decisions and orders

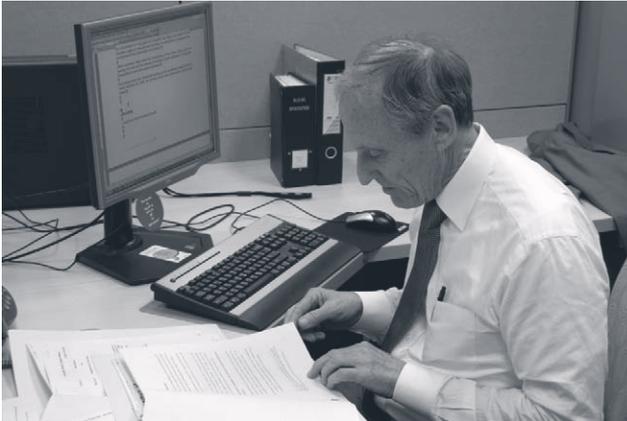
Generally a Tribunal Member will determine a matter on the day of hearing and give the decision orally with brief reasons. With the increasing use of computers and the Tribunal's *InCourt* system, parties are usually able to receive their order in writing on the day and take it with them.

Tribunal Members are increasingly providing brief written reasons with their orders which add value and provide parties with more information about the basis upon which the matter was determined. The provision of reasons at the time of determination has also meant the Tribunal is receiving fewer requests for written reasons under section 49 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

During 2008-2009 a number of minor changes to the software application made it easier for Members to use *InCourt*. In addition, all regionally-based Tribunal Members were allocated laptops with wireless broadband and sound recording capabilities. Regional Members can now access the Tribunal's *InCourt* system remotely and type orders directly into the system. Orders print out at the Registry and are posted immediately. As a result, parties in regional areas now often receive their orders before the Member has completed their circuit. This is a considerable improvement on past practices where orders could not be issued until the Member had returned the file to the Registry at the end of the circuit. The increased use of *InCourt* also improves the consistency of Tribunal orders.



Receiving Tribunal orders



Tribunal Member Phillip Briggs preparing a reserved decision

## Reserved decisions

In complex matters the Member may reserve their decision and issue a written determination, including reasons to the parties at a later date. These determinations are published on [www.austlii.edu.au](http://www.austlii.edu.au) and can be viewed by the public.

## Rehearings and appeals

Tribunal decisions are final and legally binding, subject to appeal to the District Court on a question of law or a right of rehearing in special circumstances.

In accordance with the provisions of section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, the Chairperson may consider granting an application for rehearing if it can be established that the applicant may have suffered a substantial injustice.

Alternatively a party may lodge an appeal against the Tribunal's decision to a higher jurisdiction. As a result of recent amendments under the *Courts and Crimes Legislation Amendment Act 2008*, from 1 September 2008 an appeal from a decision of the Tribunal is made to the District Court, not the Supreme Court as was previously the case.

## Enforcement

Where the Tribunal makes an order that requires a party to complete work within a particular time and the work is not completed, a party can lodge an application seeking to renew the matter in the Tribunal.

If a Tribunal order directs payment of money, a party can request that a Certified Money Order be issued. This order is enforceable in the Local Court.

Where an order is made that residential premises are returned to a landlord and the tenant does not vacate, a warrant for possession can be obtained from the Registry. Warrants for possession are executed by the Sheriff.

## Performance

Performance monitoring and reporting is an integral aspect of the Tribunal's operations, and assists the Tribunal in meeting its objective of providing an efficient, effective and expeditious dispute resolution service. The governance arrangements mentioned in this report provide the framework for performance monitoring and reporting mechanisms.

Computerised case management systems track the volume and type of applications coming into the Tribunal. Data from the case management system is used to prepare monthly and quarterly reports which examine application trends in the nine divisions, and monitor workflows in Tribunal Registries against performance standards. A review of the Tribunal's performance standards, unchanged since 2002, was commenced during the year with a view to checking whether they require adjustment to better reflect operational reality and help manage client expectations.

A range of other performance monitoring and reporting mechanisms are in place to ensure the Tribunal uses its resources and assets in an efficient and effective way.

The Tribunal's performance is transparent and is reported in a number of ways, including through the circulation of quarterly statistical reports to members of the Tribunal's Consultative Forums, and discussion of the reports at Forum meetings. This annual report is another way in which the Tribunal publicly accounts for its performance to the broader community.

Tribunal performance indicators include the rate of applications for rehearing, appeals to the District Court and letters of complaint concerning Tribunal decisions. In 2008-2009 there were:

- ▶ 1,730 applications for rehearing, representing 2.9% of all applications received

- ▶ 72 appeals to the District and Supreme Courts; of the 66 appeals determined by the courts during the year, 11 were upheld/remitted and 10 upheld/orders substituted representing 0.03% of all Tribunal decisions made during the year
- ▶ 1,032 written complaints to the Minister and Chairperson from Tribunal clients, representing 1.3% of the total number of hearings held during the year.

Managing and developing Tribunal Member and staff performance is another key activity at the Tribunal. The Chairperson holds regular Member network meetings that focus on professional development and continuous improvement in hearing practices, case assessment and decision making. Most recently, the Professional Practice and Review Committee was established following changes to the *Consumer, Trader and Tenancy Tribunal Act 2001*. The Committee includes two independent members, and will bring an external and independent perspective to professional development and performance building for Tribunal Members.

The introduction of a Performance Development Program during the year will help to manage and develop staff performance in a more systematic way than has been previously possible.

Further information about the Committee and the Program is included in the 'Our Governance' section of this report.

# Our Governance

A range of measures are in place to ensure the Tribunal meets its legislative objectives, makes optimal use of resources and maximises service delivery outcomes.

The Tribunal's governance framework, including the *Consumer, Trader and Tenancy Tribunal Act 2001* and the supporting Regulation, establish the organisation and provide legislative authority for its operations. Other legislation provides for the operation of each Division. The Tribunal is also guided by whole-of-government legislation covering the employment of staff, procurement of goods and services, use of State resources and finances and the way services are delivered such as complying with anti-discrimination and privacy requirements.

All Tribunal Members participate in a performance assessment program and must comply with a Code of Conduct set by the Chairperson. The Chairperson sets practices through the issue of Chairperson's Directions which are made public on the Tribunal's website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au). The Registrar also establishes and documents procedures to be followed by Registry staff in the administration of applications. Regular meeting processes involving Members and senior staff are in place, allowing the Chairperson and Deputy Chairpersons to monitor performance and adjust priorities as required.

Business plans are developed each year to guide the Tribunal's focus and priorities. A range of performance standards are in place. Reporting systems provide the Chairperson, the Deputy Chairpersons and senior staff with reliable information about work activities, listings and service delivery performance. Copies of quarterly statistical reports are made available to and discussed with Consultative Forum members.

A range of communication mechanisms keep Members and staff informed about changes and activities such as a regular Chairperson's Newsletter, a Registry and Administration Newsletter, and separate intranets for Members and staff.

The Tribunal has a case management system which captures and stores information about applications lodged and the progress of each application. Other supporting systems are well established to assist the Tribunal manage its operations.

Reasons for decisions by the Tribunal are available to parties and written decisions are publicly available on

[www.austlii.edu.au](http://www.austlii.edu.au). Complaints and appeal mechanisms exist. Hard copy files are kept of all applications and associated documents for a period of two years, except in the Home Building and Strata and Community Schemes Divisions where the records are retained for seven years.

## Managing risk

Risk management is a critical component of corporate governance. During 2008-2009 the Tribunal developed a Strategic Risk Management Plan providing a framework to identify, assess, treat and monitor the treatment of risks. The Plan draws on other corporate plans and policies already in place to support the implementation and effective management of the Tribunal's core services and programs.

The Plan recognises that the Tribunal has a rapidly changing environment and must be responsive to client and stakeholder needs. The Plan is reviewed on a regular basis and adjusted to reflect emerging challenges and changes in service delivery directions which may create new risks.

## Professional Practice and Review Committee

The Professional Practice and Review Committee was established in October 2008 by the *Consumer, Trader and Tenancy Tribunal Amendment Act 2008*, replacing the former Peer Review Panel. The Committee has a broader role than the Panel and brings an external and independent perspective to professional development and performance building for Tribunal Members.

The Committee is made up of the Director General of the NSW Department of Commerce, Graeme Head, the



A meeting of the Tribunal's Professional Practice and Review Committee  
From left: Jan McClelland, Gary Byron, Kay Ransome and Garry Wilson  
(Graeme Head and Nick Vrabac not pictured)

Chairperson, Kay Ransome, Deputy Chairperson (Determinations), Nick Vrabac, Deputy Chairperson (Registry and Administration) Garry Wilson and two independent persons appointed by the Minister for Fair Trading. The two independent members, Gary Byron and Jan McClelland, were selected for their expertise in consumer protection, ethics, dispute resolution, education or public administration and were appointed on 30 April 2009. Mr Byron was also appointed as Committee Chair.

The Committee is legislatively required to meet at least three times each year. After the appointment of the independent members the Committee met twice in the reporting period, on 3 June and 30 June 2009.

The Act provides that the Committee is to review and provide advice on matters referred to it by the Minister, the Commissioner and the Tribunal Chairperson. Matters referred may relate to one or more of the following:

- ▶ the education, training or professional development of Members
- ▶ the performance or management of Members
- ▶ complaints against Members and remedial or disciplinary action to be taken in relation to any such complaints
- ▶ trends in complaints or performance
- ▶ any other matter prescribed by the Regulations.

In the reporting period the Minister referred three matters to the Committee; two in May 2009 and one in June 2009. Two of these were complaints about the conduct of hearings by particular Tribunal Members. The third referral sought the Committee's advice on the efficacy of the Tribunal's complaint handling process, specifically in dealing with complaints against Tribunal Members. The referrals are yet to be finalised.

The Tribunal provides secretariat support to the Committee, which includes administrative work, arranging meetings and coordinating information.

## Complaints management

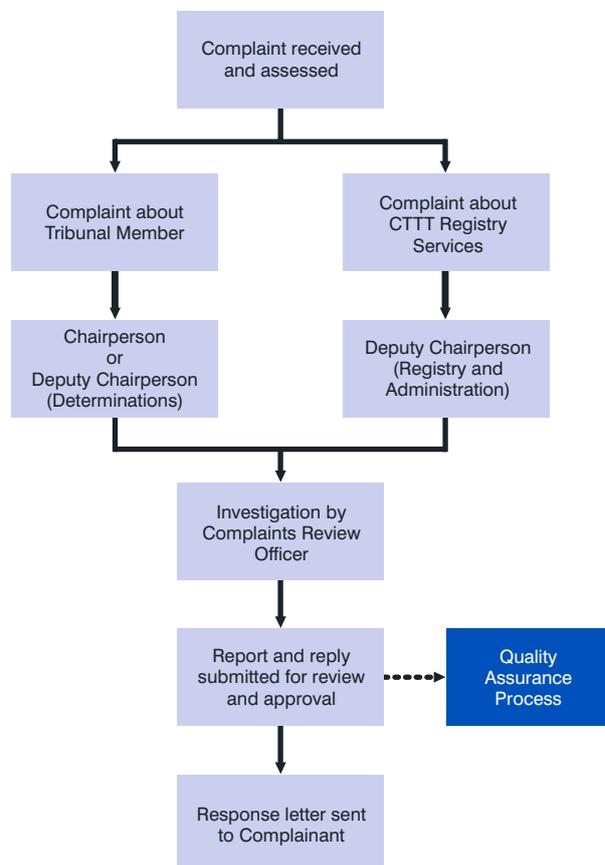
The Tribunal's commitment to responding promptly to complaints about its service is demonstrated in its Complaints Management Policy which was implemented in

2007-2008. The policy provides guidance to staff and management when handling complaints or client dissatisfaction. The policy is supported and promoted in printed material such as the *Making a complaint* fact sheet and other materials available on the Tribunal's website.

The complaints management system allows the Tribunal to identify opportunities for service improvement and is an important aspect of its continuous improvement process.

During this reporting period, the Tribunal received 1,032 written complaints (including registered ministerial letters). Approximately half of all complaints concerned dissatisfaction with decisions not made in the complainant's favour.

A further 16% related to the legislation or to factors outside the Tribunal's jurisdiction or control. Overall, written complaints represented just 1.3% of the total number of hearings held by the Tribunal during the year.



Tribunal's complaints management process flowchart

## Learning and development

The Tribunal continues its commitment to a culture of learning and improvement across the organisation. A Learning and Development Reference Group assists the Deputy Chairperson (Registry and Administration) in establishing a performance based culture with a strong focus on organisational development.

During 2008-2009 flexible training methods were used to enhance and maximise the performance of staff and Tribunal Members. This was achieved through an integrated approach including corporate training, a performance development program, regular e-newsletters, and forums to promote discussion and learning.

### Corporate training program

Tribunal staff took advantage of the NSW Department of Commerce's corporate training program, which involved structured training delivered face-to-face and online. Training was provided in a range of job related areas, for example, courses on presentation skills, project management, computer and writing skills, workshops on mediation, and occupational health and safety training.

### Tribunal Member conference

In August 2008 the annual Tribunal Members' Conference was held. Presentations and discussion at the Conference delivered practical information to Tribunal Members. The Conference also provides an opportunity for Members to share their experiences in the conduct of cases. Conference resources were uploaded to the Members' intranet.



Tribunal Member's Conference

## Registry briefing days

Each month Deputy Registrars based throughout the State meet at the Tribunal's Sydney offices with the Registrar and Deputy Registrars (Case Management). These meetings facilitate discussion about case management issues, identification of Registry staff training needs and information sharing. They assist in maintaining consistency in management practices across the organisation, and demonstrate the Tribunal's ongoing commitment to learning and continuous improvement.

## E-newsletters

Regular e-newsletters are produced to help keep staff and Tribunal Members updated on legislative, operational and other issues. The Chairperson's newsletter to Members contributes to Member awareness about issues of relevance to their work. Staff also receive regular e-newsletters which include information about legislative and operational changes, and new initiatives.

## Member network groups

With a large number of part-time and regionally based Tribunal Members, Member network groups provide a useful forum for discussion about case studies and issues relevant to the dispute resolution process. These groups are facilitated by Senior Members and meet via teleconferences on a bi-monthly basis.

## Procedures manual

An overhaul of the existing Registry 'Procedures Manual' was commenced during the year. This Manual is a key training tool for staff, and provides an outline of the role and operations of the Tribunal. New and updated procedures have been developed to assist staff in undertaking their roles, and to encourage professional development across the organisation.

## Performance Development Program (PDP)

This Program, which is being rolled out across all agencies within the Department of Commerce, provides an opportunity for managers and their staff to discuss employee performance, provide feedback and identify individual training and development needs. PDP training was provided to staff during the year to help them understand the Program and its various elements.

# Business Improvement

## Technology

The Tribunal develops, implements and maintains technological systems that underpin the Tribunal's objective to provide efficient and effective services.

The Tribunal's Business Development Unit works with the NSW Department of Commerce in supporting network services, including the Tribunal's case management system and the online lodgement website. During 2008-2009 the Tribunal's database was migrated to new hardware and relocated into a new data centre provided by the Department of Commerce. The new data centre ensures better security and a higher level of availability.

## Hearing allocations diary

New software to automate the allocation of hearings to Tribunal Members and to assist with their travel arrangements was introduced towards the end of the reporting period. The new hearing allocations diary has significantly streamlined the process for allocating and arranging Member's hearings.

## Innovation and Creativity Award

This year the Tribunal's Business Development Unit received its second Department of Commerce 'Innovation and Creativity' team award, this time for the extension of the *InCourt* application into the wireless network via new laptops. This significantly extends the reach of Tribunal technologies, providing better client service and improving the Tribunal's efficiency, particularly in regional locations.



## Pilot hearing list electronic display

New electronic hearing list displays, using flat-screen technology, were piloted during 2008-2009 at the Tribunal's Sydney Registry. The display replaces the former paper-based notices posted in Registries to let clients know the room in which their hearing is held. The new electronic hearing list displays real time hearing information directly from the Tribunal's case management database, so any changes are immediately available for clients to view. This system is being rolled out to other Registry locations around the State.

## Continuous improvement

The Tribunal has implemented various initiatives to foster the development of a continuous improvement culture across its range of services and operations.

## Continuous Improvement Reference Group

The Continuous Improvement Reference Group (CIRG) was established early in 2008. It reports on and analyses information and feedback about the Tribunal's activities, and recommends strategies that contribute to the Tribunal's ongoing effectiveness. Membership of CIRG includes the Tribunal's senior management team, officers from the Tribunal's Continuous Improvement Unit and Registry, and Tribunal Members. CIRG provides a forum for discussion about issues that impact on all operational areas and client service practices. CIRG also receives reports on actions arising from complaints and other feedback received by the Tribunal.

In 2008-2009 CIRG met each quarter. As a result of CIRG discussions, 33 recommendations for enhancements were introduced to the Tribunal's operational procedures, client services, business development initiatives, and staff training and development activities.

On 25 March 2009 the Tribunal's Business Development Unit received the NSW Department of Commerce's Service & Excellence Award for 'Innovation and Creativity'

From left: Graeme Head - Director-General NSW Department of Commerce, Carmel Tebbutt - Deputy Premier and Minister for Commerce, Evan Pidgeon and Eileen Leong representing the Business Development Unit which also includes Antony Brennan and Michelle Hoang (not pictured)

# Tenancy Division

## Key Facts 2008-2009

### Applications

Number of applications received 34,223

- 33% decrease from 2007-2008 \*

Number of online lodgements (39%) 13,259

### Application types:

• Abandoned premises / goods	168
• Access	681
• Breach	2,814
• Compensation	3,324
• Excess rent Includes excessive rent & excessive rent increase	687
• Other	553
• Recognition as tenant	106
• Rehearing	1,065
• Renewal	56
• Rental bond	5,278
• Special social housing provisions#	974
• Termination - other	3,130
• Termination - rent arrears	15,236
• Termination - use of premises	151

### Applicants:

Lodged by landlord	26,989
Lodged by tenant	7,178
Lodged by occupant	56

### Hearings

Number of hearings	41,662
Number of adjournments	9,300

### Finalised matters

Matters finalised 37,909

### Final orders:

• Made at hearing	22,896
• By consent	8,164
• Withdrawals	6,849

### Key performance indicators

90% Listed for hearing within 28 days

76% Finalised prior to or at first hearing

73% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted	474
Supreme Court / District Court appeals	22

## Overview

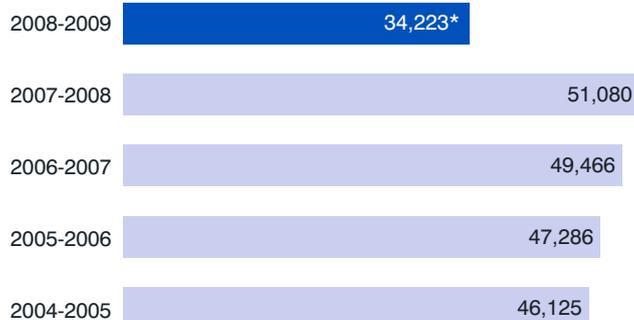
The Tenancy Division deals with disputes between landlords and tenants who have entered into a residential tenancy agreement.

The Tribunal has jurisdiction under the *Residential Tenancies Act 1987* to hear and determine applications from landlords, tenants and occupants. The common types of issues that arise in this Division include not fulfilling promises under residential tenancy agreements, excessive rent increases, termination of agreements, and return of rental bonds.

Changes to the *Consumer, Trader and Tenancy Tribunal Act 2001* in October 2008 introduced a new Social Housing Division that altered the operation of the Tenancy Division.

From 1 October 2008, only private landlords and tenants lodge applications in the Tenancy Division. As a result, Tenancy Division data for 2008-2009 is not directly comparable with previous years. However the combined total of Tenancy and Social Housing applications continues to represent the bulk of the Tribunal's workload. Information about the new Social Housing Division is included in this report.

## Application trends



The *Residential Tenancies Act 1987* does not apply to hotels and motels, boarders and lodgers, protected tenancies, and commercial or retail tenancies.

\* 2008-2009 Tenancy Division data is not directly comparable with 2007-2008 data due to the transfer of social housing tenancy matters to the Social Housing Division from 1 October 2008

# Classification discontinued following commencement of the Social Housing Division on 1 October 2008.

# Case studies

## Changing locks...

If a tenant wishes to add or change locks and other security devices to make the premises more secure, they must first obtain the landlord's consent. The *Residential Tenancies Act 1987* requires the tenant to also supply a copy of the new keys to the landlord.

The tenant of a rural property was concerned about the safety of his possessions and asked the landlord if he could change the locks to front and rear doors of the premises. The landlord agreed to this on the condition that a copy of the keys to the new locks would be supplied. The tenant then bought new locks and arranged for them to be installed. When the tenant failed to supply a copy of the new keys as agreed, the landlord lodged an application with the Tribunal.

When the parties arrived at the Tribunal, they attempted conciliation which was unsuccessful and the matter proceeded to hearing. At the hearing, the tenant gave evidence that the landlord had never held a set of keys to the premises. The tenant had concerns for valuable items of artwork which were kept on the premises and that as a gun licence holder he may, from time to time, have guns and ammunition on the premises. The tenant expressed concern about his personal security and the security of his valuables, firearms and ammunition if the landlord were to be given a set of keys to the premises.

The landlord explained that it was the landlord's policy to have duplicate keys to all its properties for use in emergencies. It was also recognised that the *Residential Tenancies Act 1987* contained provisions relating to the rights of parties to hold keys to residential premises.

The Tribunal Member found that the tenant had failed to insure the contents of the property to protect his valuable artworks, and that he had also failed to keep his guns and ammunition in a gun safe as required by law. There was also no evidence of any breaches of entry by the landlord. It was on this basis that the Tribunal Member found there was no reason the landlord should not be allowed to possess a copy of the keys to the premises. Final orders were made that the tenant was to provide the landlord with a copy of the keys to the front and rear door locks within a specified timeframe.

## Ending the tenancy early...

If a tenant wants to end a residential tenancy agreement early, he or she may become liable for some extra costs. Under the *Residential Tenancies Act 1987* the landlord can claim compensation from the tenant for any loss suffered as a result of the early ending of the agreement - such as payment of rent until new tenants move in, reletting fees and advertising costs.

A landlord and tenant entered into a tenancy agreement for a 12 month fixed term. After only 4 months the tenant advised the landlord of her intention to abandon the tenancy and vacate the premises and did so soon afterwards. The tenant had paid rent in advance, covering a further three month period. As soon as the tenant advised the landlord of her intention to vacate, the landlord began advertising the premises through his real estate agent. The landlord was unable to find a new tenant until a further 4 weeks had passed and lodged an application with the Tribunal claiming for 28 days loss of rent.

At the hearing the tenant claimed that the landlord did not advertise the property in the newspaper and consequently had failed to actively mitigate their loss. The landlord replied that as 95% of properties are let following enquiries made directly to the real estate agent's office this is where the property was best advertised. The landlord also pointed out that following the closure of two large local businesses the vacancy rate for 2008 was about 11%, adding that some properties have been vacant for over 12 months.

The Tribunal Member considered section 78 of the *Residential Tenancies Act 1987* which sets out the rights of a landlord to compensation where a tenant abandons premises. The Tribunal was satisfied that the tenant abandoned the premises within the meaning of section 78(1) of the Act and that the landlord had taken the appropriate steps to mitigate any loss by advertising through the agent.

On that basis the Tribunal Member found that the landlord had successfully made out the case for the payment of rent arrears.

# Social Housing Division

## Key Facts 2008-2009

### Applications

Number of applications received 10,106

- No comparable data to previous years\*

Number of online lodgements (90%) 9,078

### Application types:

• Abandoned premises / goods	51
• Access	353
• Breach	1,901
• Breach - water usage	558
• Compensation	612
• Excess rent Includes excessive rent & excessive rent increase	39
• Other	34
• Recognition as tenant	10
• Rehearing	94
• Renewal	7
• Rental bond	34
• Termination - other	698
• Termination - rent arrears	3,912
• Termination - use of premises	162
• Termination - water usage	1,641

### Applicants:

Housing NSW	7,867
Community Housing	1,192
Aboriginal Housing	714
Tenant	323
Occupant	10

### Hearings

Number of hearings 11,172

Number of adjournments 1,983

### Finalised matters

Matters finalised 9,909

### Final orders:

• Made at hearing	6,497
• By consent	1,978
• Withdrawals	1,434

### Key performance indicators

84% Listed for hearing within 28 days

82% Finalised prior to or at first hearing

78% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 39

Supreme Court / District Court appeals 1

## Overview

'Social housing' is a form of housing where the premises are owned or managed by a government authority or a community housing provider.

The Tribunal has jurisdiction to determine social housing disputes under the *Residential Tenancies Act 1987*. The Social Housing Division deals with disputes that relate to social housing premises where the landlord is one of the following:

- ▶ NSW Land and Housing Corporation
- ▶ Housing NSW
- ▶ Office of Community Housing
- ▶ Aboriginal Housing Office
- ▶ an organisation registered with the Office of Community Housing, or under Part 5 of the *Aboriginal Housing Act 1998*.

The Tribunal hears and determines applications from social housing providers, social housing tenants and occupants. Like the Tenancy Division, all social housing tenancies are covered by the *Residential Tenancies Act 1987*, which also has additional provisions specific to social housing - such as water usage and grounds for termination of social housing tenancy agreements.

The common issues that arise in this Division include termination of residential tenancy agreements, breaches of the agreements, and compensation.

The Tribunal's Social Housing Division was established on 1 October 2008. Planning for the new Division was undertaken in consultation with social housing providers and tenancy advocates. An information strategy was implemented to promote the new Division to social housing tenants, landlords and support agencies.

## Application trends

As the Social Housing Division was established on 1 October 2008, there is no comparable data available for previous years.

2008-2009 10,106\*

The *Residential Tenancies Act 1987* does not apply to hotels and motels, boarders and lodgers, protected tenancies, and commercial or retail tenancies.

\* Collection of Social Housing Division data commenced on 1 October 2008 when the new Division was introduced. Prior to that, social housing matters were dealt with under the Tenancy Division.

# Case studies

## A damaging mould problem...

Under the *Residential Tenancies Act 1987* the landlord has an obligation to maintain the residential premises in a reasonable state of repair. Where a tenant's belongings are damaged due to a delay in carrying out repairs, they may apply to the Tribunal for compensation. These types of disputes may also include a claim for non-economic loss. Conciliation can help parties involved in such a dispute to quickly resolve their differences.

A woman had been a tenant in social housing premises for 7 years. The premises had always been affected by mould, particularly at the back of the house, which the woman had attempted to remove with bleach and other mould cleaners purchased from the supermarket. The tenant made regular complaints to her landlord about the ongoing mould problem, and a year later the landlord had arranged for the home to be repainted. However the mould returned the following winter.

The tenant again complained to the landlord about the increasing mould, and that it was starting to damage her furniture and belongings. The landlord then engaged a contractor to inspect and report on the condition of the premises. The report stated that broken downpipes at the rear of the house were causing water to be trapped in the guttering and overflowing into the roof, and recommendations were made for urgent repairs to be carried out.

The landlord did not carry out the repairs as recommended, and instead pruned the surrounding trees thought to be contributing to the problem. However, this action was unsuccessful as the mould problem continued. The tenant continued to complain to the landlord about the mould, and a year later the necessary repairs were finally carried out to the premises.

The extensive damage to the tenant's furniture and soft furnishings caused by the mould rendered them unusable, and they had to be replaced. The tenant lodged an insurance claim with her contents insurer, however the insurance company advised that it would not accept the claim as the policy did not cover mould loss or damage caused by mould. The tenant then lodged an application to the Tribunal seeking orders for \$10,000 for replacement furniture and furnishings damaged by the mould, plus compensation for non-economic loss for the stress caused by the ongoing mould problem.

On the day of the hearing, both parties appeared and they were asked to attempt conciliation. With the assistance of a Tribunal Conciliator, the landlord admitted that there had been a delay in carrying out inspections and repairs due to a lack of resources. The parties then successfully negotiated for compensation to be paid to the tenant to enable her to purchase replacement furniture. A consent agreement was made for the landlord to pay the tenant \$4,000.

## Illegal use of premises...

It is a term of every tenancy agreement that a tenant cannot use the residential premises for any illegal purposes such as the manufacture, distribution or selling of illicit drugs.

The landlord served the tenant with a notice of termination for breach of a term of the tenancy agreement that the tenant is not to use or cause or permit the premises to be used for any illegal purpose.

When the matter came before the Tribunal it was established that the tenant had been charged and convicted of an offence under the *Drug Misuse and Trafficking Act 1985* of supplying cannabis. Evidence given on behalf of the tenant established that she had suffered from multiple medical conditions for many years. The tenant was limited in her ability to get around and care for herself. She had developed a support network in the local area. Her financial resources were limited and her chances of finding accommodation in the private market were low.

There was no challenge to the validity of the notice of termination and the Tribunal Member found that the landlord had established the breach referred to in the notice. The Member then went on to consider whether the breach, in the circumstances of the case, warranted termination of the tenancy.

The Tribunal Member commented that, if it were not for the personal circumstances of the tenant, she would have had no difficulty in terminating the tenancy. The Member warned the tenant that she should be under no illusion that if further similar breaches occurred then it would be difficult to argue against termination. The Tribunal Member ordered that the tenant comply with the term of her tenancy agreement not to use the premises for any illegal purpose.

# General Division

## Key Facts 2008-2009

### Applications

Number of applications received 6,436

- 8% increase from 2007-2008

Number of online lodgements (24%) 1,557

#### Application types:

• Goods	3,166
• Services	2,839
• Holiday parks	105
• Renewal	42
• Pawnbrokers	18
• Conveyancing	4
• Rehearing	262

#### Applicants:

Consumer	6,247
Other party	189

### Hearings

Number of hearings 7,756

Number of adjournments 3,824

### Finalised matters

Matters finalised 6,352

#### Final orders:

• Made at hearing	3,286
• By consent	1,158
• Withdrawals	1,908

### Key performance indicators

56% Listed for hearing within 28 days

67% Finalised prior to or at first hearing

48% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 93

Supreme Court / District Court appeals 10

## Overview

Consumer claims against businesses regarding the supply of goods or services make up the bulk of disputes dealt with in the General Division. The Tribunal has jurisdiction under the *Consumer Claims Act 1998* to determine disputes about any goods or services, including goods purchased over the internet.

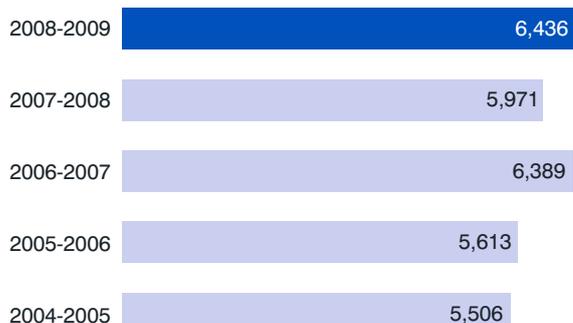
A consumer's claim must be against a supplier carrying on a business and not a private person. The common types of orders the Tribunal can make in this Division are:

- ▶ an order for money to be paid
- ▶ an order that money owed does not have to be paid
- ▶ an order for goods or services to be provided
- ▶ an order to fix or replace faulty goods
- ▶ an order for a refund and the goods to be returned.

In this Division the Tribunal also has jurisdiction under the *Holiday Parks (Long-term Casual Occupation) Act 2002*, *Pawnbrokers and Second-hand Dealers Act 1996* and *Conveyancers Licensing Act 2003* to determine disputes involving:

- ▶ long-term casual occupants of a holiday park (where a person's holiday van is left in a caravan park and is used on weekends or regularly for holidays)
- ▶ pawnbrokers and second-hand dealers who dispute a person's claim to goods on which money has been lent and where the goods are suspected of being stolen and police require the return of the goods to their rightful owner
- ▶ costs payable in respect of conveyancing work.

## Application trends



# Case studies

## A disappointing harbour cruise...

A common function of the Tribunal is to determine the terms of an agreement between two parties. In particular, the Tribunal looks at what promises were made by the parties and whether those promises have been honoured. If it is found that a breach of the agreement has occurred, the Tribunal can determine the level of damages that should be awarded to the aggrieved party.

A young woman celebrated her 21st birthday with family and friends on a Sydney Harbour cruise. She had paid for 42 people at the cost of \$65 per head and verbally requested that a DJ play music, high quality champagne and other alcoholic drinks be served, and for a projector to be made available to display photographs and a home-made video. However, on the night the young woman was very disappointed with the services provided. In addition, there were two other buck's party groups on the same cruise boat which were extremely disruptive to her party.

The young woman applied to the Tribunal seeking compensation from the harbour cruise operator, claiming that she received a reduced level of service and should only have to pay \$40 per head. At the hearing the young woman and her mother gave sworn evidence about the events of that night. It was claimed that there was no DJ in attendance as agreed and instead they had to go downstairs to ask the cruise director to change the CD. They also complained about the cleanliness of the boat and the poor quality of drinks served. The woman also stated that she had specifically told the cruise operator that she would not go ahead with the booking if there was a buck's party on the same cruise, as her party was a family event with elderly relatives and young children. The cruise operator denied these claims stating that he personally provided the DJ service on that night and that other quality drinks were available upon request. He also denied that the young woman ever specified that she objected to buck's parties booked on the same cruise boat.

It became clear to the Tribunal Member that the young woman's expectations of the service provided was clearly different to the cruise operator's in relation to the music, the quality of alcohol served and projection facilities. It was found that because the contact between the parties was unclear as to the exact terms of the agreement, the woman thought she would be getting one type of service where the operator thought he was providing another.

The Tribunal Member preferred the evidence of the young woman about her intention not to proceed if the cruise also included a buck's party. The Member commented that it was difficult to accept that a young woman would agree to share her 21st birthday celebrations with two separate groups of men with the attendant revelry normally associated with buck's parties.

The Tribunal Member decided that the cruise operator had breached the terms of the agreement. From the evidence it was

clear that the operator understood that it was a term of the agreement that there would not be a buck's party booked on the same evening as the young woman's 21st birthday party. Final orders were made that a \$15 reduction per head should be given for that breach of the agreement, and that \$630 be refunded to the young woman.

## Mismatching leather lounge suite...

All goods purchased have a basic implied warranty which requires the goods to be of 'merchantable quality', meaning that the goods must meet the basic level of quality and performance expected considering their description, price and other circumstances. If the Tribunal finds that the goods supplied were not of merchantable quality, orders can be made for a full refund of the amount paid and return of the goods.

A couple purchased a new three-piece matching leather lounge suite for their home from a furniture retailer. Soon afterwards, defects were discovered with two of the lounges and both were returned to the retailer for repairs. One lounge was repaired satisfactorily, however the second lounge had to be returned several times for further repairs. After the fourth repair, the lounge was returned to the couple with new leather and timber inserts. However the inserts had been installed more deeply which altered the lounge's appearance, and the colour of the new timber and leather no longer matched the other two lounges.

The couple applied to the Tribunal for a full refund of the amount paid for the lounge suite. At the hearing the couple gave evidence that the goods for which they had paid, being a lounge suite with all three parts matching in design, material and colour, was not what they had received. In response, the retailer denied any liability for a refund, stating that the couple saw the final repairs at the shop and said they were happy with them. The retailer claimed that this was an acceptance of the repairs and in effect this amounted to a 'waiver' in respect of any difference to the other lounges.

The Tribunal Member decided that when the couple inspected the final repairs at the retailer's premises they would not have been in a position to identify the extent of the colour difference of the leather, and would not have been in a position to compare the differences in the timber insert panels. The inspection of the final repair therefore could not amount to a waiver or an acceptance of the defects in the seat, and consequently failed to satisfy the terms of the agreement between the parties.

The Tribunal Member found that the retailer had an obligation to supply the couple with a matching three-piece lounge suite and that what had actually been supplied was in breach of that obligation, despite the various repairs which had been carried out. Final orders were made for the retailer to pay the couple a full refund and to collect the defective lounge suite from the couple's home within 3 weeks.

# Home Building Division

## Key Facts 2008-2009

### Applications

Number of applications received 3,571

- 1% decrease from 2007-2008

Number of online lodgements (11%) 410

### Application types:

• Claims under / equal to \$25,000	2,557
• Claims over \$25,000	680
• Renewal	89
• Rectification order	67
• Appeal against Director General's decision	2
• Rehearing	176

### Applicants:

Consumer	2,568
Trader	908
Other party	82
Insurer	13

### Hearings

Number of hearings 8,266

Number of adjournments 6,563

### Finalised matters

Matters finalised 3,592

### Final orders:

• Made at hearing	1,754
• By consent	895
• Withdrawals	943

### Key performance indicators

41% Listed for hearing within 28 days

58% Finalised prior to or at first hearing

32% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 71

Supreme Court / District Court appeals 26

## Overview

'Home building' refers to any residential building work done by a building contractor or tradesperson. This may include the construction of a new home, building an extension on an existing home, the installation of a swimming pool, or renovation of a bathroom or kitchen.

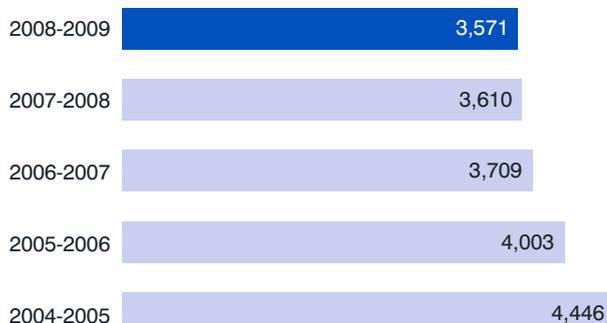
Under the *Home Building Act 1989* the Tribunal has jurisdiction to determine disputes between consumers, traders and insurers concerning residential building work up to the value of \$500,000. Typical scenarios include a builder who asks the Tribunal to require a home owner to pay for building work, or a home owner who wants the Tribunal to make an order to rectify defective work, or where the building work has been completed but not as detailed in the building contract.

Legal representation is more likely in home building disputes than in any other Division due to the large sums of money involved and the complex legal issues that often arise in these disputes.

All home building disputes must first be referred to the Office of Fair Trading's Home Building Service for alternative dispute resolution. The Tribunal is required to provide the Home Building Service with a copy of all orders made against a builder or licensed tradesperson.

Chairperson's Directions set out the procedures to be followed in home building disputes when the amount claimed is over \$25,000. These directions assist a range of alternative dispute resolution mechanisms and limit undue delay in proceedings. At the end of the reporting period consultations were underway regarding a proposal to increase this limit to \$30,000 to bring it into line with the General Division. This change took effect on 1 July 2009.

## Application trends



# Case studies

## Defective door installation...

When the Tribunal awards compensation for breach of contract, the underlying principle is that the aggrieved party should, as far as possible, be put in the position they would have been in had the contract been performed.

A home owner engaged a builder to supply and install a number of doors to his beachfront home, including three internal bedroom doors, three exterior door handles and three bi-fold doors with roller mechanisms. As soon as the work was completed the owner was unhappy with the operation of the doors and the quality of workmanship. The new bedroom doors had large gaps around them, the exterior door handles showed signs of corrosion shortly after being fitted, and the bi-fold doors failed to operate properly despite the builder attempting a number of times to fix them.

The owner applied to the Tribunal for compensation claiming the installation of the doors was not performed in a proper and workman-like manner, and that the bi-fold doors and exterior door handles supplied were not fit for the purpose for which they were sold.

At the hearing the owner gave evidence from a number of independent consultants supporting his claim, together with quotes for the rectification of the work. In response, the builder contended that the three bedroom doors were not symmetrical as the existing door jambs were not square. He considered the gaps around the doors to be only a cosmetic issue. The builder also alleged that, because the owner lived in close proximity to the sea, environmental factors were the probable cause of the continued failure of the operation of the bi-fold doors and corrosion of the exterior door handles.

The Tribunal Member found it was the responsibility of the builder to recognise and report the issue about the door jambs at the time of installation so as to avoid the inevitable defect, cosmetic or otherwise, which would arise upon completion of the work. The Member was satisfied the owner had contracted for properly fitted doors which were symmetrically consistent but instead had received a product which was defective and not fit for the intended purpose. Similarly, the Member was satisfied the owner's request for external door handles that were resistant to the potential corrosive effects of the local environment had not been met. The Member was also satisfied the bi-fold doors were not fit for the purpose for which they were sold as they had failed immediately after installation. The builder's numerous failed attempts to rectify the doors also led the Member to be satisfied that the doors were defective.

The Tribunal Member found in favour of the home owner and made orders that the builder pay compensation to have the doors rectified so they operated as required under the contract.

## Renovating without a contract...

The provisions under the *Home Building Act 1989*, that residential building work over \$1,000 should be undertaken with a contract in writing, are there to provide protection to both consumers and traders in the event something goes wrong.

The home owners wanted to renovate their kitchen and approached an acquaintance, who was a licensed builder, to carry out the building work. There was no formal agreement between the parties for the building works. When the builder completed the installation of the kitchen, the builder was asked to stay on and carry out further renovations to the bathroom. At the completion of the works the home owners were presented with a \$17,000 invoice.

The home owners were unhappy with the amount invoiced and refused to pay the builder. They commenced proceedings in the Local Court seeking orders not to pay the \$17,000 invoice, and an additional order for \$1,800 to carry out rectification works. The proceedings were then transferred to the Tribunal for determination.

At the Tribunal hearing the home owners contended the builder was a friend and that no hourly payment figure had been discussed as the builder had stated he preferred a barter system. In contrast, the builder stated they were not 'friends' and that the work was completed under a building contract with an hourly rate of \$55 for labour. The builder also stated that after he presented the invoice to the home owners, they told him that they did not have enough money to pay but would attempt to borrow the amount.

As there was little evidence of any social interaction between the parties, the Tribunal Member was not satisfied that the parties were 'friends' as claimed by the home owners, and therefore their claim of 'mate's rates' and 'a barter system' was not accepted. On the other hand, the builder's account of how the contract was formed was also not satisfactory. While the Tribunal Member did not accept \$55 per hour as a term of the contract, the Tribunal allowed the builder the invoiced amount claimed. However, the Member noted that as a licensed builder, he should have been aware of the provisions of the *Home Building Act 1989* in particular the requirements in relation to having a contract in writing, insurance and having any variations to the original contract in writing. Therefore the builder's case had to be made on a 'quantum meruit' basis, which is payment of the reasonable value of services performed. After considering the evidence of the parties, the Tribunal Member made orders that, after an off-set of the amount allowed to the builder, the builder was to pay the home owners \$3,400.

# Residential Parks Division

## Key Facts 2008-2009

### Applications

Number of applications received 1,345

- 2% increase from 2007-2008

Number of online lodgements (8%) 111

### Application types:

• Excessive rent / excessive rent increase	898
• Breach / compensation	192
• Termination	135
• Other	57
• Rental bond	6
• Renewal	6
• Recognition as a tenant	4
• Rehearing	47

### Applicants:

Resident	1,101
Park owner	240
Occupant	4

### Hearings

Number of hearings 1,187

Number of adjournments 737

### Finalised matters

Matters finalised 985

### Final orders:

• Made at hearing	481
• By consent	278
• Withdrawals	226

### Key performance indicators

36% Listed for hearing within 28 days

70% Finalised prior to or at first hearing

32% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 2

Supreme Court / District Court appeals 1

## Overview

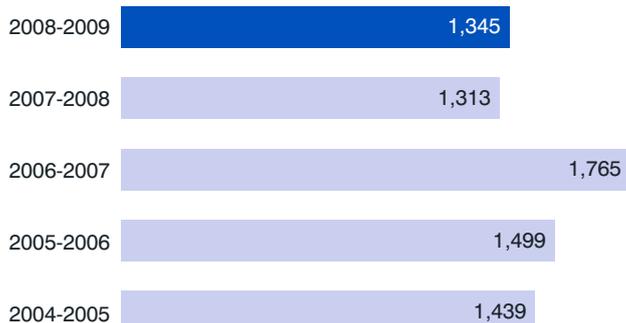
A 'residential park' may also be known as a caravan park, manufactured home estate, mobile home village or relocatable home park. Residents of a park may own their caravan or manufactured home and rent the site from the park owner. Residents may also rent accommodation that is owned by the park owner. The resident and park owner are required by law to sign a residential site agreement, moveable dwelling agreement or a residential tenancy agreement depending on the situation.

This Division applies to people who live in a residential park. It does not apply if the residential park is not the principal place of residence, or if the site is rented for holiday purposes (dealt with in the General Division under the *Holiday Parks (Long-term Casual Occupation) Act 2002*).

The Tribunal has jurisdiction under the *Residential Parks Act 1998* to hear and determine applications from both park residents and park owners. The types of disputes that arise include excessive rent claims, withdrawal of goods, services and facilities, breaches of the agreement, notices of termination, and alterations and additions to dwellings.

In this Division, the Tribunal regularly receives a large number of concurrent applications from a group of residents from the same park concerning the same issues and seeking similar orders. These 'multiple' applications are case managed collectively and are listed together for conciliation and hearing at the same time.

## Application trends



# Case studies

## Withdrawal of proposed goods, services or facilities...

If it can be shown that the goods, services or facilities provided within the residential park have been withdrawn, residents may apply to the Tribunal under section 56 of the *Residential Parks Act 1998* for orders that their rental payment is excessive.

A new residential park began operating in 2005 and advertised its facilities and its plans for future amenities in a brochure. In addition to the caravan and boat storage already available to residents, proposed future amenities included a large community hall, bar and kitchen facilities, a library and a large open meeting area. Despite being in a development stage, the park began to attract new residents.

Three years later several residents made applications to the Tribunal seeking a reduction in rent, claiming the park's planned amenities which had still not been built constituted a withdrawal of goods, services and facilities. The withdrawal of the existing caravan and boat storage was also argued to be a withdrawn facility.

The Tribunal Member decided that in respect of future goods, services or facilities, a resident is not entitled to claim that rent is excessive until the date stipulated for the provision of those goods, services or facilities has expired. The Member found that there was nothing in the documents submitted which identified a timeframe for the development of the proposed facilities, and the residents' evidence fell short of satisfying the Member that there was a binding commitment on the part of the park owner. The agreement between the parties was vague and the Member could not find a withdrawal of services.

The Tribunal Member also remarked that there had been no rent increase throughout the duration of the tenancies to date, and for this reason it was not unreasonable to infer that the stability of the rent took into account the delays in the provision of the planned services and facilities. The residents were aware that the park was new and still in the process of being developed. The residents had unfulfilled expectations because they were promised facilities that were slow to materialise. Nevertheless, in respect of the current amenities, the Member decided that the rent being paid by the residents was not excessive.

In respect of the caravan and boat storage facilities however, evidence was given that this facility had been available from the start of the tenancy and was enjoyed by several residents. As this facility had later been withdrawn the Member ordered compensation to be paid by the park owner to those residents who had subsequently been forced to store their boats and caravans elsewhere.

## Assigning rights...

Section 41 of the *Residential Parks Act 1998* provides that it is a term of every residential tenancy agreement that the resident may, with the consent of the park owner, assign the whole or part of their rights and obligations under the agreement, and the park owner may not unreasonably withhold or refuse consent to an assignment.

An elderly woman had lived at the same residential park for 22 years. At the age of 88 her health declined and she could no longer live independently within the park. She decided to sell her mobile home which was located on a site within the park so she could move closer to her family. A buyer was found, but when the woman attempted to assign her rights as a resident to the prospective buyer the park owner refused to give consent.

The elderly woman lodged an application to the Tribunal and she was successful in having an order made which required the park owner to give consent to the assignment of rights to the prospective buyer. However, when the written assignment was sent to the park owner for signature, the park owner again refused to sign the document and continued to withhold his consent to the assignment.

A second urgent application was then lodged to the Tribunal seeking orders that the park owner give his immediate consent to the assignment. At the subsequent hearing, orders were made directing the park owner to give consent immediately, however the park owner continued to refuse to sign. The park owner instead prepared an alternative assignment agreement which required that the mobile home comply with local council requirements. This meant that the mobile home would need to be reduced in length by several metres.

As the park owner failed to comply with the Tribunal's orders, the elderly woman lodged a renewal application to the Tribunal to again order the park owner to give consent to the assignment together with a claim for compensation. At the renewal proceedings the Tribunal found that the park owner had no grounds upon which to continue to withhold consent, that the alternative assignment could not lawfully add the compliance conditions, and that the park owner was in breach of the two previous orders of the Tribunal requiring that consent be given.

At the conclusion of the hearing, the park owner finally signed the assignment agreement and the Tribunal Member made orders awarding compensation to the elderly woman for financial loss and for the distress and discomfort caused by the park owner's breach.

# Strata and Community Schemes Division

## Key Facts 2008-2009

Applications	
Number of applications received	1,338
• 3% decrease from 2007-2008	
Number of online lodgements	na*
<b>Adjudication</b>	956
• Strata scheme	920
• Community scheme	36
<b>Tribunal hearings</b>	382
• Strata scheme	357
• Community scheme	25
<b>Application types:</b>	
<b>Adjudication</b>	
• General orders and other	337
• Interim orders	171
• By-laws	143
• Appoint strata manager	108
• Meetings, decisions and records	93
• Property	80
• Contributions and levies	23
• Insurance	1
<b>Tribunal hearing</b>	
• Appeal	167
• Penalty	157
• Unit entitlements	29
• Other	12
• Initial period	10
• Amend or revoke Tribunal order	3
• Caretaker contract	2
• Appoint managing agent	1
• Revoke or vary management statement	1
<b>Applicants:</b>	
Lot owner	883
Owners corporation	430
Other party	23
Occupier of a lot	2
<b>Hearings</b>	
Number of hearings	642
Number of adjournments	462
<b>Finalised matters</b>	
Matters finalised	1,253
<b>Final orders:</b>	
• Made at hearing or adjudication	1,068
• By consent	31
• Withdrawals	154
<b>Key performance indicators</b>	
84% Finalised prior to or at first hearing	
23% Finalised within 35 days	
<b>Rehearings and appeals</b>	
Number of rehearings granted	na
Supreme Court / District Court appeals	3

\* Online lodgement is not available for this Division

## Overview

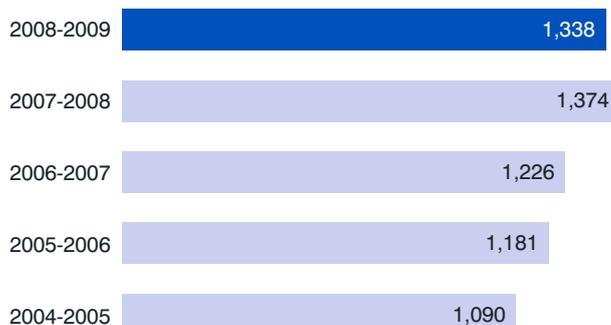
A strata scheme is a building or collection of buildings where individuals own a small portion known as a 'lot', such as an apartment or townhouse. There is also common property, such as driveways, foyers and gardens, and every lot owner shares the ownership of the common property. Strata schemes vary in size, some comprising only two lots and others having more than 700 lots. There are approximately 65,000 strata schemes in New South Wales.

A 'community scheme' also involves a system of property ownership made up of lots or units which may be subdivided into strata schemes or other smaller community or neighbourhood schemes. The common property in these schemes forms a separate lot with its own lot number, but similar to a strata scheme, all lot owners share in the common property. These schemes are set up to allow for multiple dwellings on one piece of land. They may range from rural subdivisions to large closed communities with recreational facilities such as tennis courts or golf courses. There are approximately 350 community schemes and 900 neighbourhood schemes in New South Wales.

The Tribunal has jurisdiction under the *Strata Schemes Management Act 1996* and *Community Land Management Act 1989* to hear and determine disputes about strata and community schemes. Under these Acts, mediation must generally be attempted to resolve the dispute before the Tribunal can accept an application. Mediation is conducted by the Office of Fair Trading. Other approved mediation services may also be used, such as those available from Community Justice Centres.

Most disputes in this Division are determined by an Adjudicator who is generally a Tribunal Member. All parties in the scheme, or those parties that may be affected by the order sought, are invited to make written submissions. The Adjudicator's decision is then made 'on the papers'. The Adjudicator can also refer disputes to the Tribunal for hearing when, for example, complicated issues are involved.

## Application trends



# Case studies

## Noisy neighbours...

The *Strata Schemes Management Act 1996* obliges owners and occupiers of lots not to create a nuisance, including any noise which is likely to interfere with the use or enjoyment of the common property by other owners and occupiers.

An appeal to the Tribunal from an Adjudicator's orders was lodged by a couple who were the owners and occupiers of a lot in a strata scheme. The couple claimed they were affected by the noise of their neighbour's piano which they alleged was excessively loud and interfered with their peaceful enjoyment of their lot and the common property.

At the hearing the applicants called evidence from a variety of witnesses who had visited the premises and attested to the excessive noise of the piano. In addition, a number of residents from neighbouring lots stated they could also hear the piano from their properties. Where some claimed that the noise was loud and offensive, others said that they were not bothered.

The applicants' and respondent's properties shared a common wall. As the piano was placed against that wall, the noise transmitted directly through. The applicants claimed that it was impossible to escape the noise. They could not hear their television at normal volume and they could not relax or entertain without hearing the neighbour's piano. The noise made it difficult to concentrate, impossible to have an afternoon nap and affected their health and their relationship. They had tried to resolve the matter with their neighbour directly, but without success.

The respondent chiefly relied on a report prepared by an acoustic engineer who had been engaged to test the noise levels. The tests revealed noise levels were within an acceptable range. However it was pointed out that at the time the testing was carried out, the respondent was using a panel of sound deadening foam, in place immediately adjacent to the piano. This, according to the engineer, would have reduced the noise levels by several decibels. The Tribunal noted that as the foam had subsequently been removed, less significance could be placed on the report as it would not adequately reflect the noise levels experienced by the applicants.

The Tribunal Member found that the respondent was in breach of section 117 of the *Strata Schemes Management Act 1996* and by-law 1 (under Schedule 1 of the Act) by permitting the playing of a piano within her lot in such a way that resulted in noise that was both a nuisance to the applicants and prevented their peaceful enjoyment of their lot and the common property. The Member made orders that the respondent comply with the *Strata Schemes Management Act 1996* by reducing the noise from her piano to an acceptable level.

## Exclusive use by-laws...

All strata schemes include a set of standard by-laws to regulate such aspects as the behaviour of residents and the use of common property. Owner's Corporations may create new additional special by-laws to further assist in the proper management of the common property. Owners and residents are obliged to comply with all by-laws in accordance with the *Strata Schemes Management Act 1996*. Under section 158 of the Act, an Adjudicator can order that a special by-law be made if a party or parties have unreasonably refused consent to its proposed terms.

A man who owned a lot, had exclusive use of a roof area in common property in accordance with a special by-law approved in 1988, and had built a roof deck in that area of the property. Many years later he sought to create an additional by-law allowing him exclusive use of a small adjacent roof space where he intended to erect an attic storeroom. He made the owners of the neighbouring lots an offer of \$10,000 for exclusive use of the common property. He then submitted a proposal to the Owner's Corporation and, at a subsequent mediation between the lot owners, they reached an agreement for him to arrange a valuation of the common property and submit construction plans for the attic storeroom. The Owner's Corporation could then decide the matter based on the valuation report and plans submitted.

On the day following the mediation however, the man contacted the other lot owners indicating he intended to abandon the whole project and withdrawing his \$10,000 offer, complaining that the other owners were being unreasonable. A week later he again contacted the other lot owners stating that he was going to continue with the valuation of the common property as per their agreement, and also that he intended to pursue the matter by applying to the Tribunal.

The man then applied to the Tribunal seeking an Adjudicator's order under section 158, that the other lot owners were unreasonable in refusing to consent to his proposal to erect the attic storeroom for his exclusive use.

The Adjudicator found that, without the details of a valuation of the property and an assessment of the construction plans, it was not unreasonable for the other owners to withhold their consent for the special by-law. The Adjudicator decided the applicant did not demonstrate that the refusal to consent was unreasonable, noting that the other lot owners were entitled to be concerned about proposed use of the roof space plans, as they more accurately depicted the proposed use as a habitable space rather than just a 'storeroom'. For these reasons the Adjudicator dismissed the man's application.

# Motor Vehicles Division

## Key Facts 2008-2009

### Applications

Number of applications received 1,259

- 20% increase from 2007-2008

Number of online lodgements (25%) 309

#### Application types:

• Claims under / equal to \$25,000	1,083
• Claims over \$25,000	85
• Renewal	17
• Rehearing	74

#### Applicants:

Consumer	1,226
Other party	33

### Hearings

Number of hearings 1,622

Number of adjournments 909

### Finalised matters

Matters finalised 1,199

#### Final orders:

• Made at hearing	629
• By consent	251
• Withdrawals	319

### Key performance indicators

15% Listed for hearing within 28 days

59% Finalised prior to or at first hearing

25% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 35

Supreme Court / District Court appeals 0

## Overview

Consumers who have a dispute about a new or used motor vehicle purchased from a motor dealer, or who are unhappy with repairs done to their vehicle, can lodge an application in the Motor Vehicles Division.

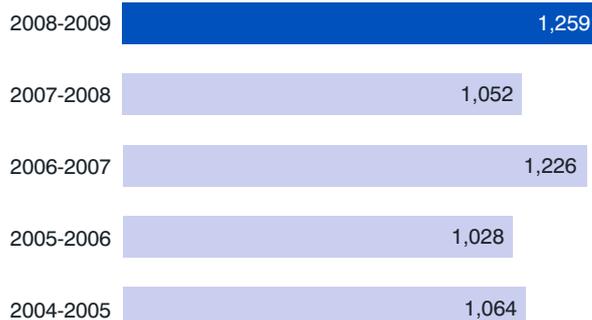
The Tribunal has jurisdiction to hear and determine motor vehicle disputes under the *Consumer Claims Act 1998*, *Fair Trading Act 1987*, *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1974*.

This Division deals with disputes about vehicles that are used primarily for private use. A 'motor vehicle' can mean a new or used car, motorcycle, tractor or other powered vehicle on wheels. Typical issues that may arise in this Division include unsatisfactory repairs and maintenance, defective or faulty used and new cars, overcharging for services, and warranties.

The maximum claim in the Motor Vehicles Division is \$30,000, except when the dispute relates to the purchase of a new motor vehicle used for private purposes and then orders can be made for any sum of money.

Applications to the Motor Vehicles Division are initially referred to the Office of Fair Trading for preliminary dispute resolution. These referrals give parties an opportunity to settle before attending the Tribunal for a hearing. If there is no resolution, a report may be provided to the Tribunal which may be of assistance during the determination of the dispute.

## Application trends



# Case studies

## Misleading and deceptive conduct...

Section 42 of the *Fair Trading Act 1987* provides that a person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Section 24 of the *Motor Dealers Act 1974* requires a dealer who offers or displays for sale a second-hand motor vehicle, to attach to the vehicle a notice containing the true particulars of the vehicle.

A man purchased a second-hand car from a car dealer. Several months later, he discovered that the vehicle had been imported from England and the odometer reading was in miles, not kilometres as he had thought. He calculated the vehicle had travelled almost 45,000 kms more than he had originally thought, and considered a fair value for a vehicle having travelled that distance would be \$5,000 less. He contacted the dealer to complain about the odometer reading. The dealer denied there had been any misrepresentation, asserting that he had clearly told the man that the odometer was in miles.

The man lodged an application to the Tribunal seeking orders for a refund of \$5,000 from the dealer. At the hearing the man brought a copy of the vehicle warranty form, signed by the dealer, which displayed a distance travelled in kilometres. The contract of purchase document, also signed by the dealer, confirmed the same odometer reading but did not indicate whether it was measured in kilometres or miles. The man told the Tribunal Member he was led to believe the distance travelled was in kilometres and was not told anything different when purchasing the vehicle. The dealer replied that the reference to kilometres in the signed documents was just a typographical error and that the man was made fully aware the odometer reading was in miles during their discussions.

The Tribunal Member referred to the *Motor Dealers Act 1974*, noting that the onus of ensuring notices attached to vehicles are filled out appropriately and accurately falls upon the car dealer.

The Tribunal Member decided that the warranty form signed by the dealer displayed a distance travelled by the vehicle in kilometres, and did not represent the true distance travelled by the vehicle. The Member found this information was false and misleading and, when combined with the oral evidence of the applicant, was sufficient to persuade the Tribunal on the balance of probabilities that the man was misled. The dealer provided no evidence to the Member to refute the applicant's evaluation of \$5,000 in damages or to provide evidence of a different valuation. The Tribunal Member was therefore satisfied the amount claimed was reasonable and made an order in accordance with the applicant's claim.

## Implied terms...

Under the *Fair Trading Act 1987*, a term is implied into every consumer contract that any services supplied will be provided with due skill and care.

The owner of a vintage camper bus engaged an engine reconditioning company to supply and fit a reconditioned engine. The engine was installed but when the bus was road tested a fire broke out causing substantial damage. The bus was hauled back to the company's premises where various inspections were carried out. The bus owner paid the invoice for the work carried out by the company but later lodged an application with the Tribunal alleging the installation of the reconditioned engine was not undertaken with due skill and care, causing the fire and the damage to the bus.

At the Tribunal hearing, a report by a forensic expert commissioned by the company's insurer was tendered. It concluded that the fire began beneath the floor in the engine area towards the rear of the automatic transmission. The fire was said to have spread from the rear exhaust pipe. The report concluded that automatic transmission fluid had leaked from the transmission and ignited on contact with the exhaust pipe.

The bus owner also tendered an independent report from an automobile engineering consultant. That report agreed the fire was due to an automatic transmission fluid leak, but concluded the transmission fluid was overfilled and caused an excessive fluid pressure build-up, causing the dipstick to be ejected from its sealed location and fluid to escape. It was this consultant's opinion that checking the roadworthiness of the vehicle before a road test, including all lubricating oils, was an essential procedure which had been neglected in this case. The respondent company argued that because it had done no work to the transmission of the vehicle the fluid leak could not be related to the work they had carried out in replacing the engine, and therefore must have been a pre-existing problem.

In deciding the case, the Tribunal Member agreed with the bus owner's independent report that it was the responsibility of the installing mechanic to check the transmission fluid levels even if the work carried out only involved linking the new engine to the transmission and nothing else. The Member accepted that the cause of the fire was due to the fluid leak and that the fluid had been overfilled. In failing to check the roadworthiness of the vehicle in this respect, the engine reconditioning company was found to be liable for the damage done to the vehicle.

# Commercial Division

## Key Facts 2008-2009

### Applications

Number of applications received 341

- 13% increase from 2007-2008

Number of online lodgements na\*

### Application types:

• Consumer Credit Code	242
• Property, Stock and Business Agents	73
• Credit - Home finance	6
• Finance brokering	5
• Termination - Return of goods	3
• Repossession	1
• Waive notice	1
• Rehearing	10

### Applicants:

Debtor	226
Interested / affected party	45
Mortgagee	33
Mortgagor	18
Credit provider	14
Lessee	4
Director General	1

### Hearings

Number of hearings 603

Number of adjournments 427

### Finalised matters

Matters finalised 320

### Final orders:

• Made at hearing or adjudication	125
• By consent	39
• Withdrawals	156

### Key performance indicators

47% Listed for hearing within 28 days

57% Finalised prior to or at first hearing

39% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 3

Supreme Court / District Court appeals 1

\* Online lodgement is not available for this Division

## Overview

The Commercial Division deals with disputes relating to five pieces of legislation - the *Consumer Credit Administration Act 1995*, *Consumer Credit (New South Wales) Act 1995*, *Credit (Home Finance Contracts) Act 1984*, *Travel Agents Act 1986* and *Property, Stock and Business Agents Act 2002*. Disputes are primarily about credit matters, appeals against Travel Compensation Fund decisions and commission fees charged by agents.

The *Consumer Credit (New South Wales) Act 1995* applies the Consumer Credit Code. The Code was developed to standardise credit practice across Australia and is uniform in all states, with minor differences in Western Australia. The Code defines the type of agreements that are categorised as credit contracts and regulates all credit providers as well as stores, solicitors, accountants and individuals who provide credit and charge interest.

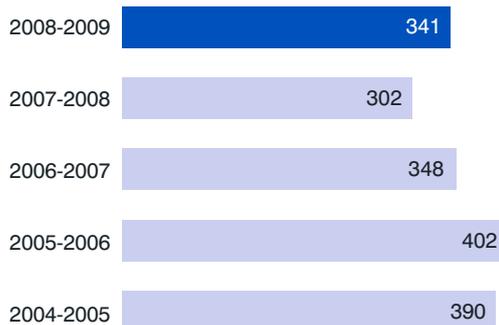
The Tribunal can only deal with credit contracts that are for personal or household uses including leases, home loans and insurance related to credit contracts (for example, insurance on a motor vehicle purchased on credit).

The Tribunal hears and determines applications from debtors, credit providers, consumers, mortgagors and lessees. Common types of issues that arise in this Division include:

- ▶ borrowers suffering hardship who are unable to meet their payments
- ▶ reduced, rescheduled or recalculated payments or arrears
- ▶ postponement of enforcement action
- ▶ reduction or waive of interest charges
- ▶ determining reasonable agent commissions and fees.

The transfer of consumer credit matters to the Commonwealth, due to take place in 2010, will impact on the types of disputes dealt with by the Tribunal. During the year the Tribunal consulted with the Office of Fair Trading regarding the transfer proposals.

## Application trends



# Case studies

## A refinancing nightmare...

Consumers should be careful about refinancing to save their home when they are already in default. Often home owners can be forced to go to a credit provider who offers short-term but high-interest loans, with large commission fees. These types of loans are often arranged for 'business' or 'investment' purposes. These types of contracts can be difficult and can cause substantial hardship.

When a married couple fell into financial difficulties, they started to default on their home loan and were subsequently served with a default notice. The couple, who were not used to commercial dealings, saw a TV advertisement by a credit provider for 'urgent cash advances' and 'bad credit mortgages'. They made an application with the credit provider to refinance their home loan and for additional funds to repay the default. They were advised that they could obtain an initial short-term 'business' loan for \$10,000 which would then be paid out by a second loan which would cover the refinancing of their current liabilities. On this basis the couple agreed to the high-interest six-month term business loan and received \$10,000 which they used to repay the default amount on their home loan. The credit provider also lodged a caveat over the couple's home.

When the couple later enquired about the second loan to refinance the short-term loan, they were unable to get in contact with the credit provider. As the couple could not sustain the repayments on the high-interest loan as well as their original home loan repayments, they again fell into arrears and made enquires with other organisations about refinancing. However approval could not be obtained due to the couple's low income and arrears on the short-term loan. The couple lodged various applications to the Tribunal seeking a number of orders under various Acts, including the Consumer Credit Code, the *Consumer Credit Administration Act 1995*, *Fair Trading Act 1987* and the *Consumer Claims Act 1998* to be released from the short term loan with the credit provider.

Due to the complex nature of this dispute, three hearings were conducted. The respondent company did not make an appearance at any of the hearings. The Tribunal Member was satisfied that the credit provider had been served with Notices of Hearing and the proceedings went ahead. The Tribunal Member considered the evidence presented by the couple and was satisfied they were given no explanation by the credit provider of the implications of signing a 'business loan', that no attempt was made by the credit provider to confirm whether the couple had the capacity to repay the loan without substantial hardship. It was determined that the loan was not provided for business purposes but was for personal, domestic or household purposes and thus the Consumer Credit Code applied. The Member also determined that the loan was unjust, the credit provider had engaged in unjust conduct in

relation to the contract with the couple, and that the commission charged by the credit provider was excessive.

The Tribunal Member made final orders that the couple were to be released from their agreement with the credit provider, that the \$3,000 commission fee be refunded to them and that the credit provider was to take steps to remove the caveat lodged on their property.

## Entitlement to commission...

Under the *Property, Stock and Business Agents Act 2002* a real estate agent may enter into an exclusive agency agreement which provides that the agent is entitled to a commission for the sale of a property where the agent is the effective cause of the sale.

A couple entered into an exclusive agency agreement with a real estate agent for the sale of their home. The agreement provided that *'the agent shall also be entitled to a fee at the agreed amount if at any time following the exclusive agency period the principal enters into a contract for sale of the property to a purchaser effectively introduced to the principal of the property during the exclusive agency period by the agent, by any other agent or by the principal'*.

At the end of the exclusivity period, the agreement was terminated. A couple of days later the agent wrote to the couple confirming the end of the agreement and removal of signage. The agent also provided a list of names of people they had shown the property to. Shortly afterwards, the couple sold the property to M. M's name was on the list of names provided by the agent.

The agent sought payment of its commission on the basis that it had introduced M to the property. The couple, however, believed that they were the effective cause of the sale, not the agent, and lodged an application with the Tribunal under the *Property, Stock and Business Agents Act 2002* arguing that they should not have to pay the commission.

At the hearing the evidence showed that M was known to the couple before they decided to sell their house. The agent marketed the property on the internet, in newspapers and magazines and displayed a signboard outside the property. The agent had shown M other properties in the area similar to the couple's house. The agent suggested on three occasions that M inspect the couple's house but M refused.

The Tribunal Member found that M knew the house was for sale and her actions in not inspecting the property during the course of the exclusive agency agreement were deliberate. The Tribunal found that the agent was the effective cause of the sale and was entitled to commission.

# Retirement Villages Division

## Key Facts 2008-2009

### Applications

Number of applications received 51

- 13% increase from 2007-2008

Number of online lodgements na\*

### Application types:

• Breach	18
• Budget dispute	7
• Termination	2
• Renewal	1
• Other	21
• Rehearing	2

### Applicants:

Resident	38
Administering authority	13

### Hearings

Number of hearings	82
Number of adjournments	70

### Finalised matters

Matters finalised 49

### Final orders:

• Made at hearing	25
• By consent	8
• Withdrawals	16

### Key performance indicators

55% Listed for hearing within 28 days

49% Finalised prior to or at first hearing

21% Finalised within 35 days

### Rehearings and appeals

Number of rehearings granted 0

Supreme Court / District Court appeals 2

\* Online lodgement is not available for this Division

## Overview

A 'retirement village' is a residential complex where the majority of residents are retired people aged 55 years and older. These residents have entered into a contract with the owner or operator of the village for the provision of certain services. Most retirement villages consist of self-contained premises for those who can live independently, and supported care is also available.

There are hundreds of villages in New South Wales that are home to tens of thousands of village residents. Churches, charitable organisations and community groups operate many retirement villages, but an increasing number are being operated by private companies.

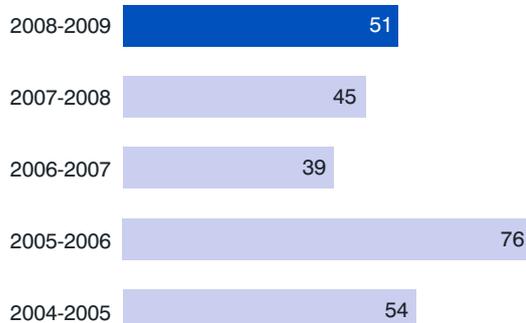
The Tribunal has jurisdiction under the *Retirement Villages Act 1999* to hear and determine disputes about retirement villages.

The Retirement Villages Division hears disputes between the retirement village owner or operator and one or more residents. Disputes can include terms of the retirement village contract, the legality of a village rule, proposed expenditure for the next financial year, and the sale or lease of a village premises.

This Division does not apply to private nursing homes, respite care premises, boarding houses, group homes or Housing NSW accommodation for older people.

During the year the Office of Fair Trading consulted with the Tribunal about the implementation of the *Retirement Villages Amendment Act 2008*, which will introduce new Tribunal orders in the Retirement Villages Division. These changes are due to be implemented in 2009-2010.

## Application trends



# Case studies

## Variation of recurrent charges...

A 'recurrent charge' is any amount (including rent) payable under a village contract, on a recurrent basis, by a retirement village resident. A variation of the recurrent charge amount may only be made in accordance with the provisions of the *Retirement Villages Act 1999*. Residents of a retirement village may apply to the Tribunal to claim a refund if they can show an overpayment of recurrent charges.

A retirement village was experiencing an increased vacancy rate and a decline in business. As a result the village operator sought to increase the recurrent charges payable by the residents to account for a shortfall in the village budget. The operator sent all residents a statement of proposed expenditure which put forward an increase of \$10 per fortnight in the recurrent charges.

The residents held a meeting to vote on the proposed increase and it was accepted by a majority, albeit with some protest and disappointment. Some residents claimed the vacancy rate was the village operator's responsibility. They subsequently made an application to the Tribunal seeking an order that the overpayment of recurrent charges be refunded on the basis that the operator did not have the authority to amend the recurring payments.

At the Tribunal hearing the village operator gave evidence that they had complied with proper procedure for the variation of recurrent charges as set out in the *Retirement Villages Act 1999*. The operator stated they had given sufficient notice of the proposed variation to the residents, sent out a statement of proposed expenditure detailing the amount and the reasons for the increase, and had sought and received the residents' consent to the variation.

The Tribunal Member found that the village operator had complied with the required procedures for variation of the recurrent charges. Accordingly, orders were made dismissing the residents' application as they did not show there were any grounds that there had been an overpayment.

## Option to buy back premises...

The *Retirement Villages Act 1999* provides that a retirement village operator who holds an option to purchase any residential premises from a resident of the village must decide whether or not to exercise the option, and must give the resident written notification of that decision, no later than 28 days after the resident permanently vacates the premises. If the operator does not give the notification required within the time allowed, the option lapses.

An elderly woman, a retirement village unit resident for 20 years, was hospitalised and relocated to a nursing home for her recovery. While in the nursing home she continued to own the unit and pay levies, with her goods remaining in the unit. The woman had let her niece know that she intended to return to her unit, and this information was passed onto the village operator. However, sadly just over a year later the woman died at the nursing home.

Upon learning of the woman's death, the retirement village operator sought to exercise a term within the agreement between the deceased and the village operator which provided them with the option of buying back the village unit. The executor of the deceased's estate then applied to the Tribunal seeking an order that the buy-back option timeframe had elapsed and was therefore void.

At the Tribunal hearing, the executor claimed that in order to properly exercise the buy-back agreement, a notification stating the village operator's intention must be sent to the village resident within 28 days of moving out. The executor argued that the deceased had in fact moved out a year beforehand and accordingly the buy-back option had elapsed. In response, the village operators argued that the deceased had not in fact moved out as her belongings remained in the unit and she had expressed her intention to move back.

The Tribunal Member found that the woman had moved out of the unit, regardless of what her intentions or wishes were about moving back to the premises, on the basis that the statement given to the village that the deceased might return was uncertain and sufficiently vague that it could not be relied upon. Under these circumstances, the Tribunal Member determined the village operator had failed to make the notification within the prescribed time and that the buy-back option was therefore inoperative.

# Appendix 1

## Legislation

The Tribunal's powers, functions and procedures are set out in the *Consumer, Trader and Tenancy Tribunal Act 2001* and the *Consumer, Trader and Tenancy Tribunal Regulation 2002*.

The following 18 Acts confer jurisdiction on the Tribunal:

- ▶ *Community Land Management Act 1989*
- ▶ *Consumer Claims Act 1998*
- ▶ *Consumer Credit Administration Act 1995*
- ▶ *Consumer Credit (New South Wales) Act 1995*
- ▶ *Conveyancers Licensing Act 2003*
- ▶ *Credit (Home Finance Contracts) Act 1984*
- ▶ *Fair Trading Act 1987*
- ▶ *Holiday Parks (Long-term Casual Occupation) Act 2002*
- ▶ *Home Building Act 1989*
- ▶ *Motor Dealers Act 1974*
- ▶ *Motor Vehicle Repairs Act 1980*
- ▶ *Pawnbrokers and Second-hand Dealers Act 1996*
- ▶ *Property, Stock and Business Agents Act 2002*
- ▶ *Residential Parks Act 1998*
- ▶ *Residential Tenancies Act 1987*
- ▶ *Retirement Villages Act 1999*
- ▶ *Strata Schemes Management Act 1996*
- ▶ *Travel Agents Act 1986*

### New and amended legislation

#### **Strata Management Legislation Amendment Act 2008**

The *Strata Management Legislation Amendment Act 2008* came into effect on 1 August 2008. The changes enhance the operation and management of strata schemes. The main amendments are to:

- ▶ make clear that all on-site caretakers are covered by the Act even if they use a different title
- ▶ restrict the making of by-laws about parking vehicles in the initial period
- ▶ protect strata buyers from terms in sales contracts which require them to give proxy voting rights to the developer of the strata scheme
- ▶ require Executive Committee members to disclose any personal, business or financial connection they have with the developer or caretaker.

An amendment was also made to the *Home Building Act 1989* to enable a lot owner to lodge a building dispute with the Office of Fair Trading about building defects on common property in a strata scheme or associated property in a community scheme.

#### **Consumer, Trader and Tenancy Tribunal Amendment Act 2008**

The *Consumer, Trader and Tenancy Tribunal Amendment Act 2008* commenced on 1 October 2008 and included a range of amendments to enhance the operational efficiency and effectiveness of the Tribunal. The changes:

- ▶ created a new Social Housing Division
- ▶ established a Member Professional Practice and Review Committee
- ▶ enhance the Chairperson's ability to give directions to Tribunal Members
- ▶ introduced a 12-month limit to the period in which proceedings can be renewed if an order is not complied with
- ▶ allows the Tribunal up to 28 days to provide written reasons for a decision following a request from the parties
- ▶ enable a second application for rehearing to be made if significant new evidence arises which suggests there may have been a substantial injustice
- ▶ enhance qualification requirements for Tribunal Members
- ▶ increase the upper limit for rehearing applications to \$30,000 and remove the \$500 lower limit
- ▶ require sound recording of hearings where possible.

#### **Retirement Villages Amendment Act 2008**

The *Retirement Villages Amendment Act 2008* received assent on 10 December 2008. When the changes commence in late 2009, they will introduce a range of new financial reporting and information requirements for village operators for current and prospective residents, and new capital maintenance / replacement requirements. The Amendment Act makes provision for new Tribunal orders that can be applied for by village operators and residents.

The *Retirement Villages Regulation 2000* is scheduled for repeal in October 2009. The remade Regulation will support

the Amendment Act changes and will provide more detail in regard to the new Tribunal orders. The date of commencement of the Amendment Act and the remade Regulation is expected to be late 2009.

### **Home Building Amendment (Claims) Regulation 2008**

The *Home Building Amendment (Claims) Regulation 2008* came into effect on 19 December 2008. The changes provide that from that date any home warranty insurance claim must be made no later than six months after the beneficiary first becomes aware, or ought reasonably to have become aware, of the fact or circumstances giving rise to the claim or no later than six months after the end of the period of insurance cover, whichever is the earlier.

### **Home Building Amendment Act 2008**

The *Home Building Amendment Act 2008* commenced on 19 May 2009 and introduced a number of changes to the *Home Building Act 1989* (the Act) of relevance to the Tribunal's jurisdiction.

The Act has been amended to make it clear that the warranty can be enforced in later proceedings where the previous breach was resolved through legal proceedings or an out of court settlement (section 18E).

A new section 42A has been inserted into the Act to provide that, where a licensee fails to comply with an order of the Tribunal or a court to pay money, the licence is suspended 28 days after the date upon which the payment should have been made. This amendment applies to building claims made from 1 April 2009 irrespective of when the contract was entered into.

Under section 99, suspension of a contractor's licence will be a trigger for an insurance claim (along with death, insolvency or disappearance). When this particular provision comes into effect on 1 July 2009 (see *Home Building Amendment (Exemption) Regulation 2009*), it will apply to contracts of insurance entered into from that date.

### **Home Building Amendment (Insurance) Act 2009**

The *Home Building Amendment (Insurance) Act 2009* amended the *Home Building Act 1989* and *Home Building Regulation 2004* to make further provision for home

warranty insurance and, in particular, to clarify the losses that are covered by home warranty insurance contracts.

This Act was the second part of a staged legislative program to clarify the scope of the home warranty insurance scheme following a 2008 decision of the Supreme Court. The first stage of the program was the *Home Building Amendment (Claims) Regulation 2008*. That amendment Regulation was an interim measure until Parliament could consider this Act. The Act commenced on 19 May 2009.

### **Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009**

The *Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009* commenced on 19 June 2009. The *Residential Tenancies Act 1987* now requires a mortgagee who becomes entitled to possession of rented premises to provide the tenant with at least 30 days notice to vacate the premises before taking possession.

Once a tenant has received the minimum 30 days notice, the tenant is entitled to withhold the payment of any rent for 30 days and seek repayment of any rent paid in advance for that period. A tenant who has already paid rent in advance, which covers part of the rent-free period, will be entitled to a refund from whoever has the money, either the landlord, the landlord's agent or the mortgagee. If the refund is not made, the Tribunal has the power to make an appropriate order.

While the tenant is still occupying the premises the mortgagee can show the property to prospective purchasers, but these inspections must be arranged with the agreement of the tenant.

The tenant can agree to vacate the premises before the date of the notice, and the mortgagee can decide to extend the notice. The mortgagee can also decide to hold off on giving notice or not give notice at all and enter into a new lease agreement with the tenant.

The Amendment Act also amends the *Landlord and Tenant (Rental Bonds) Act 1977* to enable the mortgagee to authorise the release of the tenant's rental bond.

## Appendix 2

# Tribunal Members

As at 30 June 2009, the Tribunal's Membership, in addition to the Chairperson and the two Deputy Chairpersons, comprised 6 Senior Members, 12 full-time Members and 62 part-time Members.

### Chairperson

Ransome, Kay

### Deputy Chairperson (Determinations)

Vrabac, Nick

### Deputy Chairperson (Registry & Administration)

Wilson, Garry

### Senior Members

Balding, Margaret

Bordon, John

Buckley, Richard

Connolly, Reginald

Durie, Graeme

Paull, Christine

### Full-time Members

Borsody, Agnes

Eftimiou, Maritsa

Halliday, John

Hennings, Simon

Howe, Bruce

McIlhatton, Susan

O'Keeffe, Gregory

Reid, Judy

Rosser, Kim

Smith, Jeffery

Smith, Peter

Titterton, Robert

### Part-time Members

Adderley, Georgia

Anforth, Allan

Anthony, Kevin

Bailey, Robyn

Barnetson, Diane

Bassett, Graham

Beckett, Angela

Bell, Diana

Blair, Robert

Brady, Brian

Briggs, Phillip

Brophy, Moira

Bryant, Garry

Bullen, Mark

Butler Rex

Cappe, Peter

Carney, Catherine

Carpentieri, Antony

Chenoweth, Rieteke

Cipolla, John

Cohen, Totti

Conley, Jennifer

Corley, Susan

Farey, Janet

Flynn, David

Forbes, Deborah

Gilson, Mark

Harvey, Danae

Holwell, Kim

Hunter, Penny

Ilett, Mik

Keher, Christopher

Kinsey, Graham

Lennon, David

Lynch, Joanne

Marzilli, Claudio

McMillan, John

Moore, Edward

Nicholls, Louise

Nolan, Dennis

O'Connor, Michael

Pickard, Bryan

Rickards, Kim

Ringrose, John

Ross, Katherine

Ross, Kim

Ryan, Leo

Ryan, Sharryn

Sainsbury, Murray

Sheedy, Tracy

Sheehan, Desmond

Shipp, Bernard

Smith, Stephen

Taylor, William

Thompson, John

Turley, David

Walsh, William

Walton, Julie

Williams, Kerry

Williams, Louise

Wilson, Graham

Wilson, Robert

The following persons ceased to be Tribunal Members during the reporting period:

Susan Dixon (Senior Member)

Kathy Thane (Full-time Member)

George Bordon (Part-time Member)

Michael Courtney (Part-time Member)

Tom Kelly (Part-time Member)

Raymond Plibersek (Part-time Member)

Tony White (Part-time Member)

## Appendix 3

# The Tribunal process

The following information and flowchart illustrates the life of an application for a typical dispute brought to the Tribunal.

### Applications

- ▶ Applications can be lodged by post, through the Tribunal's online lodgement system at [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au), one of the Tribunal's Registry offices, a local Fair Trading Centre, or a Local Court.
- ▶ Home Building and Strata and Community Schemes disputes must undergo an external dispute resolution process before an application can be lodged with the Tribunal.

### Case management

- ▶ Applications are case managed by one of the Tribunal's eight Registries, providing a local focus for the resolution of disputes.
- ▶ Motor vehicle disputes relating to repairs, sales and warranties are referred to the Office of Fair Trading for alternative dispute resolution before proceeding to hearing.

### Listing

- ▶ The majority of applications, mainly consumer and tenancy matters, are listed for conciliation and hearing in a 'group list'.

### Conciliation

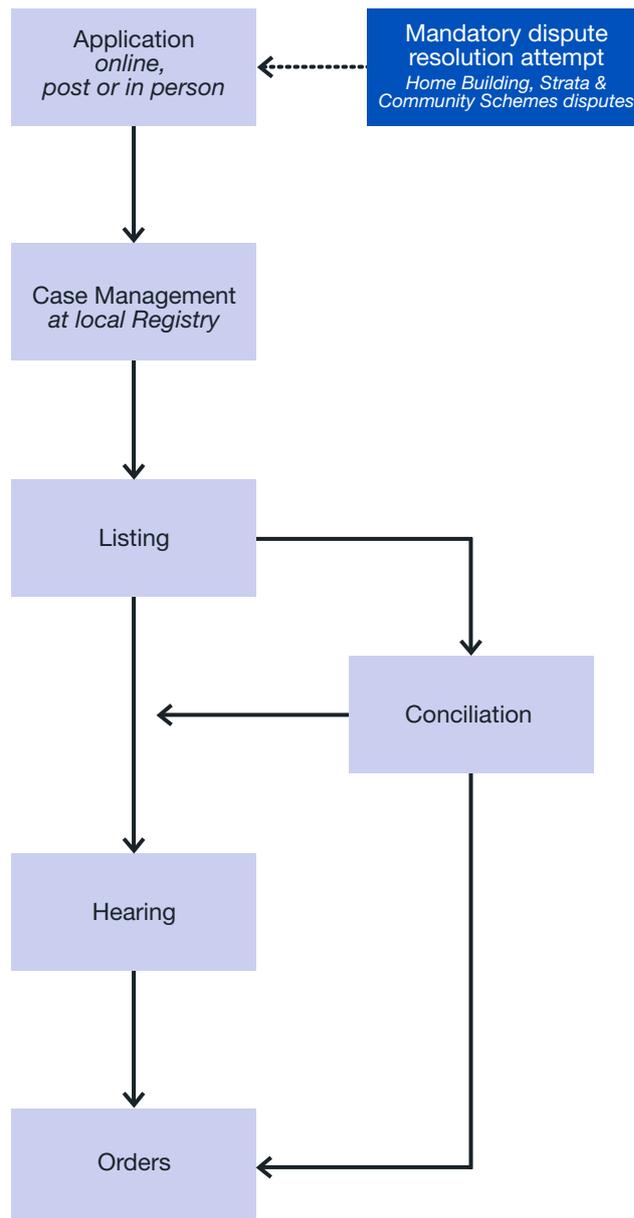
- ▶ If conciliation is successful the Member will make an order on the day without the need for a hearing.
- ▶ Tribunal Members will check that consent agreements are made without coercion.
- ▶ Where conciliation and other forms of dispute resolution are unsuccessful the matter proceeds to hearing.

### Hearing

- ▶ The Member hears the parties' evidence, considers submissions, makes a decision and issues a binding and legally enforceable Tribunal order.

### Orders

- ▶ Orders are delivered orally by the Tribunal Member at the conclusion of the hearing. Written orders are provided to the parties at the hearing or later by post.
- ▶ In very complex matters the Tribunal Member may reserve the decision.



## Appendix 4

# Consultative forums

The organisations represented on the Tribunal's consultative forums as at 30 June 2009 are set out below.

## Aboriginal Consultative Forum

Aboriginal Legal Services  
 Anaiwan Local Aboriginal Land Council  
 Bungree Aboriginal Association Inc.  
 Dtarawarra Aboriginal Resource Unit  
 Greater Sydney Aboriginal Tenancy Service  
 Murra Mia Tenant Advocacy Service  
 NSW Aboriginal Housing Office  
 NSW Aboriginal Land Council - Eastern Region  
 NSW Aboriginal Land Council - Northern Zone  
 NSW Aboriginal Land Council - Southern Zone  
 NSW Aboriginal Land Council - Western Region  
 NSW Department of Aboriginal Affairs  
 NSW Office of Fair Trading  
 South Eastern Aboriginal Regional Management Service  
 Tenants Union of NSW  
 Western Aboriginal Tenants Advice Service

## Commercial Division

Consumer Credit Legal Centre  
 Financial Counsellors Association of NSW & ACT  
 Kemp Strang Lawyers  
 Legal Aid Commission of NSW  
 NSW Office of Fair Trading  
 Redfern Legal Centre

## General Division

Australian Consumers Association  
 Community Relations Commission  
 Disability Council of NSW  
 Fair Trading Advisory Council  
 Financial Counsellors Association of NSW  
 LawAccess NSW  
 NSW Office of Fair Trading

## Home Building Division

Australian Institute of Building  
 Building and Construction Council of NSW  
 Civil Contractors Federation  
 Home Building Service (NSW Office of Fair Trading)  
 Housing Industry Association  
 Institute of Building Consultants

Institute of Engineers Australia  
 Institute of Strata Title Management  
 Law Society of NSW  
 Master Builders Association  
 Master Painters Association  
 Master Plumbers & Mechanical Contractors Association of NSW  
 National Electrical & Communications Association of NSW  
 National Wood Flooring Association  
 NSW Bar Association  
 NSW Office of Fair Trading  
 Royal Australian Institute of Architects NSW Charter  
 Russo and Partners  
 Swimming Pool and Spa Association  
 Vero Insurance

## Motor Vehicles Division

Australian Manufacturing Workers Union  
 Institute of Automotive Mechanical Engineers  
 Motor Traders Association  
 Motor Vehicle Industry Authority  
 NSW Office of Fair Trading  
 Service Station Association

## Residential Parks Division

Affiliated Residential Park Residents Association  
 Caravan & Camping Industry Association NSW  
 Central Coast Park Residents Association  
 Combined Pensioners & Superannuants Association of NSW Inc  
 Northern Alliance of Park Residents Association of NSW  
 NSW Office of Fair Trading  
 Tenants Union of NSW

## Retirement Villages Division

Aged Care Association Australia (NSW)  
 Aged Care Rights Service  
 Aged & Community Services Association of NSW & ACT  
 Australian Unity  
 Bougainvillea Retirement  
 Combined Pensioners & Superannuants Association of NSW Inc

Council on the Ageing (NSW) Inc  
NSW Office of Fair Trading  
Retirement Village Association of NSW & ACT  
Retirement Villages Residents Association  
Wesley Mission

### **Strata and Community Schemes Division**

Combined Pensioners & Superannuants Association of  
NSW Inc  
Dynamic Property Services  
Institute of Strata Title Management  
Management Rights Association (NSW) Inc  
NSW Office of Fair Trading  
Owners Corporation Network  
Property Owners Association of NSW  
Tenants Union of NSW

### **Tenancy and Social Housing Divisions**

Association to Resource Co-Operative Housing  
Dtarawarra Pty Ltd  
Estate Agents Cooperative  
Financial Counsellors Association of NSW & ACT  
Gandangara Local Aboriginal Lands Council  
Housing NSW  
Housing Appeals Committee  
Legal Aid Commission of NSW  
Marrickville Legal Centre  
NSW Aboriginal Housing Office  
NSW Federation of Housing Associations  
NSW Office of Fair Trading  
Office of Community Housing  
Property Owners Association of NSW  
Public Tenants Council (Central Sydney)  
Real Estate Institute of NSW  
Redfern Legal Centre  
Registrar Community Housing  
South Eastern Aboriginal Regional Management Service  
South West Tenants Advice & Advocacy Service  
Southern Sydney Tenants Advice & Advocacy Service  
Teacher Housing Authority of NSW  
Tenants Union of NSW

## Appendix 5

# Access to information

Pursuant to section 10 of the *Freedom of Information Act 1989*, the Tribunal is not an agency in relation to its judicial functions. In addition, any document relating to the judicial functions of the Tribunal is exempt under clause 11 of Schedule 1 of the Act. However, the Tribunal adheres to the objects of the Act and ensures that its processes are open, accountable and responsible.

All parties to a matter have access to their file in accordance with Part 8 of the *Consumer, Trader and Tenancy Tribunal Regulation 2002*. Generally, the entire file can be viewed with the exception of the Tribunal Member's hearing notes. There is no fee payable for viewing a file however photocopy fees do apply for copies of any documents on the file. Requests by parties for access to their file should be made in writing to the Registrar.

Under clause 38(3) of the Regulations, the Registrar may also grant access to a person who is not a party to proceedings to a record of proceedings where the Registrar considers there is sufficient reason to do so. The request for access should be in writing to the Registrar, Consumer, Trader and Tenancy Tribunal GPO Box 4005 Sydney 2001.

Pursuant to section 85 of the Act, the Chairperson may provide reports to the Minister or to the Commissioner for Fair Trading concerning any matter which the Chairperson considers to be of importance in relation to the administration of the Act, or in relation to the jurisdiction of the Tribunal or any matter falling within its jurisdiction or to be in the public interest.

Unless of the opinion that to do so would compromise proceedings of the Tribunal, the Chairperson is required to provide information within the knowledge or possession of the Tribunal to any request of the Commissioner for Fair Trading in relation to any investigation or disciplinary action that is being carried out under any legislation administered by the Minister (section 72).

A copy of the Tribunal's Privacy Management Plan is available on the Tribunal's website.

The Registrar may allow access to information without the parties' permission under the following circumstances:

- ▶ Written reasons and reserved decisions are published on the Australasian Legal Information Institute's website [www.austlii.edu.au](http://www.austlii.edu.au)

- ▶ Information about party names are published daily on the hearing lists and on the Tribunal's website
- ▶ The Police are investigating an allegation about perjury in the Tribunal and request access to any record
- ▶ The media's request for information about a matter has been approved by the Registrar.

Freedom of Information requests should be made in writing and addressed to the Registrar, Consumer, Trader and Tenancy Tribunal, GPO Box 4005, Sydney 2001.

All Tribunal publications can be accessed from the Tribunal's website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au).

## Appendix 6

# Fees and charges 2008-2009

The Tribunal's fees and charges are reviewed each year. This schedule indicates the Tribunal's application fees and charges from 1 July 2008 to 30 June 2009. The Tribunal's current fees and charges are also available on [www.ctt.nsw.gov.au](http://www.ctt.nsw.gov.au).

### Application Fees

<b>Tenancy, Social Housing, Residential Parks and Retirement Villages Divisions</b>	\$33.00
<b>Strata and Community Schemes Division</b>	\$67.00
<b>General, Home Building and Motor Vehicles Divisions</b> <ul style="list-style-type: none"> <li>• Claims or disputes not exceeding \$10,000 (or no specific amount claimed) \$33.00</li> <li>• Claims or disputes between \$10,000 and \$25,000 \$67.00</li> <li>• Claims or disputes more than \$25,000 \$176.00</li> </ul> NB. – The maximum claim in the General Division is \$30,000 – The maximum claim in the Motor Vehicles Division is \$30,000 except when dispute relates to the supply of a new private motor vehicle	
<b>Commercial Division</b> <ul style="list-style-type: none"> <li>• Claims or disputes not more than \$10,000 (or no specific amount claimed) \$33.00</li> <li>• Claims or disputes between \$10,000 and \$25,000 \$67.00</li> <li>• Claims or disputes more than \$25,000 \$176.00</li> <li>• Applications under s86 and 86A of the Credit Act 1984 \$588.00</li> <li>• Applications under the Consumer Credit (NSW) Code (except as provided below) \$74.00</li> <li>• Applications under s101 of the Consumer Credit (NSW) Code if the application is made by a credit provider \$588.00</li> </ul>	
<b>Pensioners and Students</b> (all Applications)	\$5.00
<b>Rehearings and Renewal Proceedings</b>	Same as original application fee

### Charges

<b>Copy of documents</b>	\$2.00 per page (with a minimum charge of \$25.00)
<b>Issue of summons</b>	\$37.00
<b>Sound Recording</b> <ul style="list-style-type: none"> <li>Standard (10 days) \$24.00 per CD</li> <li>Premium (5 days) \$66.00 per CD</li> </ul>	
<b>Transcripts</b>	\$300.00 per hour of hearing time  NB. Full estimated cost of a transcript is payable prior to processing of request. Transcripts can cost \$2,000 per day.

## Appendix 7

## Financial summary 2008-2009

The audited financial reports required under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Commerce Annual Report 2008-2009.

<b>Salary and related payments</b>	<b>\$'000</b>
Salaries	7,064
Statutory appointees	5,446
Employment agencies / Security services	753
Annual leave	860
Overtime	17
Meal allowance	-
Long service leave	685
Superannuation	1,354
Workers Compensation	123
Payroll Tax	857
Fringe Benefit Tax	50
	<hr/> 17,209
<b>Operational expenses</b>	
Office accommodation	3,437
Postage and couriers	358
Telephones	251
Minor computer purchases and consumables	222
Fees	656
Training and development fees	30
Motor vehicles expenses	53
Travel expenses	213
Minor equipment, consumables and stores	275
Minor miscellaneous expenses	158
	<hr/> 5,653
Depreciation	446
Total operational expenses	23,308
Administrative on costs	2,050
Total recurrent expenditure	<hr/> 25,358
Capital expenditure	1,892
<b>TOTAL EXPENDITURE</b>	<hr/> <b>27,250</b>
<b>Revenue</b>	
Lodgement fees	(2,239)
Contribution from Consolidated Funds	(4,089)
Contribution from Rental Bond Board	(10,637)
Contribution from Home Building Service	(1,350)
Contribution from Motor Vehicle Repair Industry Authority	(137)
Contribution from Statutory Interest Account	(8,352)
	<hr/> <b>(26,804)</b>
<b>Net Cost of Services</b>	446
<b>Less Non Cash Transactions</b>	446
Depreciation	446
<b>CASH DEFICIT</b>	<b>(0)</b>

**Sydney Registry**

Level 12, 175 Castlereagh Street  
Sydney NSW 2000  
GPO Box 4005, Sydney 2001

**Liverpool Registry**

Level 3, 33 Moore Street  
Liverpool NSW 2170  
PO Box 723, Liverpool BC 1871

**Hurstville Registry**

Level 3, 4-8 Woodville Street  
Hurstville NSW 2220  
PO Box 148, Hurstville BC 1481

**Tamworth Registry**

Suite 3-5, Kable Korner Complex  
Cnr Kable Ave & Darling Street  
PO Box 1033, Tamworth NSW 2340

**Parramatta Registry**

Level 2, 10 Valentine Avenue  
Parramatta NSW 2150  
PO Box 4117, Parramatta 2124

**Penrith Registry**

Ground floor, 2-6 Station Street  
Penrith NSW 2750  
PO Box 988, Penrith 2751

**Wollongong Registry**

Level 3, 43 Burelli Street  
Wollongong NSW 2500  
PO Box 319, Wollongong 2520

**Newcastle Registry**

Level 1, 175 Scott Street  
Newcastle NSW 2300  
PO Box 792, Newcastle 2300

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