



CTTT
Consumer, Trader &
Tenancy Tribunal

Consumer, Trader and Tenancy Tribunal

Annual Report

2010 - 2011

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

Dear Minister,

I have pleasure in submitting the Annual Report for the Consumer, Trader and Tenancy Tribunal for the year 2010-2011.

This report summarises the Tribunal's performance during 2010-2011 and the outcomes achieved.

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 2010-2011 report on the Consumer, Trader and Tenancy Tribunal.

As Minister for Fair Trading, I recognise the role the Tribunal has in providing a low cost, efficient and accessible dispute resolution service for the people of New South Wales. The Tribunal assists consumers, traders, landlords and tenants in resolving disputes about the supply of goods and services, and residential property.

With around 60,000 applications each year across a wide jurisdiction, the Tribunal offers a range of alternative dispute resolution options, including conciliation, at nearly 70 locations across metropolitan and regional New South Wales.

The Tribunal is at the forefront of embracing innovative technology to streamline its operations and respond to customer needs. This year the Tribunal trialled *eConnect* to enable case-related correspondence to be emailed to parties to reduce turn around times. The Tribunal also experienced its highest ever number of online applications with almost half of all applications lodged in this way.

Information on the Tribunal's website helps people to learn about the process, and more than 417,000 people used it to access information in the last financial year.

Enhancements to the Tribunal's technology platform will be progressively rolled out over the coming year and include an expansion of *eConnect*, video-conferencing and the online viewing of documents in the hearing room. These innovative services will be of particular assistance to parties in rural and remote locations, and will deliver more flexible and responsive service options.

This year the Tribunal has continued to work closely with its stakeholders and the community. Information about services provided by the Tribunal was delivered in metropolitan and regional centres to increase public awareness about its role and services.

This report highlights the initiatives introduced and projects undertaken by the Tribunal during 2010-2011. I would like to thank the Chairperson, Tribunal Members and staff for their commitment throughout the year.

Anthony Roberts
Minister for Fair Trading

Chairperson's Review



It has been another hectic year with our workload remaining at high levels, new challenges emerging and a range of innovative changes being implemented.

During 2010-2011 there were some fundamental changes which affected the Tribunal's legislative landscape and impacted on the way we deliver our services. The most significant of those changes resulted from reforms to this State's residential tenancy laws, which affected about 75% of our work.

Legislative change

The *Residential Tenancies Act 2010* came into effect on 31 January 2011. A project management team involving Tribunal Members and senior staff worked hard to ensure the necessary systems were developed and put in place to enable the seamless implementation of the Act. Their activities included changes to our case management system and online lodgement facilities, development of new Tenancy Division and Social Housing Division application forms, a new information sheet explaining the key changes to the Act and the associated regulations, and the distribution of information to external and internal stakeholders.

Changes to consumer law at the national level also meant further change for the Tribunal. The Australian Consumer Law (ACL) came into effect on 1 July 2010 introducing new laws relating to unfair terms in standard form contracts. The new provisions give increased protection to consumers by giving courts and the Tribunal the power to find that a contract term is unfair. If a term is found to be 'unfair' it will result in the term being void which means the term cannot be enforced or relied upon.

The *National Consumer Credit Protection Act 2009* provisions, which also came into effect on 1 July 2010, meant that matters relating to consumer credit and other financial transactions are now regulated by the Commonwealth. This legislative change impacted significantly on the Tribunal's Commercial Division with fewer applications lodged during the reporting period as a result of the transfer of powers to the Commonwealth.

Overall performance

The number of applications lodged in 2010-2011 remained fairly static with a slight 1% decrease recorded overall. More than 58,800 applications were lodged at the Tribunal, with the highest numbers received in the Tenancy, Social Housing and General Divisions.

More than 72,800 hearings were conducted at nearly 70 locations in metropolitan and regional New South Wales. More than 88,000 orders were made, and 74% of these orders were issued to parties on the day of hearing. This quick turnaround was facilitated by Tribunal Members' access to wireless technology, enabling orders to be typed directly into the case management system and, in most cases, made available to parties at the hearing.

At an operational level we continue to look at ways to enhance our service delivery. For example, during the reporting period more people used *CTTT Online* to lodge their application with almost half of all applicants choosing online lodgement. Our highest ever monthly level of online lodgement was 52.2% in February 2011. A survey of *CTTT Online* users during the year confirmed this internet service

is meeting customer needs. People can now also access *CTTT Online* via the NSW Government's *Do it online* website.

Communication strategies

Increasing awareness of the Tribunal's dispute resolution services was a key priority during the reporting period.

Our website continues to be an important aspect of our communication efforts. This year we received more than 417,000 website visits – a 28% increase in visits compared to the previous year. An email subscription alert service was introduced to notify subscribers of the latest 'What's new' items as they are added to our website.

The number of face-to-face community information events and consultative forums for stakeholder groups increased by 33% this year.

We successfully completed the implementation of our overarching *Communications Strategy 2008-2010* and first *Communications Strategy for Aboriginal Communities 2009-2011*. Information about activities under both of these communication frameworks was reported back to stakeholders through our Consultative Forums. Strategy documents for the 2011-2016 period are currently being drafted in consultation with our Forum members.

I have received much positive feedback about our communication initiatives, particularly the Aboriginal DVD *Getting a Fair Go at the CTTT* and the accompanying brochure. Both have been a huge success and have assisted Aboriginal communities in learning more about the role of the Tribunal and how we work. These types of initiatives, developed in consultation with members of our Aboriginal Consultative Forum, are helping us improve our partnerships with the Aboriginal community.

Early in the next reporting year we will launch a communications strategy aimed at raising awareness about the Tribunal in culturally and linguistically diverse communities. A range of initiatives, including short videos and translated resources, will also be launched and widely promoted.

Innovation

We continue to focus on service delivery enhancements and ways of optimising our resources through the innovative use of technology.

During this year, we piloted *eConnect* which enables case-related correspondence to be emailed, rather than posted, to parties. An evaluation of this new service will be completed early in the next reporting period prior to making this innovation more broadly available on an 'opt-in' basis.

Pilots of a number of other new technologies, including hearings by video conferencing, and online lodgement of case supplementary documents and the subsequent viewing of these documents in the hearing room, are planned for the coming year.

Our people

None of the goals reached during the year could have been achieved without the Members and staff of the Tribunal.

Registry staff are the first point of contact for many of the people who come to the Tribunal each year. They provide an outstanding service in assisting hundreds, if not thousands, of people each day.

The Members are, by and large, the public face of the Tribunal and they face many challenges in dealing with an endless variety of factual situations and legal principles. They deal each day with people who are upset or angry and who may have little prior knowledge of the law or experience of a tribunal.

The Tribunal continued its program of providing Members and staff with training and professional development activities during the year to help them perform their roles. We do, however, rely on the innate qualities of our people to provide the best service we can.

I would like to thank all Tribunal Members and staff who continued this year to meet the challenges of working in a dynamic and busy jurisdiction. The achievements in this report demonstrate their dedication, support and commitment to serving the people of New South Wales.

Future direction

Looking forward, we will continue to strive to provide a fair and accessible service to the community. We will need to find new ways, including partnering with our existing and new stakeholders, to promote and increase awareness of our services. We will continue to be proactive and will seek to identify emerging trends and sensitive issues through effective and regular dialogue with stakeholders. These partnerships will be increasingly important in adapting our services to meet changing legislative and operational priorities.

Kay Ransome

Chairperson

2010-2011 Year in Review

58,808 Applications lodged

- ▶ 1% decrease from last year.
- ▶ 48% of all applications lodged online.
- ▶ \$2.1 million application fees collected.

72,836 Hearings held

- ▶ 77% of applications listed for a first hearing within the Divisional listing standards.
- ▶ Nearly 70 venues across New South Wales used for Tribunal hearings.

59,956 Applications finalised

- ▶ 72% of matters finalised within the Divisional performance standards.
- ▶ 74% of matters finalised prior to or at the first hearing.

88,339 Orders made

- ▶ Enhancements to the Tribunal's *InCourt* service and upgrades to Member laptops, which enabled Tribunal Members to type orders into the case management system at hearing, ensured that 74% of orders issued to parties on the day of hearing and 92% within 2 days of the hearing.

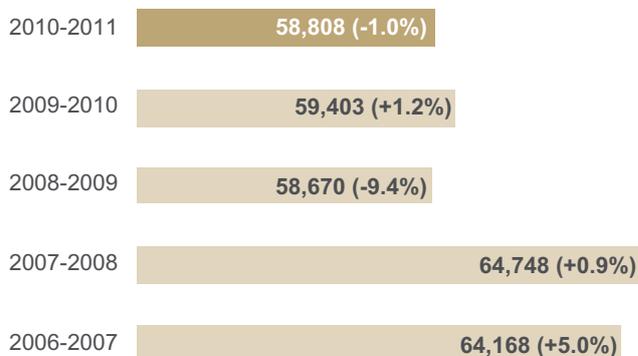
89 Community consultation forums and information sessions held

- ▶ 33% increase from last year.
- ▶ 22 Divisional, Aboriginal and community consultative forums held for stakeholder groups.
- ▶ 67 community information and education sessions convened or participated in by Tribunal staff and Members.

417,779 Website visits

- ▶ 28% increase from last year.
- ▶ Most popular website pages were the Tribunal's 'Forms', 'Contact us' and 'Hearing list' web pages.
- ▶ 8,217 email enquiries received.

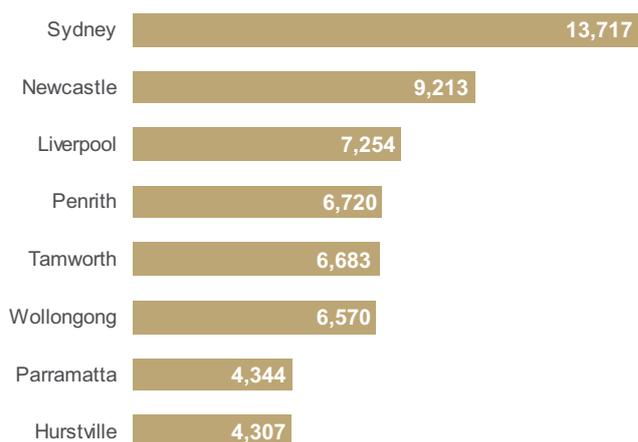
Applications - 5 year comparison



Applications by Division

Division	Count	Percentage
Tenancy	31,039	52.8%
Social Housing	12,912	22.0%
General	6,284	10.7%
Home Building	3,475	5.9%
Residential Parks	1,963	3.3%
Strata and Community Schemes	1,438	2.4%
Motor Vehicles	1,446	2.5%
Commercial	166	0.3%
Retirement Villages	85	0.1%
Total	58,808	100%

Applications by Tribunal Registry



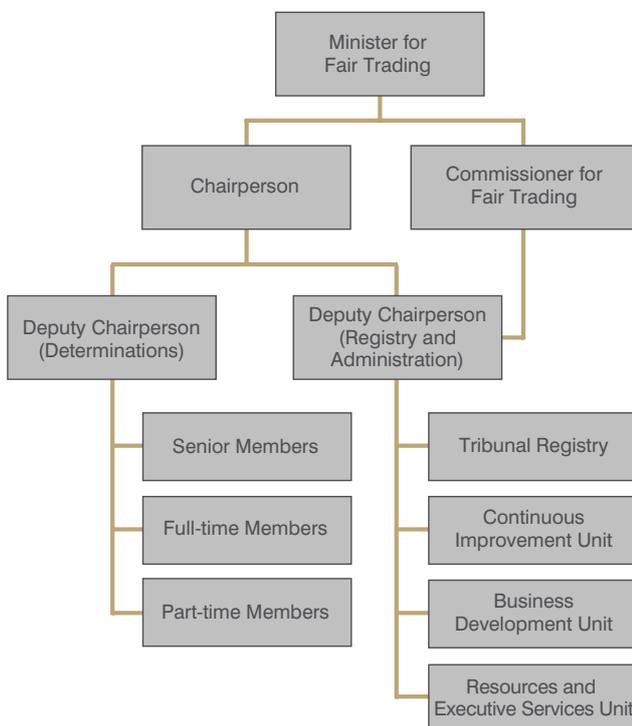
Our Organisation

The Consumer, Trader and Tenancy Tribunal is an accessible tribunal that resolves disputes about the supply of goods and services, and issues relating to residential property. The Tribunal's 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 2009*.

There are a number of Acts that confer jurisdiction on the Tribunal (refer to **Appendix 1**). The Tribunal resolves disputes brought to its nine Divisions - Tenancy, Social Housing, General, Home Building, 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.



Kay Ransome Chairperson

Chairperson since 2002, Kay has extensive experience working in tribunals and related fields. She 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, including Tribunal Member management and performance, the application of a Code of Conduct for Members and issuing Chairperson's Directions to ensure that the Tribunal's procedures are fair, informal and as speedy as practicable.



Margaret Balding Deputy Chairperson (Determinations)

The Deputy Chairperson (Determinations) is responsible for the Tribunal's adjudication function and assists the Chairperson in the management of the Membership.

Appointed to the role in September 2010, Margaret is a lawyer with a great deal of experience in the Tribunal's jurisdictions. She was a Senior Member of the Tribunal for eight years. Margaret has a Bachelor of Laws and was appointed as a solicitor of the Supreme Court of NSW and High Court of Australia in 1988.



Garry Wilson Deputy Chairperson (Registry and Administration)

Deputy Chairperson (Registry and Administration) since 2008, Garry is a non-sitting Member of the Tribunal. He is responsible for the Tribunal's financial, administrative and registry functions. Garry has broad experience in the Commonwealth and State Government sectors. He has a Masters Degree in Commerce, a Graduate Certificate in Management, and is also a part-time teacher with NSW TAFE.



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 legally binding and enforceable orders.

All Tribunal Members are appointed by the Governor of New South Wales on a full-time or part-time basis. The qualifications of Members are referred to in section 8 of the Act. Senior Members hear more complex cases and support the Chairperson and the Deputy Chairperson (Determinations) in Member professional development and mentoring. As at 30 June 2011 the Tribunal's Membership included 8 Senior Members, 9 full-time Members and 59 part-time Members (refer to **Appendix 2**).

Registry and administration

The Tribunal's registry and administrative functions sit within the NSW Department of Finance and Services (DFS). The Deputy Chairperson (Registry and Administration) has a matrix management reporting arrangement in place by reporting to the Chairperson for operational matters and the Commissioner for Fair Trading for corporate activities such as finance, human resources, accommodation and statutory obligations.

Staff are employed under the provisions of the *Public Sector Employment and Management Act 2002*. As at 30 June 2011 there were 124 staff positions attached to the Tribunal's registry and administrative units. Staff in these units undertake the following key functions:

- ▶ **Tribunal Registry** provides case management and operational support for the Tribunal's dispute resolution and hearing activities. The Registry assists parties to access and use our services; provides administrative assistance to Tribunal Members; processes applications; lists hearings; maintains file records; issues notices and orders, warrants for possession and certified copies of money orders; and processes requests for written reasons for decisions.



Senior Members conduct the Tribunal's more complex and lengthy proceedings, and provide guidance and leadership to other Tribunal Members. Left to right: G. Meadows, N. Vrabac, C. Paull, J. Bordon, J. Smith, R. Buckley, G. Durie. Not pictured: R. Connolly.

- ▶ **Continuous Improvement Unit** coordinates the Tribunal's continuous improvement regime by providing education and information services; developing change management strategies, policies and programs in response to legislative and technological change; delivering quality assurance and performance reporting, and responding to statistical requests from the media and other organisations; and providing legal support and library services to Tribunal Members and staff.
- ▶ **Business Development Unit** maintains the Tribunal's computer and other technology systems; identifies and implements technological solutions for improved service delivery in co-operation with DFS's *ServiceFirst*; and provides support to Tribunal Members and staff.
- ▶ **Resources and Executive Services Unit** provides high level support to the Minister, Chairperson and the Tribunal's executive; responds to complaints and media enquiries; and provides support to the Tribunal's Professional Practice and Review Committee. This Unit also manages the Tribunal's human resources, financial resources and administrative services and ensures compliance with DFS governance and general operating requirements, including occupational health and safety, accommodation and records management.

Our Registries

The Tribunal has eight regional Registries with hearing rooms and conciliation facilities. Each Registry manages a specific geographical catchment area of New South Wales.

Tribunal Registry staff perform a range of administrative and clerical functions including scheduling matters for hearing, responding to enquiries from parties and the public and providing administrative support to the Tribunal.

One of the main challenges facing Registry staff is providing quality client service and procedural information without giving legal advice or information to parties on how to run their case. This is summarised in the fact sheet *CTTT Registry services: What we can and cannot do*.

Deputy Registrars in metropolitan and regional Registries convene biannual Community Consultative Forums involving local key interest groups. These meetings are an opportunity to exchange information, consult and gather feedback on a range of operational issues.

Deputy Registrars (Conciliation) provide specialist and highly effective conciliation services in major hearing venues.

Sydney Registry

The Tribunal's Sydney Registry manages the inner Sydney metropolitan area including the Inner West, Eastern Suburbs and Northern Suburbs.

Sydney Registry manages a high volume of strata and community schemes matters, consumer claims and complex home building disputes. In the reporting period, Sydney Registry managed 23.3% of total applications received by the Tribunal.

In Sydney, Tribunal Members conduct hearings five days per week. Conciliators are available on group list days to facilitate settlement discussions between the parties and to negotiate consent outcomes.

Newcastle Registry

The catchment area managed by Newcastle Registry covers the Newcastle, Gosford and Port Macquarie hearing venues, and the Hunter region. Newcastle Registry



Registry Officer Jo Higgins is based at the Tribunal's Sydney Registry. She assists parties accessing the Tribunal's services and provides support for the Tribunal's dispute resolution and hearing activities.

manages a high volume of residential park matters which fall within its catchment area. In the reporting period, Newcastle Registry managed 15.7% of total applications received by the Tribunal.

Tribunal Members conduct group list hearings in Newcastle every Tuesday and Friday, and in Gosford every Wednesday. Conciliators are made available on those days to assist parties to reach an agreed outcome. Special fixture lists are also conducted for complex matters in Newcastle every Tuesday and Friday and in Gosford every Thursday and Friday.

Liverpool Registry

The Tribunal's Liverpool Registry manages applications from South West Sydney through to the Southern Highlands. During the reporting period, Liverpool Registry managed 12.3% of total applications received by the Tribunal.

Tribunal Members conduct hearings in Liverpool every Tuesday, Thursday and Friday. Hearings are also held in the Tribunal's Campbelltown Hearing Rooms every Monday and Thursday. Conciliators are available on those days to assist parties to reach an agreed outcome. Special fixture lists are also conducted for matters that are more complex and require more resources. These lists are conducted at Liverpool every Wednesday and Thursday.

Penrith Registry

The Tribunal's Penrith Registry manages applications from the Blue Mountains, Hawkesbury, Central West Tablelands, Penrith and Blacktown regions. In the reporting period, Penrith Registry managed 11.4% of total applications received by the Tribunal.

In Penrith, hearings are held every Tuesday, Wednesday and Thursday and conciliators are available on those days. The Central West region is serviced with fortnightly hearings at Katoomba, Bathurst and Orange and monthly hearings at Lithgow. Special fixture lists are also conducted in Penrith for more complex matters every Wednesday and Thursday.

Tamworth Registry

The Tribunal's Tamworth Registry manages a vast area of New South Wales, ranging from the Far and Mid North Coast, North and Far West, Upper Hunter, Upper Central West and New England regions. In the reporting period, Tamworth Registry managed 11.4% of total applications received by the Tribunal.

Tribunal Members conduct hearings in over 40 venues throughout the Tamworth Registry's catchment area, providing regional parties with an accessible service. Tamworth Registry also manages a high volume of residential park matters which fall within its catchment area, particularly in venues along the coast between Tweed Heads and Coffs Harbour.

Wollongong Registry

The catchment area managed by the Wollongong Registry is considerable, ranging from the Illawarra region, down the South Coast to the Victorian border and through to the Southern Tablelands, Riverina and Far West Regions. In the reporting period, Wollongong Registry managed 11.2% of total applications received by the Tribunal.

In Wollongong, Tribunal Members conduct hearings every Monday, Tuesday, and Friday. Conciliators are available on Thursdays to facilitate settlement discussions. In all other areas local Members conduct hearings and conciliate matters.

Parramatta Registry

The Tribunal's Parramatta Registry is responsible for applications from the greater Parramatta area. In the reporting period, Parramatta Registry managed 7.4% of total applications received by the Tribunal.

In Parramatta, Tribunal Members conduct hearings every Monday and Wednesday. Conciliators are available on those days to assist with settlement discussions. Special fixture lists are also conducted in Parramatta for complex matters every Tuesday and Friday.

Hurstville Registry

The catchment area managed by the Tribunal's Hurstville Registry covers Sydney's Canterbury, St. George and Sutherland Shire regions. Hurstville Registry managed 7.3% of total applications received by the Tribunal during the reporting period.

In Hurstville, Tribunal Members conduct hearings every Wednesday and Friday. Conciliators are available on those days to assist with settlement discussions. Special fixture lists are also conducted in Hurstville for more complex matters every Monday and Tuesday.

Our Clients

Our range of service initiatives, and a commitment to innovation and excellence in quality service delivery, assists over 120,000 people who have disputes resolved by the Tribunal each year.

We are focussed on ensuring our education and information programs help to equip all parties who come to the Tribunal and other interested persons with information about our dispute resolution process.

Accessing the Tribunal

The Tribunal is committed to providing a low cost, accessible and efficient service, delivering high quality and expert decisions to parties.

Applications can be lodged using *CTTT Online* on the Tribunal's website. Applications can also be lodged at any Tribunal Registry or Fair Trading Centre. Fair Trading Centre staff provide people with information about the Tribunal, including the steps in lodging an application and options available for resolving disputes.

Hearings are conducted at nearly 70 venues in various metropolitan and regional locations, ensuring our services are accessible across the State. Hearing venues include the hearing rooms at the Tribunal's Registries and permanent hearing rooms at Blacktown, Campbelltown, Dubbo, Gosford, Lismore, Queanbeyan and Wagga Wagga. A range of other venues, including court houses, are also used for Tribunal hearings across New South Wales.



Parties can lodge their application in person at any Tribunal Registry office or Fair Trading Centre

Our website has a hearing schedule showing how regularly the Tribunal sits at the various locations. Real time hearing lists are also available online providing an invaluable resource for tenants advocacy services and others who are involved in Tribunal proceedings.

Information on the Tribunal's website explains the dispute resolution process to assist clients, most of whom are self represented, to access and participate in Tribunal proceedings.

In special circumstances, hearings can be conducted by telephone. Parties who are unable to travel or who are not located near the hearing venue and would otherwise incur excessive travel costs can be given permission to appear at a hearing by telephone. During 2010-2011 the *Hearings by telephone* fact sheet was developed to explain the process and provides useful tips to guide parties in how best to participate in a hearing conducted over the telephone.

Parties can also have their case considered on the basis of the written material submitted in support of their application, without needing to appear at a hearing. The Tribunal is also moving towards a video-conferencing capability, which will further expand access for parties or witnesses who are unable to attend in person.

In the Residential Parks and Retirement Villages Divisions, hearings can also be held at the residential park or retirement village when there are a number of applications by residents about the same issue and a hearing 'on site' is more convenient for residents and park or village owners.

CTTT Online

CTTT Online enables people to lodge applications online at their own convenience and to receive an electronic Notice of Hearing where matters are automatically listed. *CTTT Online* also allows applicants to track the progress of their application online at any time.



Tribunal applications can be conveniently lodged online using the *CTTT Online* lodgement system.

In 2010-2011 a number of enhancements were made to *CTTT Online* including a keyword search function for the new tenancy orders and increased pre-filling of information for frequent users. Access to *CTTT Online* was also extended through the NSW Government's 'Do it online' website www.nsw.gov.au/do-it-online.

This year the Tribunal worked with Housing NSW, a major user of the Tribunal's services in the Social Housing Division, to pilot *eConnect* – an automated email service attached to *CTTT Online* which enables case-related correspondence to be emailed. An evaluation of *eConnect* will be undertaken prior to this new service being expanded across other Divisions and to all users of *CTTT Online*.

Explaining Tribunal services

During the reporting period the Tribunal increased the ways in which we provide information about who we are and what we do. Articles about the Tribunal's services, often accompanied by educational case studies, were featured in our stakeholders' publications. A new free subscription service to our 'What's new' web page was introduced from February 2011.

We are currently examining how best to incorporate social media into our communications mix to more actively explain our services to different audiences. A number of short educational videos about the Tribunal that will be uploaded

on YouTube and the Tribunal's website are currently in production. These short videos will be available in a number of languages and will help community workers and culturally and linguistically diverse (CALD) communities, in particular newly arrived and emerging communities, to better understand our dispute resolution processes.

Information delivery

During 2010-2011, Tribunal Members and staff participated in 89 community educational and information events, including:

- ▶ Tribunal information sessions conducted across New South Wales, including presentations for Aboriginal and culturally and linguistically diverse communities
- ▶ Functions and events arranged by the Tribunal's key industry stakeholders and various community organisations where Tribunal Members and staff participated as guest speakers
- ▶ NSW Fair Trading Community and Regional Access Programs at various locations throughout New South Wales.

In addition, the Tribunal provided training sessions for NSW Fair Trading staff, including Aboriginal Customer Service Officers, to update them on Tribunal processes and services.

Website

The Tribunal's website www.cttt.nsw.gov.au continues to evolve as information is reviewed and enhanced and new features are added.

The website provides extensive information about the Tribunal, including our nine Divisions, related legislation and case management practices. The website also contains direct links to the Tribunal's daily hearing lists which are automatically updated in 'real time' as changes occur. People can locate a Tribunal Registry using a Google map facility on the website, and also plan their trip to a Registry via the Transport NSW Info 'widget' embedded in the website.

During 2010-2011, the website received close to 418,000 visitors - a 28% increase compared to the previous period. The most popular web pages continue to be Tribunal's 'Forms', 'Contact Us' and 'Hearing list' web pages.

New web pages were developed during the year to improve website navigation and to meet the varied information needs of our customers and the broader community.

Multimedia

The website contains the following multimedia resources about the Tribunal:

Get it sorted shows how the Tribunal can assist parties in resolving their dispute.

We're talking your language provides Tribunal information to people from culturally and linguistically diverse backgrounds and is available in a range of community languages.

Getting a fair go at the CTTT provides information for Aboriginal people on how disputes are resolved at the Tribunal.

Publications

We produce a wide range of educational resources and information about the Tribunal and its processes. A series of fact sheets and other information has been developed to explain specific aspects of the Tribunal's services.

During 2010-2011 the following resources were developed:

- ▶ *Chairperson's Direction CTTT 2010-1—CTTT Lodgement Online*
- ▶ *Chairperson's Direction CTTT 2011-1—Acceptance of building claims*
- ▶ *Chairpersons Direction 2011-2—Termination for non-payment of rent*
- ▶ *Hearings by telephone* fact sheet
- ▶ *Engaging an expert* fact sheet
- ▶ *CTTT Significant Facts for 2009-2010* information sheet.

These resources are available on the Tribunal's website at www.cttt.nsw.gov.au.

Stakeholder involvement

The Tribunal's continued liaison with stakeholders has made a significant contribution to the way we operate. For example, our Tenancy Consultative Forum assisted with the development of new application forms and supporting information in preparation for the commencement of the *Residential Tenancies Act 2010* in January 2011.

Our key stakeholders assist us in achieving process enhancements that align with our continuous improvement ethos and aid the delivery of an effective and responsive service.

During the year, we held 22 Divisional, Aboriginal and Community Consultative Forum meetings. Deputy Registrars from regional and metropolitan Tribunal Registries led the community forums in their geographical areas where local issues affecting Tribunal operations were discussed and ideas were exchanged.

The Tribunal issued nine e-newsletters to keep stakeholders up-to-date with current Tribunal issues.



The Tribunal's fact sheets provide information and guidance about the Tribunal's processes.

Inter-Agency liaison

The Tribunal liaises with NSW Fair Trading and other agencies on policy and whole-of-government issues. For example, in 2010-2011 consultation took place with the offices of the NSW Ombudsman and the NSW Privacy Commissioner regarding new privacy and information disclosure laws. Discussions were also held with the NSW Sheriff's Office regarding enforcement changes resulting from new tenancy laws.

In accordance with section 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, the Commissioner for Fair Trading is provided with regular reports on cases in the Home Building, General and Motor Vehicles Divisions in which a respondent has appeared in three or more applications to the Tribunal within a 12-month period.

This information, together with other intelligence held by NSW Fair Trading, assists in identifying adverse trends that may require Government intervention in the marketplace.

Assisting people with additional needs

The Tribunal helps people in identified communities to more readily access our dispute resolution services by providing tailored information and other programs.

Aboriginal communities

The Tribunal continued its commitment to delivering information to Aboriginal communities through various communication channels. Our Aboriginal Forum members assist with the development of culturally appropriate information products for Aboriginal people, and are consulted about procedural changes.

During the reporting period, staff and Tribunal Members presented information about the Tribunal's services at various outreach programs and Aboriginal stakeholder events, including the annual Koori Conference and the bi-monthly Homelessness/Housing Forum.



Local Aboriginal Lands Council – Broken Hill meeting. Left to right: Glen O'Donnell Jnr, Anthony O'Donnell, Glen O'Donnell, Jarred Menz, Christine Tester, Joanne O'Donnell, Kay Ransome (Tribunal Chairperson), Craig Britt & Cobie Britt.

In March 2011, the Chairperson gave a talk to housing providers in Broken Hill at the Local Aboriginal Lands Council meeting. In April 2011, a bi-monthly outreach program at The Shed, a crisis drop-in centre for Aboriginal and other men in Emerton, involved local Registry staff speaking about the types of disputes the Tribunal deals with, how to apply and what happens at a Tribunal hearing.

The Chairperson was interviewed on Koori Radio's 'Blackchat' program and answered questions about the dispute resolution services and range of resources available for Aboriginal communities.

The Tribunal's *Communications Strategy for Aboriginal Communities 2009-2011*, which concluded in June 2011, ensured the successful delivery of a range of initiatives to raise awareness in Aboriginal communities about resolving disputes with assistance from the Tribunal.

Anecdotal feedback from Aboriginal Forum members and other organisations confirmed that the Tribunal's initiatives were helping to promote awareness in these communities. Another indicator was the high demand for the *Getting a Fair Go at the CTTT* DVD and brochure, which led to more being produced. A new Communications Strategy for Aboriginal Communities is currently being developed in consultation with our Aboriginal Forum members.

Culturally and linguistically diverse (CALD) communities

We continued to provide services to assist people from culturally and linguistically diverse (CALD) communities to understand the role and processes of the Tribunal.

The Translating and Interpreting Service (TIS) is available for people who need assistance with the English language. Professional interpreters can be arranged free of charge for people who require language assistance during Tribunal proceedings.

During the reporting period, 2,589 requests for interpreter services were arranged for 56 languages. The most common languages requested were Mandarin, Cantonese, Arabic, Korean, Vietnamese, Greek and Spanish. Refer to **Appendix 6** for full details of the Tribunal's interpreter usage.

We delivered information to CALD communities through an information session for community workers and by participating in NSW Fair Trading events and presentations.

We also used the Community Language Allowance Scheme (CLAS) to support and recognise staff who use their expertise in a community language to improve customer service. There is a network of 94 departmental officers



Sydney Deputy Registrar Lamia Ebrahimi is one of the Department's CLAS officers providing community language assistance in Farsi and Dari.

within the Tribunal and Department of Finance and Services who provide CLAS services in 32 community languages.

A communication strategy for CALD communities has been developed and will be launched early in the next financial year. This Strategy establishes a framework for promoting the Tribunal's services and enhancing our relationship with CALD communities.

A key initiative of the CALD Strategy is to expand the Tribunal's educational resources in community languages. Much information is already available, and work is currently underway to translate selected fact sheets and web pages into eight community languages.

Another initiative of the CALD Strategy to be implemented in the next reporting period is a series of short videos that provide a visual overview of key aspects of the Tribunal to a wide audience. These short videos will be available in community languages.

People with disabilities

The Tribunal aims to ensure that people with a disability receive the necessary assistance to provide them with equal access to our services.

Parties who have a disability can contact the Tribunal Registry to discuss how their individual requirements can best be met, and arrange for the necessary adjustments to be made to accommodate their specific needs.

Some of the services the Tribunal provided during the year included:

- ▶ providing professional Auslan translators to interpret during proceedings at no cost to the parties
- ▶ facilitating telephone contact via the National Relay Service (NRS) for people who were deaf, or had a hearing or speech impairment
- ▶ ensuring flexible hearing options were available, such as transferring proceedings to an accessible hearing room or hearings by telephone

- ▶ ensuring all Tribunal premises and non-Tribunal hearing venues are wheelchair accessible where required
- ▶ making electronic and printed material available in appropriate formats
- ▶ providing portable hearing loop systems in Tribunal premises.

A review of all venues used by the Tribunal commenced towards the end of the reporting year. This will help to identify possible access issues for people with disabilities and those with additional needs.

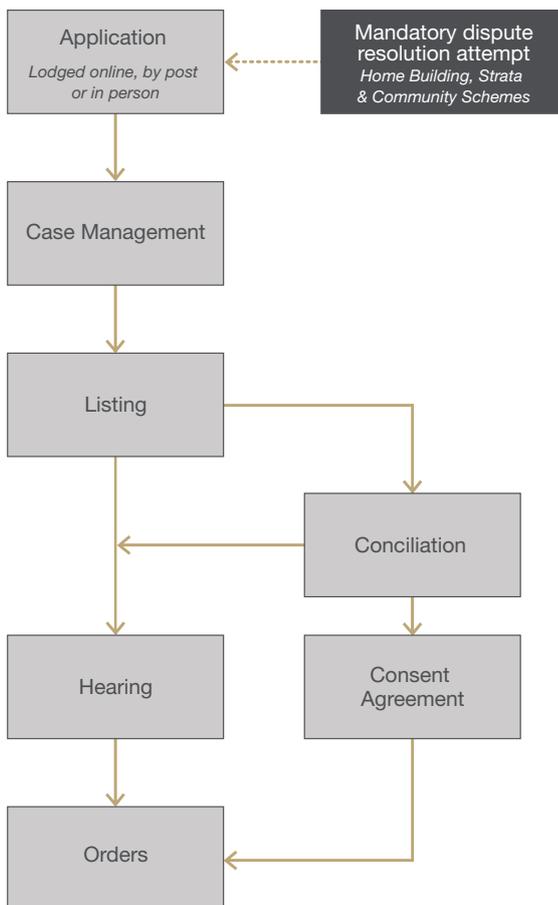
The series of short videos about the Tribunal mentioned earlier will also be captioned in English for the hearing impaired.

Our Processes

The Tribunal is the busiest dispute resolution service in New South Wales. Since 2002, we have undertaken a vital role in helping people resolve everyday disputes. During 2010-2011 the Tribunal received 58,808 applications and held 72,836 hearings at nearly 70 locations.

We used a variety of dispute resolution strategies to manage our high volume workload, and refined our processes to optimise the use of technology at different stages of the Tribunal hearing process. **Appendix 3** contains more information about the life of an application for a typical dispute brought to the Tribunal.

The Tribunal has a differential case management system that employs a variety of timeframes and dispute resolution processes based on the nature and type of case.



Flowchart illustrating the life of an application for a typical dispute brought to the Tribunal.

Appropriate dispute resolution

The Tribunal has a legislative requirement to use its best endeavours to assist parties to reach a settlement that is acceptable to them. This is achieved through the application of appropriate dispute resolution strategies which reflect the differing nature of disputes and the varying skills and knowledge of the parties.

During the year the Tribunal offered a range of alternative dispute resolution (ADR) options including conciliation, formal mediation and, in complex home building cases, an 'on-site' meeting with a Tribunal Member with building expertise and the parties' experts. Matters that did not settle proceeded to hearing before a Tribunal Member for determination.

All Tribunal Members and certain key staff have recognised qualifications or extensive experience in alternative dispute resolution.

Conciliation

Conciliation is the primary dispute resolution process applied in the Tenancy, Social Housing, General, Home Building, Residential Parks, Retirement Villages and Motor Vehicles Divisions. Conciliation is a confidential process which enables parties to discuss the issues in dispute in an informal manner and explore options to resolve the issues outside the hearing room.



Conciliation rooms are available at all major Tribunal hearing venues for parties to conduct settlement discussions.

In residential parks and retirement villages disputes involving multiple applications about the same issues, conciliation is often held 'on-site' at the park or village or at a nearby community facility.

Our publication *Ten Top Tips for Conciliation*, which is integrated into the initial Notice of Hearing sent to parties, helps people to understand the conciliation process and how both parties can maximise participation in their first appearance before the Tribunal.

Mediation

In some disputes, matters are listed for formal mediation as a way to resolve some or all of the issues. Formal mediations are conducted by a Tribunal Member, usually in a Tribunal hearing venue, and provide the parties with an opportunity to explore a variety of issues and canvass options to resolve the dispute in a supported environment.

Conclaves

A number of home building matters are notable for the magnitude of defective or incomplete works and the complexity of technical issues in dispute. In these cases it is often helpful to arrange for a conclave of experts at the location of the building work.

A conclave is a joint meeting between experts engaged by the applicant and the respondent. The conclave is usually held 'on-site' and is facilitated by a Tribunal Member with building expertise. During a conclave, the experts discuss the issues on which they have prepared reports with a view to clarifying matters in dispute, and to reduce, as far as possible, the issues to be determined at the final hearing.

The Tribunal's *Conclaves* fact sheet explains how conclaves assist parties in the resolution of their dispute.

Hearings

Where the Tribunal is unable to bring the parties to a mutually agreed settlement, the matter will proceed to hearing. Matters are listed for hearing according to the type of application and nature of the dispute.



Tribunal Members conduct hearings informally, providing self-represented parties with the best possible opportunity to present their case.

Parties are given the opportunity to present their evidence to a Tribunal Member who will then make a decision based on the evidence and the relevant legislation. All Tribunal hearings are generally open to the public.

Notices of Hearing, issued to parties in advance of their hearing, provide information such as the type of hearing event they will be attending and what they need to do to prepare for their hearing.

Group lists

A 'group list' involves a number of cases which are listed together before a Tribunal Member. The majority of applications are listed for first hearing in a group list.

When both parties appear at the hearing they are encouraged to resolve their dispute through conciliation. Where conciliation is successful, the Tribunal Member will make binding orders by consent of the parties to reflect the agreed outcome. If conciliation is unsuccessful, or if only one party appears, the case proceeds to hearing, and *ex parte* orders may be made.

Sometimes, if the parties need to obtain further evidence, or the hearing will take further time, the matter can be adjourned to a formal hearing on a later date.

Directions hearings

Directions hearings are a case management tool used to prepare for a formal hearing. They are used in 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.

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.

Determination on the papers

In the Strata and Community Schemes Division, adjudications are determined 'on the papers'. Parties make written submissions which are considered by an Adjudicator, generally a Tribunal Member, who makes a written determination on the basis of those submissions.

In other Divisions, when both parties consent, matters can be determined on the basis of the written material provided. Applications for rehearing under section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001* are also determined on the basis of written submissions.

Decisions and orders

A Tribunal Member will generally determine a matter on the day of hearing and give brief oral reasons for the decision. Using the Tribunal's *InCourt* system, Tribunal Members type orders directly into the case management system. The orders are printed out and parties usually receive a copy of the Tribunal's order at the conclusion of the hearing.

Regional Tribunal Members access the *InCourt* system using wireless technology via laptops in the hearing room. The orders are printed out at the Registry and posted



The *InCourt* system allows Tribunal Members to print the orders in the hearing room and give them to parties at the conclusion of the hearing.

immediately. As a result, parties in regional areas receive their orders days earlier than previously and often before the files are returned to the Registry from the hearing venue. *InCourt* continues to provide significant efficiencies in the timely delivery of decisions to people in both urban and regional areas.

Tribunal Members are increasingly providing brief written reasons with their orders, giving parties more information on how their case was determined, thus increasing transparency and accountability in decision making.

The increasing provision of brief reasons has also coincided with a reduction in the number of formal requests for written reasons under section 49 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Reserved decisions

In complex matters the Tribunal Member may reserve the decision and issue a written determination, including reasons, to the parties at a later date. These written determinations outline the decision, and the reasons for it, the evidence presented by both parties and the Tribunal Member's findings.

Reserved decisions and other written reasons are published on the Australasian Legal Information Institute's website www.austlii.edu.au and can be viewed by the public.

Chairperson's Direction CD2009-1 *Personal Identifiers in Written Reasons and Reserved Decisions*, sets out the policy applying to the inclusion of personal information or the anonymisation of personal information contained in published written reasons and reserved decisions. The purpose of this policy is to prevent any unnecessary intrusions into personal privacy and to minimise the risk of identity theft.

Enforcement

Orders made by the Tribunal are binding and legally enforceable. If the orders are not complied with, there are a number of enforcement options available:

- ▶ 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 proceedings in the Tribunal. The Tribunal can then make any other order, for example an order that the respondent pay the applicant money, to finalise the dispute.
- ▶ If a Tribunal order directs payment of money, a party can request that a certified copy of the money order be issued. This order is then enforceable in the Local Court as a debt.
- ▶ Where an order is made that residential premises are to be returned to a landlord and the tenant does not vacate, a warrant for possession can be obtained from the Tribunal Registry. Warrants for possession are executed by the NSW Sheriff.

In home building matters, the Tribunal provides copies of final orders to NSW Fair Trading's Home Building Service for inclusion on the public register. Licence holders are unable to renew their licence if they fail to comply with a Tribunal work order. Where a builder fails to pay a money order, a licence may be suspended 28 days after the due date for payment.

In strata and community schemes disputes, it is an offence to wilfully contravene or fail to comply with a decision of an Adjudicator. The Tribunal can impose a pecuniary penalty on anyone who does not comply with an Adjudicator's order.

Rehearings and appeals

Tribunal decisions are final and binding, subject to a limited right of rehearing or appeal.

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

A substantial injustice must be established on one or more of the following grounds:

- ▶ the decision was not fair and equitable
- ▶ the decision was against the weight of evidence
- ▶ significant evidence is now available that was not reasonably available at the time of hearing.

Alternatively, a party may lodge an appeal against the Tribunal's decision to a higher jurisdiction. Appeals may be made to the District Court of New South Wales on a question of law or to the Supreme Court of New South Wales on the grounds of jurisdictional error or denial of procedural fairness.

The Tribunal's *Rehearing and appeals* fact sheet explains the rehearing and appeal processes, and is available from www.cttt.nsw.gov.au.

Our Governance

A range of measures exist to ensure that we meet our legislative requirements, make optimal use of our human, financial, capital and intellectual resources and maximise dispute resolution and service delivery outcomes.

Independent body

The Tribunal is an independent body that resolves disputes and issues enforceable orders. Tribunal decisions are final and binding subject to a limited right of rehearing or appeal. Our decision making process is independent of any political, administrative or other influence. Tribunal Members are independent statutory officers appointed by the Governor of New South Wales. Registry staff are employed under the *Public Sector Employment and Management Act 2002*.

Legislative framework

Our governance framework substantially stems from the *Consumer, Trader and Tenancy Tribunal Act 2001* and the supporting Regulation. Other legislation confers jurisdiction upon the Tribunal in its nine Divisions. Together, this legislation establishes the Tribunal, provides legislative authority for its operations and outlines its jurisdiction and objectives. For more information refer to **Appendix 1**.

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 in which services are delivered, such as complying with occupational health and safety, anti-discrimination, privacy and other legislative and policy requirements.

Tribunal Members

Tribunal Members must act in accordance with the objectives of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the Act) and work with staff and other Members to ensure the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair. Tribunal Members also contribute to the effective administration of the Tribunal and assist in implementing and promoting corporate and strategic goals and objectives.

All Tribunal Members are required to enter into a performance agreement with the Chairperson and must comply with a Code of Conduct established by the Chairperson.

The Chairperson sets hearing practices and processes through the issue of Chairperson's Directions which are made available to the public at www.cttt.nsw.gov.au.

Regular training of Tribunal Members takes place as required or when major changes occur to legislation, systems or processes. Mechanisms are also in place to address any inconsistencies in the interpretation of the law.

Professional Practice and Review Committee

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

The Committee is made up of two independent persons appointed by the Minister for Fair Trading, Jan McClelland and Larissa Behrendt; the Tribunal Chairperson, Kay Ransome; Director-General Finance & Services, Michael Coutts-Trotter; Deputy Chairperson (Determinations), Margaret Balding; and Deputy Chairperson (Registry and Administration), Garry Wilson. The two independent members were appointed on 15 March 2010, and were selected for their expertise in consumer protection, ethics, dispute resolution, and education or public administration. Ms McClelland is also the Chair of the Committee.

The Committee is required to meet at least three times per year. In 2010-2011 the Committee met seven times. The Act requires that the Committee review and provide advice on matters referred to it by the Minister, the Director-General and the Chairperson. Matters referred may be related to one or more of the following: the education, training or professional development of Tribunal Members, the performance or management of complaints against Members, and remedial

or disciplinary action to be taken in relation to any such complaints and trends in complaints or performance.

During the reporting period the Minister referred three new matters and the Director General referred two new matters to the Committee. Four matters concerned complaints about the conduct of hearings by Tribunal Members, and the other referral concerned comments made about the Tribunal in a judgment of the Supreme Court.

The Committee finalised four referrals during the reporting period. These included a matter referred in the last reporting period. Of the four finalised referrals, three were complaints about the conduct of hearings. In these the Committee found there was no substance to the complaints. The Committee made some recommendations about improving Tribunal procedures and information resources for parties.

Registry and administrative staff

Tribunal Registry and administrative staff are obliged to comply with the Department of Finance and Services (DFS) Code of Conduct and enter into a Performance Development Plan (PDP) with their respective managers. These plans are linked to unit business plans and staff development opportunities.

During this reporting period we developed new position descriptions with DFS that reflected the NSW Public Sector Capability Framework. The capability based position descriptions, along with the Capability Framework and relevant business planning documents, assist with the production of our Performance Development Plans.

The Registrar and other senior managers establish and document procedures to be followed by staff in the administration and listing of applications and other aspects of the Tribunal's work. Training and coaching of staff takes place regularly, particularly when major changes occur to legislation, systems or processes.

Planning

Business plans are developed each year to guide the Tribunal's focus and priorities. A multi-disciplinary project management approach is taken to implementing change.

Communication

A range of communication mechanisms keep Tribunal Members and staff informed about changes and activities, including regular e-newsletters issued by the Chairperson, the Deputy Chairpersons, and intranet sites for Members and staff.

Regular meetings involving Tribunal Members and senior staff are in place, allowing the Chairperson and Deputy Chairpersons to consult, seek feedback, communicate changes and adjust priorities as required.

Managing risk

Risk management is a critical component of our corporate governance framework. The Tribunal's Risk Management Plan identifies the strategic risks that the Tribunal must manage to achieve its strategic goals, objectives and priorities. The Plan identifies the risk, the potential source and impact of the risk, and identifies risk treatment strategies and responsibilities for managing the risk.

The Plan is reviewed on a regular basis and is adjusted to reflect emerging challenges and changes in service delivery direction which may create new risks.

The Plan identifies five strategic risks:

- 1. Change agenda** – implementation of changes to legislation and new initiatives stemming from the NSW Government, NSW Fair Trading and the Tribunal's continuous improvement projects.
- 2. Registry and administrative services** – maintaining timely and effective delivery of service by Tribunal Members and staff, for our stakeholders and the people who use the Tribunal's services.
- 3. Resources** – maintaining effective leadership, management and governance of capital, financial, staff and other resources.
- 4. Community image** – maintaining productive relationships and ensuring that stakeholders and parties have a sound appreciation of the role and services of the Tribunal.

5. Continuity of services – maintaining continuity of systems and services for Members and staff to do their work, and for parties and stakeholders to effectively participate in the resolution of disputes.

During the reporting period there were no incidents that impacted on the Tribunal's capacity to meet its obligations and deliver its services.

Significant improvements were made in a number of areas of our operations as a result of careful planning and effective change management.

Case and records management systems

Our computerised case management system captures and stores information about applications lodged and the progress of each application.

Other supporting systems are well established to assist the management of our operations, in particular the requirement to list almost 73,000 hearings and appropriately allocate cases to 80 Tribunal Members across 70 hearing venues.

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 hard-copy records are retained for seven years.

Complaints management

We are committed to responding promptly to complaints about our services. The Tribunal's complaint handling system is based on the guidelines issued by the NSW Ombudsman and the Australian Standard: *Customer Satisfaction – Guidelines for complaints handling in organisations* (ISO 1002:2006, MOD).

Our Complaints Management Policy provides guidance to Tribunal staff and management when handling complaints or dealing with client dissatisfaction. The policy is supported and promoted in the *Making a complaint* fact sheet and other materials available at www.cttt.nsw.gov.au.

Our complaints management system allows us to identify opportunities for service improvement and is an important aspect of our continuous improvement process.

Approximately 50% of complainants expressed dissatisfaction with decisions which were not made in the complainant's favour, and asked the Minister or Chairperson to review or alter the decision.

The Tribunal is a legal body that must uphold long standing legal principles that apply to all Australian courts and tribunals. As Tribunal decisions are final and binding, neither the Minister nor the Chairperson has the power to change Tribunal decisions. This ensures that Tribunal decisions are free from political, administrative or other influence.

A party can seek redress via the rehearing process or by lodging an appeal to the District Court of New South Wales or Supreme Court of New South Wales on specific and limited grounds outlined in the *Consumer Trader and Tenancy Tribunal Act 2001*.

Overall, the number of complainants represented less than 1% of the total number of hearings held by the Tribunal during the year.

Performance

Monitoring and Reporting

Performance monitoring and reporting systems help us meet the Tribunal's objective of providing an efficient, effective and expeditious dispute resolution service. Our reporting systems provide the Chairperson, Deputy Chairpersons and senior staff with reliable and timely information to help manage our significant and diverse caseload; to monitor operational performance against the service standards; and to meet our annual reporting and statutory requirements.

Data from our case management and other systems is used to prepare monthly and quarterly statistical reports. These reports examine application trends in the nine divisions and monitor workflows in the Tribunal's Registries against performance standards.

A significant review of our reporting capability commenced in December 2010. Activities are underway to upgrade the reporting software and introduce a range of other changes to deliver reports in a more timely and efficient way with considerably improved scope and levels of detail. It is anticipated these changes will be in place during 2011-2012.

The primary performance reporting measures used by the Tribunal are built around its statutory objectives and other operational requirements and are interrelated as set out below.

Accessibility

The Tribunal's accessibility is measured by:

- ▶ the number of venues in which the Tribunal sits
- ▶ how often the Tribunal sits at each venue
- ▶ suitability of each venue
- ▶ the ease by which clients can lodge applications, access information and participate in Tribunal processes and proceedings.

Hearings are conducted at nearly 70 venues in various metropolitan and regional locations. The table at **Appendix 7** shows the hearing venues used and number of hearings held during the reporting period.

During the year, the Tribunal commenced a project to review the suitability of all its venues. The review initially involved a survey of Tribunal Members and subsequently the local senior Registry staff member visited each site, generally while hearings were being conducted.

The review covered aspects such as access to public transport; availability of car parking facilities; wheelchair accessibility; signage; security arrangements; suitability of accommodation for hearing and conciliation; availability of public amenities; noise levels; and suitability for the use of technology – facsimile, telephone hearings and use of wireless computer equipment. It is anticipated that the review will be finalised early in 2011-2012 and any necessary refinements made to improve accessibility to the Tribunal's services wherever possible.

Efficiency and effectiveness

The Tribunal's efficiency and effectiveness is measured by:

- ▶ the number of lodgements by Division and Registry
- ▶ the Tribunal's case clearance ratio which shows the capacity of the Tribunal to manage its workload.

The table 'Number of Lodgements' at **Appendix 8** sets out the applications received by Division and Registry, and demonstrates how the Tribunal monitors lodgement volumes and trends, so that resources can be adjusted to efficiently and effectively maintain service delivery standards.

In the reporting period, the Tribunal had an overall clearance ratio of 102%, demonstrating that the Tribunal is keeping up with its new workload and has no backlog of work in the major Divisions (refer to the 'Clearance Ratio' table at **Appendix 8**).

Timeliness

In early 2010 the Tribunal reviewed its timeliness service standards for lodgement to first hearing and lodgement to finalisation. On 1 July 2010, we replaced the 'one size fits all' service standards model with individual targets for each Division and broad application type.

These new targets better accommodate the marked differences between the types of applications that are lodged, and case management practices that are required to deal with the Tribunal's disparate jurisdictions. The new service standards and related reporting systems support the Tribunal's differential case management practices.

Data is reported at Registry level so that local staff can monitor their own performance against the service standards. The aim is for 80% of all applications in a particular division and application grouping to meet the relevant service timeframe. The 80% target recognises the variable sitting patterns in some venues, the availability of parties, Tribunal Members and staff at different periods of the year and the complexity of some cases.

Complex applications might only be determined after a process of hearings, procedural directions, interim orders and adjournments. However, delay rarely occurs due to the lack of availability of Tribunal Members, listing practices or administrative oversights, bearing in mind that during 2010-2011 the Tribunal held almost 73,000 hearings, and issued over 88,000 orders across almost 70 New South Wales venues.

Any delay in resolving cases usually occurs as a result of adjournments, which generally arise due to:

- ▶ the lack of availability of parties, their witnesses, experts or legal representatives
- ▶ the requirement to exchange evidence or to obtain additional evidentiary material
- ▶ additional time required to allow for specific actions or events to take place
- ▶ a need to allocate additional hearing time
- ▶ security, health or other reasons.

The Tribunal is required to balance the competing interests of proceeding to hearing to enable the matter to be finalised expeditiously, against the need to afford procedural fairness to all parties.

The Tribunal's timeliness is measured by:

- ▶ time from the lodgement of an application to first hearing
- ▶ time from the lodgement of an application to finalisation
- ▶ number of times that attendance by a party is required before a case is finalised
- ▶ time taken to make Tribunal decisions available to the parties.

Time from lodgement of an application to first hearing

The graph 'Time from lodgement to first hearing' at **Appendix 8** shows the service timeframes set for each Division and application type, and how the Tribunal performed against the standard at the conclusion of the financial year. The Tribunal fully met its service delivery standards across all Divisions and application types.

Time from lodgement of an application to finalisation

The graph 'Time from lodgement to finalisation' at **Appendix 8** shows the service timeframes set for each Division and application type, and how the Tribunal performed against the standard at the conclusion of the financial year.

The new reporting and monitoring system, introduced at the start of this reporting period, provided the Tribunal with a clear understanding of its performance and therefore provided triggers to adjust its resources and priorities to meet the various standards.

Number of times for attendance

The goal is to have 75% of matters finalised at or before the first hearing. During the financial year 74% of all matters were finalised at or before the first hearing. Complex matters such as home building or motor vehicles disputes often required some adjournments to allow time for the parties to obtain experts reports and other material or to allow a Tribunal 'on site' conclave to take place in a home building case.

Time taken for Tribunal decisions

Most Tribunal decisions are made at the conclusion of the hearing with a small number of decisions being reserved to be delivered at a later date. The standard is to make 90% of Tribunal decisions (other than reserved decisions) available to parties within 4 days of the conclusion of the hearing.

With the advent of the Tribunal's *InCourt* computer system which allows Tribunal Members to make orders during the hearing, 74% of orders were issued to parties on the day of hearing and 92% within 2 days of the hearing.

Reserved decisions are generally made available to parties within 6 weeks and requests for written reasons within 28 days of the conclusion of the hearing.

The Tribunal introduced the *eConnect* pilot program with Housing NSW on 7 March 2011, allowing the Tribunal to email all correspondence and orders immediately decisions are made. Once the pilot is completed and the system refined this service will be made available progressively across other Divisions and to all parties to proceedings.

Cost

The cost of the Tribunal's services is measured by:

- ▶ the level of application fees
- ▶ the net expenditure to finalise each case.

Application fees

A low application fee regime exists to allow parties to inexpensively access the Tribunal. For this reporting period, the majority of parties paid an application fee of \$35; applicants in the Strata and Community Schemes Division and applicants with claims between \$10,000 and \$25,000 in the General, Home Building and Motor Vehicle Divisions paid \$72; and those with claims over this amount in these Divisions paid \$187. Pensioners and students pay \$5 and in certain circumstances the fee can be waived.

Fees have traditionally been increased each year in accordance with the CPI (excepting the \$5 concessional fee). During the financial year revenue generated from fees was \$2.1m. The Tribunal has a process in place to ensure that fees are paid.

Net expenditure

Although the Tribunal does not have a full unit costing model in place, we operate on the basis that 95% of cases will incur a net expenditure of \$350; 4% of cases will incur a net expenditure of \$490; and 1% of cases will incur a net expenditure of \$1,200. A small number of complex cases will incur further costs.

Informality

The Tribunal's informality is measured by:

- ▶ the level of legal representation
- ▶ the level of consent agreements.

Legal representation

Leave of the Tribunal is generally required before legal representation is permissible in Tribunal proceedings. The vast majority of parties are either self represented or are assisted by free or inexpensive community-based advocacy services such as the Tenants Advice and Advocacy Program or other consumer advocacy services.

Consent agreements

At the commencement of the proceedings the Tribunal has a conciliation process that allows parties to engage in informal discussions in an attempt to establish consent agreements. If a matter does not settle at the first hearing, other opportunities for settlement can and do arise during the course of proceedings. All Tribunal Members are required to have alternative dispute resolution skills so they can assist parties to reach an agreement.

Consent agreements are made into binding Tribunal orders which are generally made available on the day of the hearing. Before making Tribunal orders flowing from a consent agreement, a Tribunal Member will ensure that the parties freely entered into the agreement; understand the agreement; and that it is lawful.

Party participation in proceedings

The Tribunal's website provides considerable information to assist parties prepare and present a case before the Tribunal. The Tribunal monitors visits to its website and the top 10 website pages visited. During the financial year, the website recorded 417,779 website visits, which represented a 28% increase over the previous year.

Registry staff provide parties with procedural information over the counter and inform parties where specialist advice can be obtained. Over 10,000 telephone calls and more than 4,000 face to face enquiries are dealt with by Registry staff each month.

Although Tribunal proceedings are a legal process and somewhat adversarial in nature, Tribunal Members generally take an inquisitorial approach by seeking out the relevant issues and evidence so each party is able to fully present their case.

Tribunal Members will adjourn matters to allow parties to seek advice if it is clear that a party is at a disadvantage in proceedings, whilst using discretion to dismiss cases that are frivolous, vexatious, misconceived or lacking in substance.

The Tribunal encourages tenancy advocates to provide a duty advocacy service at many venues to support unrepresented tenants. Interpreters are provided on request free of charge.

Fairness and consistency

To ensure fairness and consistency in the Tribunal's decision making, cases are considered on their merits and the relevant legal principles applied to the evidence put forward in each particular case. Each case has its own particular circumstances and parties have varying degrees of expertise in presenting their case.

Outcomes can vary due to the quality of evidence and the particular weight and relevance given to the evidence by the Tribunal Member. Tribunal Members are not bound by each others' decisions although due regard is paid to decisions of other Members. The Tribunal does, of course, follow legal precedent set by a higher court.

Fairness and consistency in Tribunal decision making is measured by:

- ▶ the level of Tribunal Member training
- ▶ the level of written complaints
- ▶ feedback from stakeholders and parties
- ▶ the number of appeals to the District or Supreme Court and the extent to which Tribunal decisions are upheld.

Tribunal Member training

Each year there is a Tribunal Member conference in which all Members participate. Every two months Senior Members meet formally with the Chairperson and the Deputy Chairpersons to discuss emerging issues. Training for all Members is conducted by a bi-monthly telephone network process led by Senior Members. A range of informal and case management meetings are also held.

The primary focus of the network meetings is case study discussion to develop a consistent understanding of the law and procedure. The Chairperson also issues specific Directions about process and procedure, and issues a regular newsletter to all Tribunal Members. Members have a separate intranet which assists them with case information, the law and precedents. A standard template for reserved decisions, orders and written reasons has been developed and a range of standard orders are available to Tribunal Members via the Tribunal's InCourt computer system. These standard orders greatly aid consistency.

Written complaints

During the reporting period, 580 complainants wrote to the Tribunal, representing less than 1% of the total number of hearings held. Of these complaints, nearly 50% related to decision dissatisfaction with redress available via an application for rehearing or an appeal to the District or Supreme Courts. The remaining complaints concerned a wide range of issues, some of which led to refinement of Tribunal processes.

The Tribunal recognises that there will invariably be parties who are dissatisfied with decisions made by the Tribunal or who wish to pursue matters of principle that may not be consistent with the law. Complaints are classified around a number of aspects but predominately distinguish between complaints that relate to decision dissatisfaction and complaints that relate to dissatisfaction with service delivery due to Tribunal Member or staff conduct, inefficient service or inappropriate information provision.

Feedback

The Tribunal has a number of mechanisms to seek direct feedback from, and deliver information to, stakeholders and parties. During the financial year the Tribunal conducted:

- ▶ 22 Divisional, Aboriginal and community consultation forums with stakeholder groups
- ▶ 67 community information and education sessions convened or participated in by Tribunal Members and/or staff.

Appeals

During the financial year 85 appeals were lodged with the District or Supreme Court which represented less than 0.1% of the number of orders made by the Tribunal during this financial year.

The outcomes are consistent with previous financial year reporting periods with 95 appeals determined as follows:

- ▶ 11 appeals upheld and remitted to the Tribunal
- ▶ 15 appeals upheld and orders substituted
- ▶ 49 appeals dismissed
- ▶ 20 appeals discontinued.

In the main, the original Tribunal orders were upheld. A small number of matters were remitted for a rehearing by the Tribunal, or the relevant court overturned the Tribunal decision and granted alternative orders. Most Court decisions that changed a Tribunal decision became a precedent for the Tribunal to follow in similar future cases.

Other reporting mechanisms

Other performance monitoring and reporting mechanisms are in place, such as review of adjournment rates and application type numbers, or are being developed to monitor operational performance.

Our performance reporting is transparent and is made accessible in a number of ways:

- ▶ quarterly statistical reports are regularly discussed with the Tribunal's consultative forum members and other stakeholders
- ▶ relevant statistics are posted on the Tribunal's website
- ▶ our Annual Report publicly accounts for the Tribunal's performance to the Minister, NSW Parliament, and the broader community.

Benchmarking

Benchmarking performance is difficult across the Tribunal sector as there is a varying focus on what is critical business activity and different metrics and methodologies are used to measure performance. The Tribunal has a hybrid model consisting of some measures used internationally and other measures specific to its operational environment due to legislative and other requirements.

Business Improvements

A strategic approach is taken to business improvements. We pursue projects that make it easier for clients to access and use our services and for Tribunal Members and staff to do their work.

Projects that save effort, time and money receive high priority. As a result we have established an ambitious business improvement program and worked tirelessly over the reporting period introducing various technological innovations.

Technological innovations

Our approach has been to incrementally introduce new technology. Major projects are piloted and any necessary refinements made to the systems before they are made available more broadly to the community, Tribunal Members and staff. We have found this approach has enabled the seamless and successful implementation of technological changes.

eConnect

eConnect is a technological initiative which allows us to deliver case-related correspondence including Notices of Hearing and Orders to parties using email rather than post.

A pilot of this initiative went live on 7 March 2011, initially with six Housing NSW offices participating, and was later expanded to all Housing NSW offices. The pilot will be evaluated in 2011-2012, any necessary refinements made to the system, and it will then be rolled out across most Divisions on an opt-in basis.

Video conferencing

A video conferencing capability was established with the aim of increasing access to our services for regional consumers and traders, and of providing Tribunal Members and staff with another means of communication. The first phase of the video conferencing project was implemented during the reporting period, providing the Tribunal with the facilities to communicate internally using video conferencing equipment installed in all Tribunal Registries as an alternative to travelling to meetings.



Tribunal staff use the new video conferencing equipment to conduct meetings with others located in different Tribunal Registries.

Once Tribunal Members and staff are comfortable and confident in using the equipment, the second phase of the project will be introduced in the latter half of 2011-2012. Use of video conferencing will be expanded to include Tribunal hearings with the aim of increasing accessibility. This service will be particularly useful for parties residing in regional and remote locations.

Digital documentation

Planning for another service improvement commenced during the year — the ability to store digital documentation in our case management system and indexed against a Tribunal matter. This innovation will allow parties to electronically submit their evidence and other case-related documents. The initial pilot of this innovation will be undertaken in partnership with Housing NSW which has digitised its entire file record.

Future proofing

In the next reporting period, the Tribunal will continue to work on projects that maximise the use of technology to future proof our business processes, and generally make it easier for people to use Tribunal services and for Tribunal Members and staff to do their work.

Future identified priorities include refinements to the *CTTT Online* lodgement system, and to the Tribunal's case management and *InCourt* systems.

Continuous improvement

The Tribunal has an integrated approach to achieving continuous improvement. The foundations for continuous improvement are based on a culture of innovation, problem solving by involving Members, staff and stakeholders, and ensuring that solutions are cost effective and make it easier to use Tribunal services and systems.

The Tribunal's senior management and Continuous Improvement Reference Group (CIRG) drive improvements by focussing on stakeholder requirements, measuring our performance, identifying potential improvements to Tribunal services and implementing new approaches.

Continuous Improvement Reference Group

The Tribunal's Continuous Improvement Reference Group (CIRG) has formed an integral part of the Tribunal's business improvement program since its establishment in 2008. CIRG provides a forum for Tribunal Members, senior management and staff to have focussed discussions on major issues and trends that impact on the Tribunal.



The annual Tribunal Members Conference offers an opportunity for Members to share experiences, and exchange ideas and knowledge.

During 2010-2011 CIRG met each quarter to report on and analyse information and feedback about the Tribunal's activities and recommend strategies for better customer service outcomes and increased effectiveness of operations. CIRG's activities contributed to recommendations for improvement of the Tribunal's operational procedures, client services, business development initiatives, and staff training and development activities.

Tribunal Member professional development

The Tribunal assists Members in their professional development by providing opportunities to identify specific training and development needs, through performance monitoring and Member mentoring. During 2010-2011 we continued our commitment to a culture of learning and improvement across the organisation through a range of programs.

Tribunal Member conference

The annual Tribunal Member conference was held in September 2010. The major agenda items included managing communication in the hearing room, contracts over the internet, new legislation about unfair contract terms and insolvency.

The conference provided an opportunity for Members to share their experiences regarding the conduct of various types of cases and to update their legal knowledge. Presentations and discussions at the conference delivered practical information to Tribunal Members. Conference papers were uploaded to the Tribunal Members' intranet to allow ongoing access and reference.

Member network groups

With a large number of part-time and regionally-based Tribunal Members, Member network groups provide a useful forum for discussion of case studies and emerging issues in the law and practice. The groups meet via teleconference on a bi-monthly basis and are facilitated by Senior Members.

Chairperson's e-newsletter

Regular e-newsletters were issued by the Chairperson and the Deputy Chairperson (Determinations) to keep Tribunal Members updated on legislative, operational and other issues of relevance to their work.

Staff learning and development

During 2010-2011 flexible training approaches were used to enhance and maximise the performance of Tribunal registry and administrative staff. This was achieved through an integrated approach including corporate training, a performance development program, regular e-newsletters, and forums to promote discussion and learning.

Registry briefing days

Each month the Deputy Registrars based throughout the State meet at our Sydney office with the Registrar and Deputy Registrars (Case Management).

Registry briefing day meetings facilitate discussions about case management issues, identification of staff training needs and information sharing. The meetings also assist in maintaining consistency in case management practices across the Tribunal, and demonstrate the ongoing commitment to learning and continuous improvement.

During 2010-2011, this program was extended to team leaders, bringing together key frontline operational staff with a view to improving service delivery, developing skills and establishing succession planning in all Registries.

The Registry briefing day program has been highly effective in achieving consistency in procedures, the sharing of ideas and common solutions to problems, and facilitating a productive flow of information between Registry offices, particularly through a period of significant legislative change.

Corporate training programs

A number of staff took advantage of the Department of Finance and Service's (DFS) corporate training programs. These involved structured training which was delivered face-to-face and online.

During 2010-2011 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, occupational health and safety, and a leadership development program.

Registry and administrative e-newsletters

The Deputy Chairperson (Registry and Administration) issues regular newsletters to keep staff informed about legislative and operational changes and new initiatives.

Procedures manual

The procedures manual is a key training tool for Registry and administrative staff, and provides an outline of the role and operations of the Tribunal. New and updated procedures were developed during the year to assist staff in undertaking their roles, and to encourage professional development across the organisation.

Performance Development Program

All Registry and administrative staff reviewed their Performance Development Program plans during the year. This program provides an important opportunity to facilitate ongoing and constructive dialogue between staff and their managers about individual work performance and future training needs.

Green initiatives, waste management and recycling

The Tribunal is committed to reducing waste and recycling resources to reduce our impact on the environment.

During 2010-2011, we continued to promote and implement green initiatives and waste minimisation through various initiatives, including:

- ▶ minimising energy consumption wherever possible
- ▶ double-sided printing of Notices of Hearing and orders
- ▶ using email or website options to communicate information to the community and stakeholders, and to gather feedback
- ▶ promoting *CTTT Online* to encourage people to lodge applications over the internet
- ▶ reducing printed resources where possible
- ▶ extending recycling programs to collect and recycle paper and waste from our eight Registry offices
- ▶ appropriate disposal of toner cartridges for Tribunal photocopiers and printers.

These initiatives are embedded into our operating environment. This ensures resources are used effectively and efficiently, and necessary waste is disposed of in a safe and environmentally sound manner.

Tenancy Division

Key Facts 2010-2011

Applications

Number of applications received 31,039

• 2% increase from 2009-2010

Number of online lodgements (43%) 13,222

Application types:

• Pre-agreement matters and agreements*	66
• Rent and other payments	661
• Access to residential premises	162
• Repairs*	212
• Alterations and additions*	17
• Security and safety*	11
• Change of tenants	75
• Termination for non-payment of rent	13,695
• Termination by a co-tenant under section 102*	42
• Termination for other reasons	4,121
• Mortgagee repossession	7
• Occupation fee*	6
• Vesting of tenancy*	3
• Abandonment of residential premises	110
• Goods left in residential premises	67
• Rental bonds	4,894
• General orders	5,901
• Residential tenancy databases*	11
• Renewal	44
• Rehearing	934

Applicants:

Landlord	23,882
Tenant	6,951
Other person**	76
Co-tenant**	74
Occupant	35
Prospective tenant**	21

Hearings

Number of hearings 35,297

Number of adjournments 8,797

Finalised matters

Number of matters finalised 31,137

Rehearings and appeals

Number of rehearings granted 426

Supreme Court / District Court appeals 24

* New 'Application Types' introduced from 31 January 2011 in line with new Tenancy legislation

** New 'Applicant' categories introduced from 31 January 2011 in line with new Tenancy legislation

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

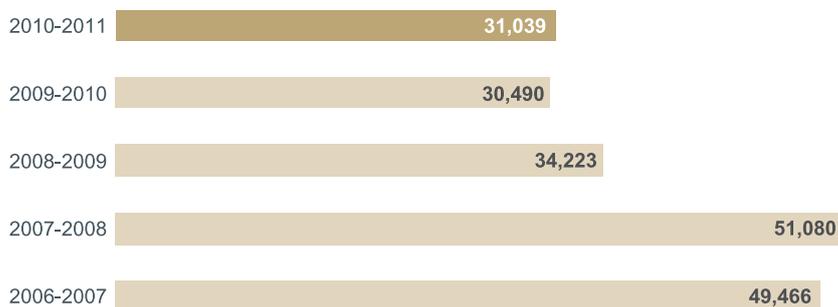
The Tribunal has jurisdiction under the *Residential Tenancies Act 2010* to hear and determine applications from landlords, tenants, co-tenants and occupants. The common types of issues that arise in this Division include breaching the residential tenancy agreement, termination of agreements for failing to pay rent and return of rental bonds.

The commencement of the *Residential Tenancies Act 2010* has meant that the Tribunal can now make orders to deal with the following disputes:

- ▶ Resolving a dispute between co-tenants
- ▶ Sub-letting
- ▶ Disputes about information in tenancy databases
- ▶ Recognition of occupant as tenant after an apprehended violence order (AVO).

The new *Residential Tenancies Act 2010* has to date not significantly impacted on the workload of the Division.

Application trends



The *Residential Tenancies Act 2010* does not apply to hotels and motels, boarders and lodgers, protected tenancies, and commercial or retail tenancies.

Case studies

Making alterations

The *Residential Tenancies Act 2010* makes provision for tenants who wish to make renovations, alterations or additions to the rental premises. Section 66 makes it clear that the landlord's consent must be given before any changes are made, and section 67 provides that the tenants may remove any fixtures they installed at their own cost before giving vacant possession.

A couple rented an apartment for just over 12 months from a landlord who managed the property herself. During the tenancy the couple carried out various modifications to the apartment with the landlord's consent, including the installation of light fittings, shelving and blinds.

When the tenancy ended the landlord lodged an application to the Tribunal under section 69 of the *Residential Tenancies Act 2010* seeking compensation for the cost of rectification work required as a result of the alterations made to the property.

At the hearing the landlord conceded that she had consented to 'any alterations as long as it adds value to the property'. However she was shocked when she discovered the extent of the alterations and now she was seeking compensation. The tenants replied that every alteration was made with the landlord's consent and that she had even agreed to reimburse them for their expenses.

The Tribunal Member reviewed the evidence provided by both parties, including the rental ledger, written correspondence, quotes and receipts for the alterations. The Member found that the tenants had met their obligations under the Act as they had the landlord's written consent. There was also no evidence that the work was not done to a satisfactory standard or that it required removal or rectification. The landlord's application for compensation was dismissed.

Unexpected sale of property

Under the *Residential Tenancies Act 2010* a landlord has an obligation to disclose a proposed sale of the property before entering into a residential tenancy agreement. Otherwise the tenants may terminate the tenancy during the fixed term without being liable to pay any compensation or additional amount for the early termination of the agreement.

A young family signed a 12 month fixed-term tenancy agreement via a real estate agency to rent a house. Six months into the tenancy, the family received correspondence from the agency stating that the landlord had instructed them to place the property on the market and that they wished to conduct open house inspections every Saturday, and a second evening inspection during the week until the property was sold. This was the first time that the tenants were made aware of the landlord's intention to sell the property.

After seeking independent legal advice, the tenants gave the agency a written notice advising that they sought early termination of the tenancy under section 100 of the *Residential Tenancies Act 2010*. The agency then lodged an application to the Tribunal on behalf of the landlord seeking orders to stop the tenants from terminating the tenancy and to pay compensation for any loss caused by the abandonment of the premises.

At the hearing, the Tribunal Member determined that the tenants' notice of termination was valid as the landlord had not informed the tenants, prior to entering into the fixed term lease, that the landlord intended to sell the property. The Tribunal also found that the tenants had complied with all the provisions of the Act in serving the notice of termination and vacating the property.

The Tribunal determined that the tenants were allowed to vacate the property without penalty and orders were made dismissing the landlord's application.

Social Housing Division

Key Facts 2010-2011

Applications

Number of applications received **12,912**

• 2% decrease from 2009-2010

Number of online lodgements (91%) **11,726**

Application types:

• Pre-agreement matters and agreements*	3
• Rent and other payments	62
• Access to residential premises	859
• Repairs*	69
• Alterations and additions*	2
• Security and safety*	4
• Change of tenants	6
• Termination for non-payment of rent	6,178
• Termination by a co-tenant under section 102*	0
• Termination for other reasons	1,366
• Mortgagee repossession	0
• Occupation fee*	2
• Vesting of tenancy*	0
• Abandonment of residential premises	49
• Goods left in residential premises	39
• Social housing provisions	35
• Rental bonds	52
• General orders	3,994
• Residential tenancy databases*	0
• Renewal	29
• Rehearing	163

Applicants:

Housing NSW	9,164
Community Housing	2,226
Aboriginal Housing	935
Tenant	578
Occupant	6
Other person**	3
Prospective tenant**	0

Hearings

Number of hearings **15,994**

Number of adjournments **3,836**

Finalised matters

Numbers of matters finalised **13,066**

Rehearings and appeals

Number of rehearings granted **104**

Supreme Court / District Court appeals **6**

* New 'Application Types' introduced from 31 January 2011 in line with new Tenancy legislation

** New 'Applicant' categories introduced from 31 January 2011 in line with new Tenancy legislation

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

The Tribunal has jurisdiction to determine social housing disputes under the *Residential Tenancies Act 2010*. 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, co-tenants and occupants. The *Residential Tenancies Act 2010* applies to social housing tenancies in the same way as it does to private tenancies. The Act also has additional provisions specific to social housing, including water usage and particular grounds for termination, such as that the tenant is no longer eligible for social housing.

The common issues that arise in this Division include termination of the tenancy agreement for non-payment of rent, breaches of agreements and compensation.

Application trends



As the Social Housing Division was established on 1 October 2008, the data for 2008-2009 is not directly compatible with 2009-2010.

Case studies

A damp situation

Damp and mould in rental properties can be a very difficult issue for tenants to live with and for landlords to carry out the necessary repairs. In the event that a tenant seeks compensation for damage and non-economic loss caused by mould and mildew, they need to provide sufficient evidence or their claim for compensation may go 'down the drain'.

A social housing tenant had lived in a house with her family for six years. From the commencement of the tenancy, the tenant made regular complaints to the property manager about damp and mildew. Several repairs had been made to patch up walls where cracks had appeared, but the tenant ultimately felt that the property had become 'unliveable' due to the damp. She sought her own independent building inspection that reported many damp-related issues with the property including decay of door jambs and architraves and high moisture readings in the walls.

The tenant lodged an application to the Tribunal for orders that the landlord carry out repairs and maintenance, and for compensation for the loss of personal items destroyed by mould and the breach of her 'peace, comfort and quiet enjoyment' of the property.

When the parties first arrived at the Tribunal they were successful in conciliating an agreement for the landlord to inspect the property and provide a schedule of repairs. However, the tenant was again unhappy with the actions taken by the landlord, and she renewed the application as she did not think the landlord had carried out repairs as agreed during conciliation.

At the formal hearing, the tenant gave evidence that she and her family had not been able to access all facilities in the home due to water damage, in particular the side verandah which was sagging and not safe so the children could not use it. The tenant also said she had lost several personal items due to mould damage, but was unable to provide any receipts.

The respondent social housing provider gave evidence that a technical officer had inspected the property and had reported that all scheduled repairs had been completed, including the installation of new security locks. The respondent conceded that the repairs had not been completed as per the timeframe agreed to in conciliation, but they were now completed.

The Tribunal Member found that the tenant was inconsistent about dates, and by her own admission, she was confused as to whom, when and what problems were reported. The Member accepted that the respondent landlord had acted when the damage was reported, albeit not promptly, and that the issues in the independent building inspection report were now rectified. As there was no evidence of the loss of personal items or a breach of peace, comfort or quiet enjoyment, the tenant's application was dismissed.

Increasing the rent

When determining a tenant's application that a rent increase is excessive, the Tribunal must have regard to the factors set out in section 44 of the *Residential Tenancies Act 2010*. These include the state of repair of the premises and the facilities provided, the general market level of rent for comparable premises, and any work done by the tenant to the premises.

A tenant had lived in the same social housing property for 25 years. As she had part-time employment, the tenant paid market rent for the property. When the tenant received a notice that there was to be a rent increase of \$70.00 per week, she lodged an application to the Tribunal seeking orders that the rent increase was excessive.

At the hearing the tenant provided the Tribunal with photographs showing the state of repair of the property and documents detailing a number of comparable rental properties in the area. The tenant gave evidence that she had added to the value of the property during her tenancy. She had painted the house and carried out significant landscaping improvements at her own expense. She submitted that the landlord had not undertaken any significant repairs or maintenance during her 25-year tenancy and that any repair requests were usually ignored. The tenant gave evidence of her employment income and medical expenses for a chronic condition, stating that the proposed rent increase would cause her economic hardship. The respondent landlord relied only on a valuation following a recent property inspection.

The Tribunal Member considered section 44 of the *Residential Tenancies Act 2010* which entitles a tenant to apply for an order declaring that the rent increase is excessive. The Member found that the tenant had produced details of a number of similar properties in the area, but that landlord's evidence was limited only to a rental valuation. The Member was also satisfied that the tenant had invested time and money in maintenance with the consent of the landlord, that she had requested numerous repairs without a satisfactory response, and that the proposed rent increase was well above the statistical rent increase for the area. In all the circumstances, the Tribunal Member made orders for a \$20.00 rent increase to take effect for the period of one year.

General Division

Key Facts 2010-2011

Applications

Number of applications received 6,284

• 6% decrease from 2009-2010

Number of online lodgements (29%) 1,831

Application types:

• Goods	2,986
• Services	2,835
• Holiday parks	100
• Pawnbrokers	7
• Conveyancing	1
• Renewal	71
• Rehearing	284

Applicants:

Consumer	6,071
Other party	213

Hearings

Number of hearings 7,708

Number of adjournments 4,008

Finalised matters

Number of matters finalised 6,465

Rehearings and appeals

Number of rehearings granted 117

Supreme Court / District Court appeals 7

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. A 'consumer' can be an individual who receives goods or services for private purposes, or a business or company which uses the goods or service for business purposes.

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.

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 in this Division 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. Pawnbrokers and second-hand dealers may apply to the Tribunal to dispute a person's claim to the goods.
- ▶ Costs payable in respect of conveyancing work. The Tribunal can hear and determine conveyancing applications from both consumers and conveyancers.

Application trends

2010-2011	6,284
2009-2010	6,676
2008-2009	6,436
2007-2008	5,971
2006-2007	6,389

Case studies

Faulty smartphone under warranty

National consumer law guarantees your rights when you buy goods or services, including rights to repairs, replacements and refunds. These rights exist even if you do not have a warranty.

A customer purchased a brand new smartphone and within a year of use he began to experience multiple technical issues with the phone, including screen freezing, antenna problems, having to constantly restart the unit and not being able to access various functions of the phone. The customer made an appointment with a store technician to have his phone inspected and repaired.

The technician confirmed that the phone was still under manufacturer's warranty. The technician also advised that the unit had both software and hardware faults and he offered to replace the faulty unit with a refurbished one. The customer was unhappy with this offer and asked that his smartphone be either repaired or replaced with a brand-new unit. The store rejected his request and the customer lodged an application to the Tribunal to resolve the dispute.

At the hearing, the Tribunal heard evidence from both the customer and a representative from the store. The customer described the problems with his smartphone and the steps he had taken to repair the unit, including updating the software, returning the phone to its factory settings, and making the appointment with the technician. The store representative said that the customer had refused to allow them to 'properly test' the unit in the store to confirm that it had a hardware fault. The customer replied this was because he was concerned this would result in the loss of all his stored personal information.

The Tribunal Member made orders for the respondent store to undertake a full technical inspection of the customer's smartphone, and if a manufacturing or hardware fault was detected then the unit was to be replaced with a brand-new smartphone from the store's normal retail stock.

A lost business opportunity

It is unlawful for a business to make false or misleading representations about goods or services when supplying those goods or services. Failure to disclose relevant information, or making false promises and predictions can be misleading or deceptive conduct.

A company offering face to face training seminars about share trading and investment also ran a six-month training and mentoring program. After participants had completed this six-month course, they were offered a limited opportunity to enter into a "business licence agreement" giving them the right to promote and sell the company's DVD and online "webinars" with an attractive 50% commission package. Several interested participants agreed to this offer. They each signed a 25-year business licence agreement and paid a \$10,000 non-refundable deposit before attending an intensive training weekend.

The licensees began selling the company's products in their allocated regions, but problems soon arose. The company's database system and merchant facility could not handle the volume of orders or processing of payments. Monthly commission payments were late and were often incorrect, and customers began complaining they had not received their products. As more and more issues arose, including the constant altering of the terms and conditions of their agreements particularly in relation to commission fees and expenditure, the licensees began to question the honesty and integrity of the company and its Director. Soon afterwards the Director sent an email to all licensees advising that their licences had been dissolved.

After seeking legal advice, the licensees found that their 'business licence agreements' could be franchise agreements. They then applied to the Tribunal seeking a refund of the licensing fees and other operating costs incurred under their individual agreements.

At the Tribunal hearing, the licensees claimed that the Director engaged in misleading and unconscionable conduct by taking advantage of his role as a mentor and abusing their trust, and using pressure selling techniques on them to enter into an agreement without seeking legal advice. They also alleged that the Director made numerous misrepresentations regarding many aspects of the business model. The company's Director denied making the alleged promises, and blamed the global financial crisis for the company's poor performance.

After reserving the decision, the Tribunal Member found that there was a clearly executed contract between the parties, regardless of whether it was a business licence agreement or franchise agreement, which was willingly entered into by the licensees. The Member did not accept that the licensees relied on any pre-contractual misrepresentations. However, the Member found there were significant misrepresentations in the contract relating to the provision of the database services and back end support.

The Member found that it was the failure of the database system that caused the failure of the business model and the respondent did not provide a proper system to support the contracted conduct that was misleading and deceptive. Orders were made for any fees and operational costs incurred after the training weekend to be refunded to each licensee.

Home Building Division

Key Facts 2010-2011

Applications

Number of applications received 3,475

- 1% increase from 2009-2010

Number of online lodgements (18%) 637

Application types:

• Claims under / equal to \$30,000	2,528
• Claims over \$30,000	606
• Rectification order	97
• Appeal against Director General's decision	1
• Renewal	67
• Rehearing	176

Applicants:

Consumer	2,549
Trader	839
Other party	85
Insurer	2

Hearings

Number of hearings 7,795

Number of adjournments 6,249

Finalised matters

Number of matters finalised 3,488

Rehearings and appeals

Number of rehearings granted 70

Supreme Court / District Court appeals 30

'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 the 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.

Except in some specified categories, all home building disputes must first be dealt with by NSW Fair Trading's Home Building Service for alternative dispute resolution. The Tribunal is required to provide the Home Building Service with a copy of any adverse order 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 \$30,000. These directions assist a range of alternative dispute resolution mechanisms and limit undue delay in proceedings.

Application trends



Case studies

Driveway damages

Section 18B of the *Home Building Act* sets out the warranties as to residential building work, which include that the building materials used are reasonably fit for the specified purpose or result.

The owners corporation of a strata scheme engaged a paving company to repair the common property driveway with a new waterproofing membrane and surface. Shortly after work was completed, residents reported small cracks and bubbles forming in the driveway surface along the edge of the retaining walls. Several months later after heavy rain there was further puckering and sections of the driveway surface were beginning to lift away. The paving company carried out rectification works on two occasions, including scraping damaged areas, patching and repainting of the driveway, but the problems with the driveway surface persisted.

The owners corporation contacted NSW Fair Trading for assistance. A Fair Trading Inspector attended the premises and found that the waterproof membrane had failed to bond to the concrete surface. The inspector's report indicated that although the manufacturer's documentation advised that the product was 'suitable in trafficable areas', in this instance the product used was not reasonably fit for the specified purpose. The owners corporation then lodged an application to the Tribunal seeking orders for an amount of money for the removal of the damaged driveway and for a new driveway surface to be installed.

At the Tribunal hearing, the owners corporation stated that it relied upon the contractor's professional opinion when choosing the driveway surface product. The owners corporation tendered the inspector's report and produced witness statements from several residents and photographs depicting the condition of the defective surface areas.

The respondent company claimed that the damage was caused by water ingress between the substrate and the waterproof membrane, and alleged that the owners corporation had failed to disclose past water ingress issues. The respondent blamed inadequate waterproofing of the surrounding garden retaining walls and cracks in the concrete slab. The company tendered letters from the product manufacturer and an expert's report in support of their case.

The Tribunal Member accepted that the owners corporation had relied on the company's expertise for their choice of product and application. The Member found that both the Fair Trading Inspector's report and expert's report indicated the chosen membrane product was not suitable for the intended use. The Member also found that the company had failed to properly investigate the condition of the existing substrate, moisture content, traffic usage and other external forces, and had used a material which was not suitable for the intended purpose. This was in breach of the warranties set out in section 18B of the *Home Building Act 1989*. Orders were made for the company to pay \$30,000 in damages to the owners corporation.

Solar panel blues

The Tribunal can award compensation for breach of contract where the goods supplied are not in accordance with the contract.

A couple wanted to install solar panels on their home and arranged for a consultation with a solar supply and installation company. The sales consultant recommended the installation of 16 solar panels providing a 3.2kw energy capacity with a high quality German-made inverter. Happy with the recommendations, the couple signed the contract paperwork and made full upfront payment.

On the day of installation, the home owners discovered that only 14 solar panels and a different brand inverter had been provided. They complained to the installers who left without connecting the solar panels to the electricity grid. The home owners were unable to resolve these issues with the supplier and they lodged an application to the Tribunal seeking a refund of the two panels not supplied, \$440 for the grid connection and a replacement inverter of the type originally specified.

At the hearing, the home owners produced a chronology of events, copies of the contract, various documents relating to the connection, payment receipts and product information about the inverters. They also asked that their application be amended as the company had since paid for the grid connection, and they were now claiming the difference in value between the two inverters and compensation for the two panels not supplied.

The respondent solar company produce a summary of events, a copy of the contract, documents about the pricing structure of the solar panels, copies of correspondence, a tax invoice and a written statement from the sales consultant. The respondent company said that, although the contract was for 16 panels, there was an error made by the sales consultant about the number of panels required and the required output. The company conceded that it had supplied a different inverter. The Tribunal Member reviewed the contract between the parties and found that the home owners were entitled to 16 solar panels with an output of at least 3.2kw, and that the respondent company had supplied goods other than those it ought to have supplied under the contract. The Member considered the quantum of the claim and, based on the parties' evidence, made an order for the respondent company to pay \$2,500 to the home owners.

Residential Parks Division

Key Facts 2010-2011

Applications	
Number of applications received	1,963
• 20% decrease from 2009-2010	
Number of online lodgements (6%)	126
Application types:	
• Excessive rent / excessive rent increase	1,146
• Breach / compensation	203
• Termination	183
• Other	45
• Recognition as a tenant	3
• Rental bond	3
• Renewal	121
• Rehearing	259
Applicants:	
Resident	1,462
Park owner	496
Occupant	5
Hearings	
Number of hearings	2,822
Number of adjournments	895
Finalised matters	
Number of matters finalised	2,696
Rehearings and appeals	
Number of rehearings granted	201
Supreme Court / District Court appeals	1

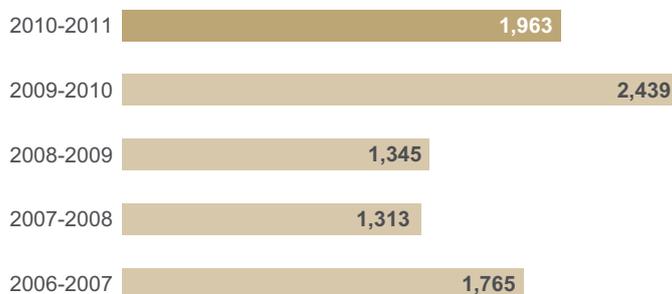
A 'residential park' may also be known as a caravan park, manufactured home estate, mobile home village or relocatable home park. Residents of a park may own their caravan or manufactured home and rent the site from the park owner. Residents may also rent accommodation that is owned by the park owner.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

This Division applies to people who live permanently in a residential park. It does not apply if the residential park is not the principle place of residence, or if the site is rented for holiday purposes (these applications are 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 groups of residents from the one 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

A fair trade off

The Tribunal sometimes receives multiple applications from a large group of residents in a residential park seeking the same or similar orders about the rent payable for sites within the park. Conciliation plays an integral part of the resolution of these multiple applications

The residents of a seaside residential park received a notice of rent increase from the park owner, seeking to increase all park residents' weekly rent payments to between \$95 and \$110 depending on the facilities on each resident's site. A group of 40 residents who were unhappy with the proposed rent simultaneously lodged applications to the Tribunal seeking orders that the rent increase was excessive.

The Tribunal listed all the applications together for a group conciliation and hearing. At the group conciliation, most of the residents attended in person but they had nominated a single park resident advocate to speak and negotiate on their behalf. The park manager appeared on behalf of the park owner.

During the conciliation discussions, the residents stated they believed that the rent increase was unjustified as security at the park had become an issue, especially on the weekends. They also gave evidence that several of the park roads had deteriorated and needed repairing.

With the assistance of a Tribunal conciliator, the parties were successfully able to reach agreement allowing the park owner to raise the rent incrementally over time. The consent orders also provided that the park owner was to engage a night-time security officer for the weekends and additional security services during holiday periods, that the amenities block would be open only during certain hours, and that the owner would fully repair all the roads in consultation with the residents committee.

Under the influence

Is a park rule banning the consumption of alcohol in public areas unfair? Under section 88(4) of the *Residential Parks Act 1998* the Tribunal can declare that a park rule is unfair. However, the park rule might not be considered unfair if a regular social function gets too rowdy and excessively disturbs the other park residents and visitors.

A number of residents of a residential park made an application to the Tribunal against the park owner after they were notified of a new park rule which prohibited the consumption of alcohol in public areas of the park. The residents were outraged as the new park rule affected their regular weekly social event held in the park's barbeque area. They claimed that being unable to enjoy a beer with their barbeque was simply 'un-Australian'.

The matter was initially listed for a 'group conciliation' between the applicant residents and park owner. At conciliation they reached an interim agreement for the park owner to refrain from enforcing the park rule until the matter was fully resolved. The residents also agreed that their social events would finish at 9.00pm and they would not cause any noise or disturbances.

When the matter came before the Tribunal for final determination, the residents contended that their regular barbeque provided an important social function for the park allowing casual visitors and tourists to meet the long-term residents. They also said that the barbeque area was the only place available for residents to socialise and that they always made sure the area was cleaned up afterwards.

The respondent park owner provided the Tribunal with numerous letters of complaint from other park residents and visitors about the conduct of the applicants using the barbeque site, with some stating that they would never return to the park. The park owner contended that the regular barbeque event was actually more of a 'happy-hour' or 'drinking event', and that it continued well after the curfew time. Offensive language could be heard and people leaving the function caused much noise and disturbance to sleeping residents. The park owner also stated that tourists had reported they were reluctant to use the barbeque area when the social function was being held.

After hearing the evidence of both parties, the Tribunal Member found that the park owner, in making the new park rule, had deemed that the consumption of alcohol in public areas detracted from the amenity of all park residents and visitors. He also considered that the rule did not unreasonably restrain residents from socialising in the barbeque area, adding that social interaction is possible without alcohol.

The Tribunal Member set aside the earlier consent orders and dismissed the residents' applications.

Strata and Community Schemes Division

Key Facts 2010-2011

Applications	
Number of applications received	1,438
• 2% decrease from 2009-2010	
Number of online lodgements	n/a
Adjudication	
Adjudication	1,031
• Strata scheme	979
• Community scheme	52
Tribunal hearings	
Tribunal hearings	407
• Strata scheme	382
• Community scheme	25
Application types:	
Adjudication	
• General orders and other	419
• Interim orders	190
• Appoint strata manager	142
• By-laws	136
• Property	69
• Meetings, decisions and records	56
• Contributions and levies (Strata Scheme)	19
Tribunal hearing	
• Appeal	185
• Penalty	151
• Unit entitlement	39
• Other	11
• Initial period	10
• Amend or revoke Tribunal order	7
• Appoint managing agent (Community Scheme)	3
• Revoke or vary management statement	1
Applicants:	
Lot owner	968
Owners corporation	444
Occupier of a lot	10
Other party	16
Hearings	
Number of hearings	736
Number of adjournments	524
Finalised matters	
Number of matters finalised	1,345
Rehearings and appeals	
Number of rehearings granted	n/a
Supreme Court / District Court appeals	9

A 'strata scheme' is a building or collection of buildings where individuals own their apartment or townhouse as well as sharing ownership of common property, such as driveways, foyers and gardens. A strata scheme may also comprise commercial property, for example, shops and offices. Strata schemes vary in size, some comprising only two lots and others having more than 700 lots.

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 a golf course.

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 be attempted to resolve the dispute before the Tribunal can accept an application. Mediation is generally conducted by NSW Fair Trading. Other mediation services may also be used, such as those run by Community Justice Centres, or a private mediator may be engaged.

Most disputes in this Division are determined by an Adjudicator. All parties in the scheme, or those parties who 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 refer disputes to the Tribunal for hearing, for example when complicated issues are involved. Parties can also appeal to the Tribunal from an Adjudicator's decision.

There are a small number of disputes when an application can be made directly to the Tribunal rather than being dealt with by an Adjudicator in the first instance.

Application trends

2010-2011	1,438
2009-2010	1,469
2008-2009	1,338
2007-2008	1,374
2006-2007	1,226

Case studies

Common courtesy

By-laws set out the rules that all owners and residents living in a strata scheme must follow. Standard by-law 2 provides that an owner or occupier must not park their vehicle on common property without permission, and by-law 3 states that they must not obstruct common property. The Tribunal can make orders imposing a monetary penalty against those who do not comply with the by-laws

The owners corporation of a strata scheme lodged an application with the Tribunal for adjudication against a resident who persistently parked numerous vehicles on the common property. Evidence of attempted mediation was provided and written submissions were received from the owners of 14 other units. The respondent did not file a submission in response. The application was then referred to a Strata Schemes Adjudicator for determination on the papers.

The written submissions provided evidence that the respondent resident had regularly parked his motor vehicles on common property over a lengthy period of time. Photographs were provided showing various vehicles parked on the common property which were said to be owned or driven by the respondent.

The Adjudicator was satisfied that the respondent's vehicles were parked on common property without permission contrary to by-laws 2 and 3, showing a disregard for the rights of other lot owners to access and enjoy the common property. Orders were made for the respondent to comply with these by-laws.

When the resident continued to park his vehicles on common property, the owners corporation lodged an application to the Tribunal seeking to have a monetary penalty imposed on the respondent for non-compliance with the Adjudicator's order.

At the Tribunal hearing the owners corporation provided evidence that the respondent continued to park a number of vehicles, some registered and some not, on the common property which blocked access to the garages. The respondent replied that that he only owned three cars and that he sometimes parked these in the visitors parking. He also contended that there was no evidence he owned the other vehicles being complained about.

Based on the evidence presented by both parties, the Tribunal Member found the owners corporation's version of events more persuasive and she was satisfied that the respondent had not complied with the by-laws as per the Adjudicator's orders. Accordingly, orders were that the respondent lot owner pay a penalty of \$2,000.

Water penetration

Under section 62 of the *Strata Schemes Management Act 1996* the owners corporation has a duty to properly maintain and repair common property.

A strata scheme, comprising 10 units and 4 shops in a 1930's art deco building, had ongoing issues with water penetration through the roof. Numerous repairs to patch the leaks had been made but they failed to fix the problem.

One of the lot owners, whose unit was most affected by the water penetration, lodged an application with the Tribunal for Adjudicator's orders that the owners corporation carry out a complete replacement of the roof and undertake repairs to her unit including replastering and painting of damaged walls. She provided photographs showing extensive mould and water damage to her ceilings and a quote for the repair work coming to a total of \$170,000.

A number of submissions were received from other lot owners who generally supported the application. The submissions confirmed that many attempts had been made to patch and repair the leaking roof and that water penetration into the applicant's unit had been an ongoing problem. However, it was apparent there was much disagreement between the lot owners about how and when the roof repair work should be undertaken. Some submissions contended that other common property repairs were more of a priority than repairing the roof.

After reviewing the submissions and evidence, the Strata Schemes Adjudicator was satisfied that there was a problem with water penetration into the applicant's unit and that extensive repairs were required. However, the Adjudicator considered that the owners corporation should be given an opportunity to obtain a report which clearly articulated the scope of works.

The Adjudicator declined to make the orders sought by the applicant, and instead ordered the owners corporation to obtain a report from a suitably qualified person to investigate the cause of the water penetration into the applicant's unit and provide options and solutions for the repair works.

Motor Vehicles Division

Key Facts 2010-2011

Applications

Number of applications received 1,446

- 7% increase from 2009-2010

Number of online lodgements (29%) 425

Application types:

• Claims under/equal to \$30,000*	177
• Claims over \$30,000*	402
• Contractual issues	80
• Defective/faulty new cars	79
• Defective/faulty used cars	185
• Overcharging	14
• Repairs	319
• Warranties - new cars	31
• Warranties - used cars	31
• Renewal	20
• Rehearing	108

Applicants:

Consumer	1,388
Other party	58

Hearings

Number of hearings 2,015

Number of adjournments 1,168

Finalised matters

Number of matters finalised 1,491

Rehearings and appeals

Number of rehearings granted 40

Supreme Court / District Court appeals 3

* New 'Application Types' introduced from 31 January 2011 in line with new Tenancy legislation

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.

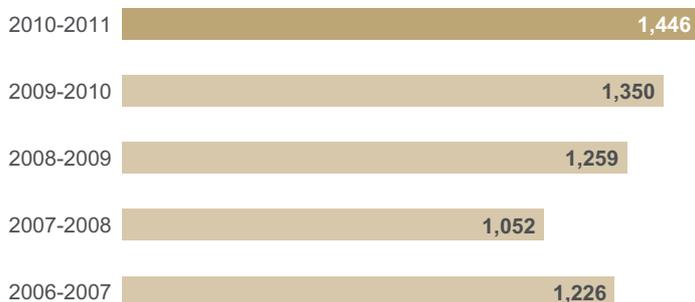
The Tribunal has jurisdiction to hear and determine motor vehicle disputes under the *Consumer Claims Act 1998*, *Fair Trading Act 1987*, *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*.

Applications can be made about vehicles used for private or business purposes. A 'motor vehicle' can be 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 often referred to NSW 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 by Fair Trading to the Tribunal, which may be of assistance during the determination of the dispute.

Application trends



Case studies

Scratched paintwork

The *Consumer Claims Act* and *Fair Trading Act* give consumers protection through conditions and warranties. Suppliers must guarantee that their goods are acceptable in appearance and finish.

A consumer purchased a new car for \$25,000 from a licensed motor dealer after viewing the demonstration model in the showroom. When the new vehicle was delivered a couple of days later, the consumer found several paint scratches in sections of the vehicle's bonnet and roof.

The applicant contacted NSW Fair Trading and a motor vehicle inspector attended to inspect the damage to the vehicle. The inspection report indicated there were many fine long straight scratches across the roof consistent with a car wash, but that these scratches were not deep and they could be rectified with polishing or buffing.

The applicant also sought an expert report before and after attempting to remove the scratch marks. The expert's report indicated there were light scratches detectable under artificial light and that buffing undertaken by a well-trained professional could eliminate these scratches without devaluing the vehicle. After the attempted repair, the expert's report indicated that a significant proportion of the scratches were removed but some were still visible in several locations. The expert's report also indicated that any further removal of the clear coating could compromise the UV protection of the entire coating system.

The car owner then made an application to the Tribunal seeking orders for compensation. At the hearing, although the parties' opinions differed as to the extent and seriousness of the scratch marks, it was found that the applicant did not get 'what he bargained for' notwithstanding the respondent's efforts to remedy the defect. The issue considered by the Tribunal Member was whether the defect constituted a breach of a condition. Having taken all the evidence into account, the Member found that compensation equal to 15% of the purchase price was reasonable given the devalued state of the vehicle and a sum of \$4,000 was awarded to the vehicle's owner.

A dubious dealer

When a second-hand vehicle is sold by a licensed motor dealer it must be roadworthy at the time of sale. The consumer must also be provided with a Safety Inspection Report, commonly known as a 'pink slip', stating that the vehicle is roadworthy. If the vehicle is not roadworthy at the time of sale, the Tribunal can make orders for the dealer to refund the full purchase price of the vehicle and other associated costs.

A man was looking to purchase a second-hand family car for around \$10,000. He searched on the internet and found a licensed motor dealer advertising a "family" automatic station wagon for \$9,999. The advertisement guaranteed that all vehicles were "work shop tested". The man called the dealer to enquire about the vehicle and he was told that the vehicle was in "good condition" and that it was "rust free". Satisfied with the description, he purchased the vehicle over the internet.

Upon delivery of the station wagon, the man found that the vehicle did not match the advertised description and was in poor condition. He arranged for an independent mechanical inspection of the station wagon which revealed that the vehicle had serious rust issues and required extensive mechanical repairs. A further RTA inspection declared the vehicle to be unroadworthy and doubted the validity of the 'pink slip' that had been issued only two months prior.

The man made an initial complaint to NSW Fair Trading against the motor dealer. The dispute could not be resolved with the dealer, and the man then lodged an application to the Tribunal seeking orders for a full refund of the purchase price.

At the Tribunal hearing, the man stated that the motor dealer had misrepresented the condition of the vehicle, in particular that it was "rust free". He presented evidence including the original advertisement and proof of purchase, the inspection reports and subsequent correspondence between himself and the dealer.

On the evidence presented, the Tribunal was satisfied that the vehicle was not of merchantable quality as it was sold with numerous faults and did not match the description of the advertisement. The Tribunal was also satisfied that the vehicle was not roadworthy when issued with a pink slip at the time of sale and that the dealer had been misleading in regards to the sale. The man was awarded \$10,649 in damages including the cost of the vehicle, cost of the inspections and storage costs. The dealer was also ordered to collect the defective vehicle.

Commercial Division

Key Facts 2010-2011

Applications

Number of applications received 166

• 47% decrease from 2009-2010

Number of online lodgements n/a

Application types:

• Property, Stock and Business Agents	145
• Credit Act	4
• Termination - Return of goods	1
• Waive notice	1
• Renewal	1
• Rehearing	14

Applicants:

Consumer / debtor	128
Interested / affected party	28
Credit provider	2
Mortgagor	2
Lessee	1
Mortgagee	1

Hearings

Number of hearings 299

Number of adjournments 221

Finalised matters

Number of matters finalised 193

Rehearings and appeals

Number of rehearings granted 2

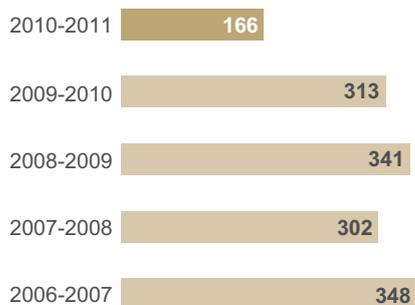
Supreme Court / District Court appeals 2

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

The transfer of consumer credit matters to the Commonwealth, which took place on 1 July 2010, impacted on the number of disputes dealt with by the Tribunal. During the year the Tribunal continued to deal with a small number of matters that had been lodged with the Tribunal prior to the transfer of the jurisdiction to the Commonwealth.

The most common type of dispute that arose in this Division involved consumers seeking a determination of reasonable agent commission fees.

Application trends



Case studies

Transitional credit provisions

Under the transitional credit provisions of the National Credit Act, the Tribunal can hear and determine applications under the Consumer Credit (NSW) Code received prior to 1 July 2010.

The owners of a rural property who were suffering financial hardship commenced proceedings in the Tribunal in June 2010 against their mortgage company, its agent and a finance broker seeking orders that their credit contract was unjust and that the contract should be reopened to enable them to make reduced mortgage payments. They also sought orders that the respondents made false and misleading representations inducing them to enter into the mortgage contract in the first instance.

At a Tribunal hearing, the solicitor for the mortgage company stated that they had filed a claim in the District Court of New South Wales against the applicants and requested that the Tribunal transfer the proceedings to the District Court for determination. The solicitor also contended that the Tribunal did not have jurisdiction to determine the owners' allegations of fraud and any cross-claims the mortgage company may wish to make against the other respondents based on negligence or breaches of contractual duty.

The applicants resisted the request to transfer. They argued that an application had been made to the Tribunal to hear and determine the issues under the Consumer Credit Code at a time when the issues were not before the Court. They also said that although the agreement of the agent was mentioned in a letter from the mortgage company's solicitor, there was no representative of the agent present at the hearing to confirm such consent.

Although it would generally be desirable to have all issues between the parties determined in one proceeding, the Tribunal expressed the opinion that there would be no prejudice to the mortgage company if it brought any application against the other respondents seeking damages for indemnity in separate proceedings if the right to bring those claims arose as a result of the present application. Moreover, the Tribunal's view was that it was inappropriate to deprive the applicants of the procedural advantages inherent in proceedings before the Tribunal.

Having weighed up all of the considerations, the Tribunal stated there was no reason that any contemplated cross-claims could not be commenced in a court of appropriate jurisdiction after the issues between the parties in the Tribunal had been determined. The order was that the application for transfer was refused.

No agreement, no money

Under the *Property, Stock and Business Agents Act 2002*, a licensee is required to enter into a written agency agreement with their client for the services to be performed. If such an agreement is not made, then the licensee is not entitled to payment of any commission or expenses.

A husband and wife were divorced and, as part of the divorce settlement, it was agreed that the husband's real estate business would sell a commercial property belonging to the wife. The business had managed the property on behalf of the wife for several years before the divorce and during that time had arranged for a commercial lease of the premises.

When the commercial property was finally sold, the agency retained \$3,000 plus GST for previously unpaid commission for leasing services. The ex-wife lodged an application to the Tribunal seeking a refund of the total of \$3,300.

At the Tribunal hearing, the wife appeared via telephone from overseas. The respondent ex-husband appeared in person. The wife argued that her ex-husband's business was not entitled to retain any commission from the sale of the property pursuant to the orders of the Family Court. She alleged that after their separation, her ex-husband had leased the commercial property against her wishes and that she did not receive any rent during that time from the tenant.

In cross-examination, the Tribunal found that the husband's business had not entered into a written agency agreement as required by the *Property, Stock and Business Agents Act 2002*, and was therefore not entitled to any commission or expenses.

The Tribunal made orders that the sum of \$3,300 was to be refunded to the applicant.

Retirement Villages Division

Key Facts 2010-2011

Applications

Number of applications received **85**

• 6% increase from 2009-2010

Number of online lodgements n/a

Application types:

• Breach	15
• Budget dispute	14
• Contract	6
• Fees	5
• Money / compensation	14
• Other	15
• Recurrent charges	8
• Residence rules	1
• Termination	4
• Renewal	1
• Rehearing	2

Applicants:

Resident **63**

Administering authority **22**

Hearings

Number of hearings **170**

Number of adjournments **151**

Finalised matters

Number of matters finalised **75**

Rehearings and appeals

Number of rehearings granted **0**

Supreme Court / District Court appeals **3**

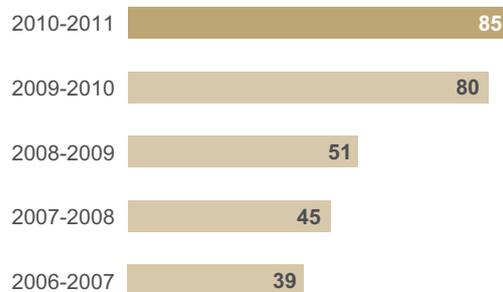
A retirement village is a residential complex where the majority of residents are retired people aged 55 years and older. These residents have entered into a contract with the owner or operator of the village for the provision of certain services. Most retirement villages consist of self-contained premises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

There are hundreds of villages in NSW 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. Matters dealt with include disputes about the terms of the retirement village contract, the legality of a village rule, annual budgets and accounts, payment of money and compensation, termination and vacant possession, security and safety, and disputes about the sale or lease of a premises within the village.

The Tribunal often lists retirement village matters, particularly disputes concerning the statement of proposed expenditure, for a directions hearing in order to determine the complexity of the issues, the future conduct of the hearing and to allow for the exchange of evidence. Mediation is also offered to assist parties reach a settlement.

Application trends



The *Retirement Villages Act 1999* does not apply to private nursing homes, respite care premises, boarding houses, group homes or Housing NSW accommodation for older people.

Case studies

Bad behaviour

The Tribunal has power to order the termination of a residence contract following a breach of the village contract or rules under section 134 of the *Retirement Villages Act 1999*. In considering such an application, the Tribunal must be satisfied that the breach justifies the termination of the contract.

A retirement village operator applied to the Tribunal for an order terminating the residence contract with a village resident on the grounds that the resident was verbally abusive and that his behaviour was unacceptable to the operator and other residents.

At the Tribunal, the parties attempted to conciliate the dispute but they were unable to reach an agreement. When the matter proceeded to hearing, the village manager explained that she had received numerous complaints about the resident's behaviour and that she herself had been verbally abused by the resident. She tendered a number of letters from other residents and a transcript of a message left on her answering machine in support of the claim.

The manager explained that most of the village residents were in their 80's or 90's and the behaviour of the respondent resident, who was younger, caused many of the older residents much distress. The resident had been offered alternative premises in a nearby village but he rejected this offer, so the operator felt compelled to issue a notice to terminate the residence contract.

The respondent replied that there had not been any problems reported recently and that his past behaviour was due to a particularly stressful period. He presented a written statement from a neighbouring resident supporting his claim. He also explained that the alternative village premises offered were not near a train station and that two additional bus trips would be needed to visit family and friends.

After hearing the evidence of the parties, the Tribunal Member reserved the decision and a final decision was handed down three weeks later. Based on the evidence presented, the Tribunal Member found that although the resident's behaviour had caused interference with the peace, comfort and privacy of other residents in the past, he had demonstrated restraint recently. The Member did not consider that the past breaches justified terminating the residence contract.

Orders were made for the resident to comply with the terms and conditions of his residence contract not to cause or permit any nuisance and to respect the rights of the other village residents, with a right to relist the matter for a further Tribunal hearing in the event that the resident did not comply with those orders.

Items of capital

Under the *Retirement Villages Act 1999* it is the responsibility of the village operator to allocate a sufficient amount for capital maintenance when preparing a proposed annual budget, which may be paid from the recurrent charges or the village's capital works fund. However, the Act also states that the operator must bear the cost of replacement for 'items of capital', including fixtures, fittings, furnishings, whitegoods and furniture, from its own funds.

A retirement village operator lodged an application to the Tribunal to resolve a dispute with the residents about the proposed annual budget. The residents disputed several items in the proposed annual budget, in particular the inclusion of a new line item called 'Capital maintenance fund' valued at \$40,000. The residents alleged that there were items of capital included in the proposed capital maintenance fund that should not be there.

At the hearing, the residents committee was represented by one of their members and the operator was represented by a solicitor. The solicitor provided a quantity surveyor's report upon which the operator based its estimated capital maintenance charges. The report included a section titled 'Loose items', to the value of \$18,000, setting out various items at the village that needed replacement such as a clothes dryer, entertainment equipment, outdoor settings and venetian blinds.

The Tribunal Member considered that the 'Loose items', described in the capital maintenance item of the proposed budget clearly fell within the categories of 'items of capital' as defined in the *Retirement Villages Act 1999*, and that the inclusion of this item within the capital works fund budget was clearly in contravention of the Act.

The Tribunal made orders that the line item 'Capital maintenance fund' be reduced by \$18,000, reflective of the inclusion of non-claimable capital replacement charges.

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 2009*.

The following Acts confer jurisdiction on the Tribunal as at 30 June 2011:

- ▶ *Community Land Management Act 1989*
- ▶ *Consumer Claims Act 1998*
- ▶ *Conveyancers Licensing Act 2003*
- ▶ *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 2010*
- ▶ *Retirement Villages Act 1999*
- ▶ *Strata Schemes Management Act 1996*
- ▶ *Travel Agents Act 1986*

New and amended legislation

Credit (Commonwealth Powers) Act 2010

Schedule 3 of the Act, containing savings, transitional and other provisions commenced on 1 July 2010. The Act:

- ▶ refers to the Commonwealth Parliament certain matters relating to consumer credit and other financial transactions which were previously handled by New South Wales
- ▶ repeals existing consumer credit legislation operating in New South Wales and makes consequential and related amendments to other legislation.

The Commonwealth's *National Consumer Credit Protection Act 2009* (National Credit Act), which commenced concurrently on 1 July 2010, replaced most existing Australian State and Territory-based legislation relating to products such as home loans, personal loans, credit cards, consumer leases, overdrafts and some other financial services.

The following transitional provisions apply. The Tribunal continues to deal with:

- ▶ applications under the Consumer Credit (NSW) Code received prior to 1 July 2010, in accordance with the Code as it was at 30 June 2010
- ▶ disputes under the *Credit Act 1984* and the *Credit (Home Finance Contracts) Act 1984* which pre-date the Consumer Credit (NSW) Code
- ▶ finance broking disputes until 1 January 2011 (under provisions of the *Consumer Credit Administrative Act 1995*)
- ▶ disputes about maximum annual percentage rates for credit contracts until Commonwealth legislation takes up the subject.

Residential Tenancies Act 2010

On 10 June 2010 the NSW Parliament passed the *Residential Tenancies Act 2010*. The Act and its associated Regulation commenced on 31 January 2011.

The Tribunal is able to make a range of new orders under the 2010 Act including orders to deal with the following disputes:

- ▶ rights of co-tenants
- ▶ sub-letting
- ▶ disputes about tenancy databases
- ▶ transfer of tenancies and sub-letting of premises
- ▶ alterations
- ▶ water usage
- ▶ recognition of occupant as a tenant after an apprehended violence order (AVO).

From 31 January 2011, the jurisdictional limits were also increased to \$15,000 for compensation matters, and to \$30,000 for rental bond matters.

The Tribunal implemented case management changes to accommodate the new tenancy laws in relation to termination applications.

From 31 January 2011, landlords seeking termination for non-payment of rent no longer have to wait until after the date for possession before applying for an order for termination. An application for termination for non-payment of rent can now be lodged any time from when the termination notice was issued, and up to 30 days after the expiry of the termination notice.

Landlords need to provide the termination date, as stated on the termination notice, as part of the application form. This enables the Tribunal to allocate a 'conciliation and hearing' date within 14 days of the application being lodged providing that the termination date has passed, the application fee is paid, and that hearing dates are available.

Australian Consumer Law

The Australian Consumer Law (ACL) replaced Commonwealth, State and Territory consumer protection legislation in Fair Trading Acts and the *Trade Practices Act 1974* on 1 January 2011. The ACL is contained in a schedule to the *Competition and Consumer Act 2010*.

In NSW the Australian Consumer Law (NSW) replaced parts of the *NSW Fair Trading Act 1987*.

Aspects of the ACL are also reflected in the Australian *Securities and Investments Commission (ASIC) Act 2001* to protect consumers of financial products and services.

The key changes in NSW apply to:

- ▶ consumer guarantees
- ▶ product safety
- ▶ acceptable business practices
- ▶ unfair contract terms
- ▶ sales practices
- ▶ penalties.

Appendix 2

Tribunal Members

As at 30 June 2011, the Tribunal's Membership, in addition to the Chairperson and the two Deputy Chairpersons, comprised 8 Senior Members, 9 full-time Members and 59 part-time Members.

Chairperson

Ransome, Kay

Deputy Chairperson (Determinations)

Balding, Margaret

Deputy Chairperson (Registry & Administration)

Wilson, Garry

Senior Members

Bordon, John
Buckley, Richard
Connolly, Reginald
Durie, Graeme

Meadows, Geoffrey
Paull, Christine
Smith, Jeffery
Vrabac, Nick

Full-time members

Eftimiou, Maritsa
Halliday, John
Hennings, Simon

Howe, Bruce
McIlhatton, Susan
O'Keefe, Gregory

Rosser, Kim
Smith, Peter
Titterton, Robert

Part-time members

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
Campbell, Cathy

Cappe, Peter
Carney, Catherine
Carpentieri, Antony
Chenoweth, Rieteke
Conley, Jennifer
Corley, Susan
Farey, Janet
Flynn, David
Gilson, Mark
Harris, Ronald
Harvey, Danae
Holwell, Kim
Hunter, Penny
Ilett, Mik
Keher, Christopher

Kinsey, Graham
Lennon, David
Levingston, John
Lynch, Joanne
Marzilli, Claudio
McMillan, John
Moore, Edward
Moss, Deborah
Nolan, Dennis
O'Connor, Michael
Pickard, Bryan
Rickards, Kim
Ringrose, John
Roser, Kim
Ross, Katherine

Ross, Kim
Ryan, Sharryn
Sheedy, Tracy
Sheehan, Desmond
Shipp, Bernard
Smith, Stephen
Taylor, William
Thompson, John
Turley, David
Walsh, William
Walton, Julie
Williams, Kerry
Williams, Louise
Wilson, Graham

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

Adderley, Georgia (part-time Member)
Borsody, Agnes (full-time Member)
Holm, Catherine Donovan (part-time Member)
Ryan, Leo (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, or in person at one of the Tribunal's Registry offices or at a local Fair Trading Centre.
- ▶ 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 NSW 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

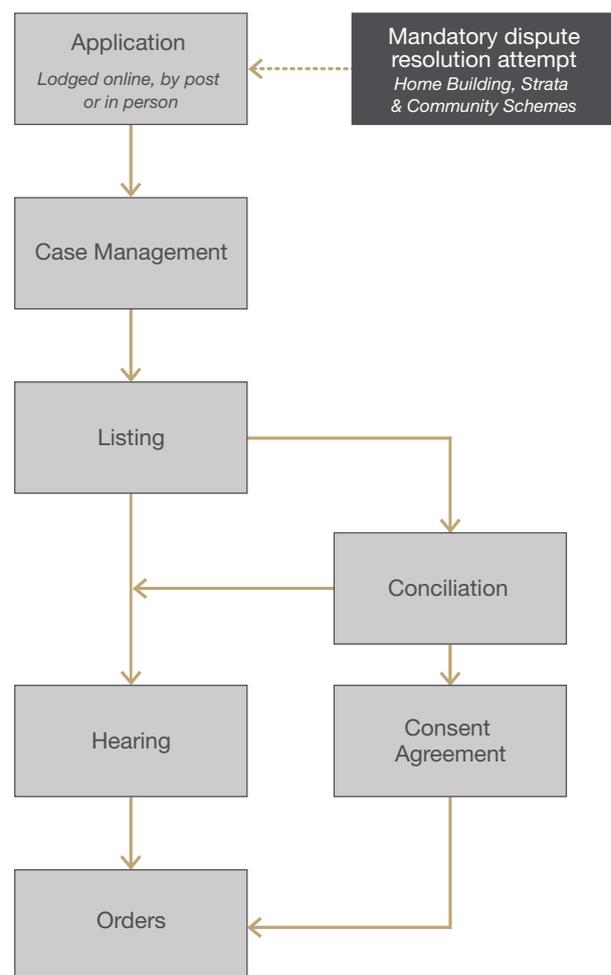
- ▶ If conciliation is successful the Member will make an order on the day without the need for a hearing.
- ▶ Tribunal Members will check that consent agreements are made without coercion.
- ▶ Where conciliation and other forms of dispute resolution are unsuccessful the matter will proceed to hearing.

Hearing

- ▶ The Tribunal Member hears the parties' evidence, considers submissions, makes a decision and issues a binding and legally enforceable 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 complex matters the Tribunal Member may reserve their decision.



Appendix 4

Access to information

All parties to a matter have access to their file in accordance with Part 8 of the *Consumer, Trader and Tenancy Tribunal Regulation 2009*. 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.

Under clause 41(3) of the Regulation, 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 made in writing to the Registrar.

Pursuant to section 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the Act), the Chairperson may provide reports to the Minister or the Commissioner for Fair Trading concerning any matter 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 of the Act).

The Registrar may allow access to information without the parties' permission in limited circumstances.

The Tribunal's Privacy Management Plan is available on the Tribunal's website at: www.cttt.nsw.gov.au.

From 1 July 2010 the *Government Information (Public Access) Act 2009* (the GIPA Act) replaced the *Freedom of Information Act 1989*. The GIPA Act establishes new rights to information that are designed to meet community expectations for more open and transparent government, and encourages the routine and proactive release of government information.

It should be noted that information relating to the Tribunal's judicial functions is excluded information under the Act for which it is conclusively presumed that there is an overriding public interest against disclosure (section 14(1), Schedule 1 Clause 6(1) and Schedule 2 Clause 1). An application for access is invalid to the extent that it seeks excluded information (section 43).

You can find out more about your rights to information and new ways to access NSW government information on the NSW Office of the Information Commissioner (OIC) website at: www.oic.nsw.gov.au.

Under the *Government Information (Public Access) Regulation 2009* (Schedule 3) the Tribunal comes under the umbrella of the Department of Finance and Services (DFS), formerly the Department of Services, Technology and Administration. Members of the public may visit the DFS at: www.services.nsw.gov.au, for information about DFS's GIPA Act responsibilities and about formal access requests.

To access information about the Tribunal you may:

- ▶ review the comprehensive information currently available on the Tribunal's website and download it free of charge
- ▶ write to us, or contact us by telephone on 1300 135 399, or email ctttenquire@cttt.nsw.gov.au to request a copy of the Tribunal information you are seeking
- ▶ lodge a formal request to DFS under the GIPA Act. This action should only be taken after you have requested information from the Tribunal and you are advised that we are otherwise unable to provide the information.

It should be noted that the Tribunal's provision for parties to a matter to have access to their own file continues to apply. 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, Consumer, Trader and Tenancy Tribunal, GPO Box 4005, Sydney 2001.

Appendix 5

Consultative forums

The organisations represented on the Tribunal's consultative forums as at 30 June 2011 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 Land Council – Eastern Region
NSW Aboriginal Land Council – Southern Zone
NSW Aboriginal Land Council – Western Region
NSW Department of Aboriginal Affairs
NSW Fair Trading
Tenants Union of NSW
Western Aboriginal Tenants Advice Service

General and Commercial Divisions

Australian Consumers Association
Community Relations Commission
Disability Council of NSW
Fair Trading Advisory Council
Financial Counsellors Association of NSW
LawAccess NSW
Legal Aid NSW
NSW Fair Trading
Redfern Legal Centre

Home Building Division

Australian Institute of Building
Building and Construction Council of NSW
Civil Contractors Federation
Home Building Service (NSW Fair Trading)
Housing Industry Association
Institute of Building Consultants NSW
Institute of Engineers Australia
Institute of Strata Title Management
Law Society of NSW
Master Builders Association

Master Painters Association
Master Plumbers Association of NSW
National Electrical and Communications Association of NSW
National Wood Flooring Association
NSW Bar Association
NSW Fair Trading
Royal Australian Institute of Architects
NSW Charter
Russo and Partners
Swimming Pool and Spa Association
Suncorp

Motor Vehicles Division

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

Residential Parks Division

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

Retirement Villages Division

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

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

Strata and Community Schemes Division

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

Tenancy and Social Housing Divisions

Common Equity New South Wales
Dtarawarra Pty Ltd
Financial Counsellors Association of NSW and ACT
Gandangara Local Aboriginal Lands Council
Housing Appeals Committee
Housing NSW
Legal Aid NSW
NSW Aboriginal Housing Office
NSW Federation of Housing Associations
NSW Fair Trading
Office of Community Housing
Property Owners Association of NSW
Public Tenants Council (Central Sydney)
Real Estate Institute of NSW
Redfern Legal Centre
Southern Sydney Tenants Advice and Advocacy Service
Teacher Housing Authority of NSW
Tenants Union of NSW

Appendix 6

Interpreter engagement

During the 2010-2011 reporting period, the Tribunal engaged a total of 2,589 interpreter services for parties needing language assistance during proceedings in 56 different languages. The Tribunal's usage of interpreters during the reporting period is set out below.

Language	Usage	Language	Usage
Mandarin	670	Japanese	10
Arabic	294	French	9
Cantonese	233	Bosnian	9
Vietnamese	194	Lao	8
Korean	170	Dinka	8
Chinese	131	Czech	8
Spanish	77	Sudanese Arabic	7
Greek	72	Kurdish	7
Persian (Farsi)	63	German	7
Turkish	61	Amharic	7
Macedonian	45	Albanian	7
Italian	42	Maltese	6
Russian	41	Tongan	4
Croatian	37	Hazaragi	4
Serbian	33	Gujarati	4
Thai	29	Romanian	3
Indonesian	29	Hungarian	3
Auslan (Australian Sign Language)	29	Burmese	3
Hindi	28	Armenian	3
Polish	27	Sinhalese	2
Portuguese	24	Samoan	2
Bengali/Bangla	23	Pushto	2
Assyrian	23	Hebrew	2
Filipino (Tagalog)	20	Finnish	2
Dari	18	Fijian	2
Punjabi	17	Danish	2
Tamil	13	Norwegian	1
Khmer	13	Nepalese	1

Appendix 7

Hearing venue usage

During the 2010-2011 reporting period, hearings were conducted in nearly 70 locations throughout New South Wales. The table below lists the hearing venues and the number of hearings held.

Hearing venue	Hearings	Hearing venue	Hearings
Sydney	17,242	Moree	214
Parramatta	5,467	Mudgee	206
Penrith	5,426	Broken Hill	162
Hurstville	5,055	Forbes	156
Liverpool	4,821	Leeton	151
Newcastle	4,674	Inverell	150
Gosford	3,757	Cooma	131
Campbelltown	3,638	Narrabri	122
Wollongong	3,163	Gunnedah	112
Lismore	1,563	Walgett	103
Blacktown	1,470	Coonamble	103
Tweed Heads / Murwillumbah	1,362	Glen Innes	83
Dubbo	1,128	Lithgow	65
Coffs Harbour	1,093	Tumut	63
Port Macquarie	1,046	Ballina	63
Maitland	910	Parkes	61
Wagga Wagga	828	Cobar	58
Albury	730	Cowra	53
Nowra	699	Nyngan	48
Queanbeyan	640	Coonabarabran	42
Tamworth	636	Bourke	37
Taree	581	Cootamundra	36
Orange	578	Deniliquin	32
Batemans Bay	433	Young	25
Grafton	410	Yass	22
Armidale	381	Tenterfield	16
Muswellbrook	376	Condobolin	15
Bega	373	Wentworth	11
Kempsey	364	Brewarrina	7
Bathurst	329	West Wyalong	6
Moss Vale	303	Warren	6
Kiama	267	Lake Cargelligo	3
Goulburn	262	Singleton	2
Griffith	236		
Katoomba	231		
		TOTAL HEARINGS	72,836

Appendix 8

Tribunal performance

Application lodgement

The table below shows applications received by Division and Registry for the 2010-2011 financial year.

Division	Hurstville	Liverpool	Newcastle	Parramatta	Penrith	Sydney	Tamworth	Wollongong
Tenancy	2,550	3,916	4,847	2,676	3,624	7,481	2,916	3,029
Social Housing	617	2,140	1,868	570	1,948	1,646	1,787	2,336
General	493	609	819	622	567	2,092	489	593
Home Building	353	268	528	261	295	1,125	349	296
Residential Parks	5	6	796	0	100	65	882	109
Strata and Community Schemes	150	94	118	46	25	881	70	54
Motor Vehicles	123	195	194	143	146	331	170	144
Commercial	12	20	22	21	12	63	10	6
Retirement Villages	4	6	21	5	3	33	10	3
TOTAL	4,307	7,254	9,213	4,344	6,720	13,717	6,683	6,570

Clearance ratio

The table below shows the Tribunal's clearance ratio by Division for the 2010-2011 financial year.

Division	Clearance Ratio
Tenancy	100%
Social Housing	101%
General	103%
Home Building	100%
Residential parks	137%
Strata and Community Schemes	94%
Motor Vehicles	103%
Commercial	116%
Retirement villages	88%
TOTAL	102%

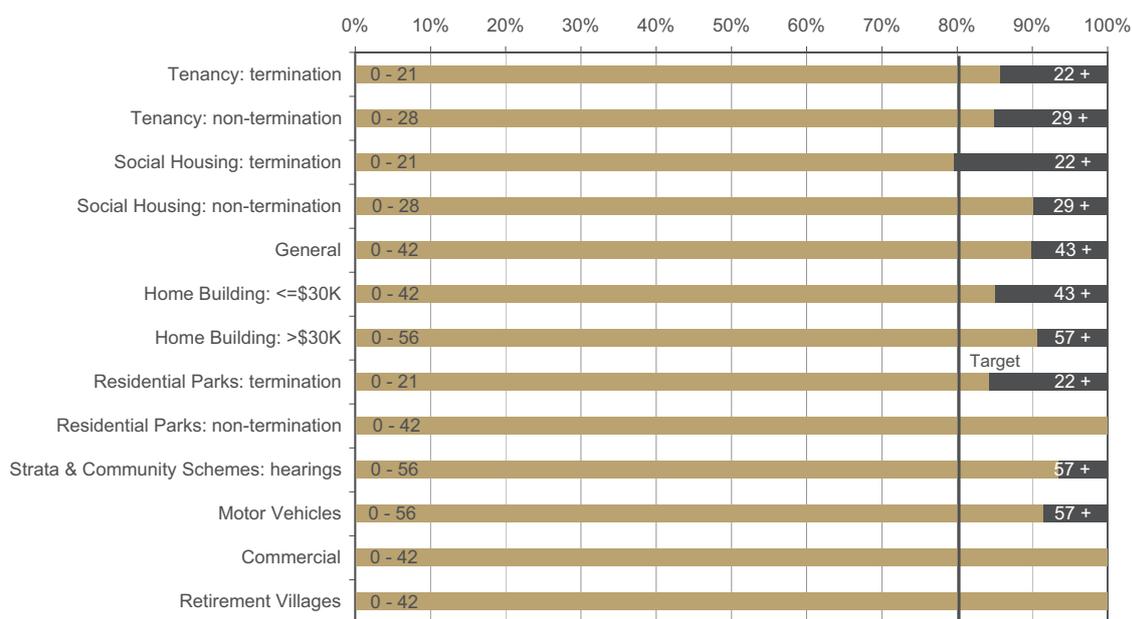
100% = keeping up with workload

>100% = reducing existing workload

<100% = accumulating cases

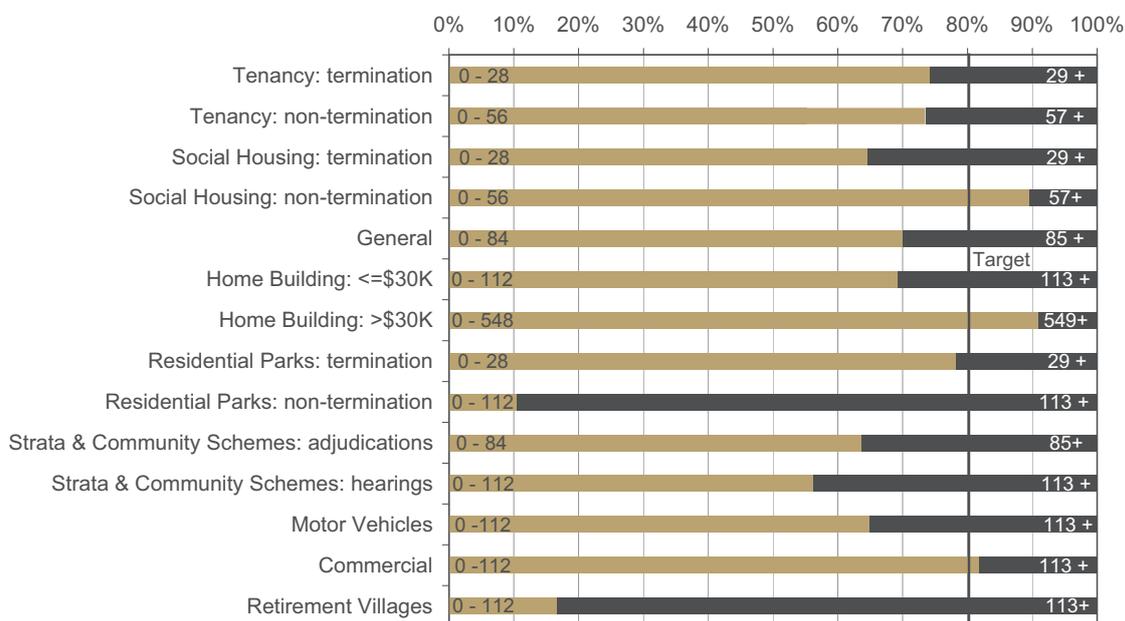
Lodgement to first hearing

The table below shows the service timeframes set for each Division and application type, and how the Tribunal performed against the standard at the conclusion of the 2010-2011 financial year.



Lodgement to finalisation

The table below shows the service timeframes set for each Division and application type, and how the Tribunal performed against the standard at the conclusion of the 2010-2011 financial year.



Appendix 9

Fees and charges 2010-2011

The Tribunal's fees and charges are reviewed each year. This schedule indicates the Tribunal's application fees and charges from 1 July 2010 to 30 June 2011. The Tribunal's current fees and charges are available on www.cttt.nsw.gov.au.

Application Fees

Tenancy, Social Housing, Residential Parks and Retirement Villages Divisions	\$35.00
Strata and Community Schemes Division	\$72.00
General, Home Building and Motor Vehicles Divisions <ul style="list-style-type: none"> • Claims or disputes not exceeding \$10,000 (or no specific amount claimed) \$35.00 • Claims or disputes between \$10,000 and \$25,000 \$72.00 • Claims or disputes more than \$25,000 \$187.00 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	
Commercial Division <ul style="list-style-type: none"> • Claims or disputes not more than \$10,000 (or no specific amount claimed) \$35.00 • Claims or disputes between \$10,000 and \$25,000 \$72.00 • Claims or disputes more than \$25,000 \$187.00 • Applications under s86 and 86A of the Credit Act 1984 \$623.00 	
Pensioners and Students (all Applications)	\$5.00
Rehearings and Renewal Proceedings	Same as original application fee

Charges

Copy of documents	\$2.00 per page (with a minimum charge of \$27.00)
Issue of summons	\$39.00
Sound Recording <ul style="list-style-type: none"> Standard (10 days) \$24.00 per CD Premium (5 days) \$66.00 per CD 	
Transcripts	\$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 10

Financial summary 2010-2011

The audited financial reports required under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Finance and Services Annual Report 2010-2011.

SALARY AND RELATED PAYMENTS	\$'000
Salaries	7,536
Statutory appointees	5,628
Annual leave	1,013
Overtime	28
Meal allowance	-
Long service leave	331
Superannuation	1,388
Workers compensation	61
Payroll tax	849
Fringe benefit tax	43
	<hr/>
	16,877
OPERATIONAL EXPENSES	
Office accommodation	3,638
Postage and couriers	399
Telephones	140
Minor computer purchases and consumables	306
Fees	702
Security services	632
Training and development fees	37
Motor vehicles expenses	3
Travel expenses	139
Minor equipment, consumables and stores	378
Minor miscellaneous expenses	165
	<hr/>
	6,539
Depreciation	708
Total operational expenses	<hr/>
	24,124
Administrative on costs	2,937
Written down value of assets written off	66
Total recurrent expenditure	<hr/>
	27,127
Capital expenditure	416
TOTAL EXPENDITURE	<hr/>
	27,543
REVENUE	
Lodgement fees	(2,124)
Contribution from Consolidated Funds	(2,719)
Contribution from Rental Bond Board	(12,311)
Contribution from Home Building Service	(1,531)
Contribution from Motor Vehicle Repair Industry Authority	(179)
Contribution from Statutory Interest Account	(7,971)
	<hr/>
	(26,835)
Net Cost of Services	708
Less Non Cash Transactions	708
Depreciation	(708)
CASH DEFICIT	-

Appendix 11

Glossary

Adjournment

The postponing or deferring of the hearing to another day.

Adjudicator

A Tribunal Member appointed to determine strata and community scheme disputes 'on the papers' based on written submissions.

Appeal

A procedure which enables a person to challenge the decision made. For example, Tribunal decisions may be appealed to the District Court of NSW on a matter of law.

Applicant

The person, people or business who has lodged an application with the Tribunal.

Breach

Failure to comply with one or more of the terms or conditions of an agreement or contract.

Certified money order

A certified copy of an order made by the Tribunal for the payment of money that is registered with the Local Court for enforcement action.

Conciliation

Process of resolving disputes which involves negotiations between the parties. Conciliation aims for mutual agreement rather than a decision made in favour of one side.

Conciliator

A Tribunal Member or staff person skilled in alternative dispute resolution who assists parties during their conciliation discussions.

Consent order

An agreement reached between the parties which is then made into Tribunal order.

Decision

The final orders made the Tribunal Member after a hearing.

Directions

Instructions made by a Tribunal Member as to the procedure to be followed by parties in preparing or presenting their case; usually relating to the exchange of documents before a hearing.

Dismissal

In certain circumstances the Tribunal may dismiss an application. This may occur if the applicant fails to appear at the hearing or fails to prove their case.

Ex parte

A hearing held in the absence of a party.

Evidence

Anything that is relied upon to support a claim, such as documents, affidavits, photographs, objects and verbal statements.

Hearing

Where the parties present their evidence and submissions to a Tribunal Member to enable a decision to be made.

Interim order

A temporary order made by the Tribunal until another order or decision is made.

Jurisdiction

The extent of the Tribunal's legal authority or power to determine and make orders about certain issues.

Legislation

Laws made by Parliament (Acts and Regulations).

Matter

The case or the legal proceedings before the Tribunal.

On the papers

A decision made by a Tribunal Member or Adjudicator without a hearing, based on the written evidence presented.

Order

A direction of the Tribunal. Orders may be made for the payment of money, for a party to carry out the terms of the contract, or to stop doing something.

Part heard

Proceedings where a Tribunal Member has taken some evidence but the hearing is yet to be completed.

Parties

The people involved in the Tribunal proceedings. These generally include applicants and respondents and any third persons joined to the proceedings.

Proceedings

The progression of an application including all acts and events between the time of lodgement to final orders being made.

Quantum meruit

A Latin phrase used in contract law to mean a claim for the reasonable value of services.

Registrar

The Registrar manages the Tribunal Registries and has certain administrative responsibilities.

Rehearing

An application to the Tribunal requesting that completed proceedings be reheard.

Renewal

An application to renew proceedings if an order has not been complied with.

Reserved decision

Where the Tribunal Member may not immediately give their decision after the hearing, but delivers a decision at a later time usually in written form.

Respondent

The person, people or business that has had an application lodged against them.

Serve

To give or provide a copy of documents, a notice or a summons to the other party or another person.

Tribunal Member

The person who will hear the matter and make a decision.

Written reasons for decision

A written statement explaining how the Tribunal Member came to their decision.

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

Level 1, 308 High 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



CTTT
Consumer, Trader &
Tenancy Tribunal

www.cttt.nsw.gov.au

Telephone: 1300 135 399

Facsimile: 1300 135 247

Email: ctttenquire@cttt.nsw.gov.au

Registry opening hours: 8:30am to 5:00pm

Language Assistance: 13 14 50

National Relay Service: 1300 555 727