



CTTT
Consumer, Trader &
Tenancy Tribunal

10 Years
2002–2012

Consumer, Trader and Tenancy Tribunal

Annual Report

2011 - 2012

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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 2011-2012.

This report summarises the Tribunal's performance during 2011-2012 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 read 'Jeffery Smith'. The signature is fluid and cursive, written over a light grey rectangular box.

Jeffery Smith
Chairperson (Acting)
Consumer, Trader and Tenancy Tribunal

Minister's Foreword



I am pleased to introduce the 2011-2012 annual report of the Consumer, Trader and Tenancy Tribunal (CTTT).

The CTTT offers a valuable service to the people of New South Wales by providing a low cost, efficient and accessible dispute resolution service. The Tribunal assists consumers, traders, landlords and tenants in resolving disputes about the supply of goods and services, and residential property.

In marking its 10th anniversary, the Tribunal has demonstrated its capacity to deliver a fast and effective dispute resolution service. This reporting period was the busiest year on record with 64,803 applications lodged, representing an increase of over 10% on the previous year. The Tribunal provided its services at nearly 70 locations across New South Wales.

I want to congratulate the Tribunal in delivering 95% of orders within 2 days of the hearing, despite a significant increase in demand. This demonstrates the Tribunal's continued commitment to delivering a timely and quality dispute resolution service to the people of NSW.

During the year the Tribunal embraced new technology. The *eConnect* service was expanded to allow all applicants who opt in to the service to receive hearing notices and case related correspondence via email. Almost 8,000 emails are now being sent each month. Shortly, the service will be available for respondents.

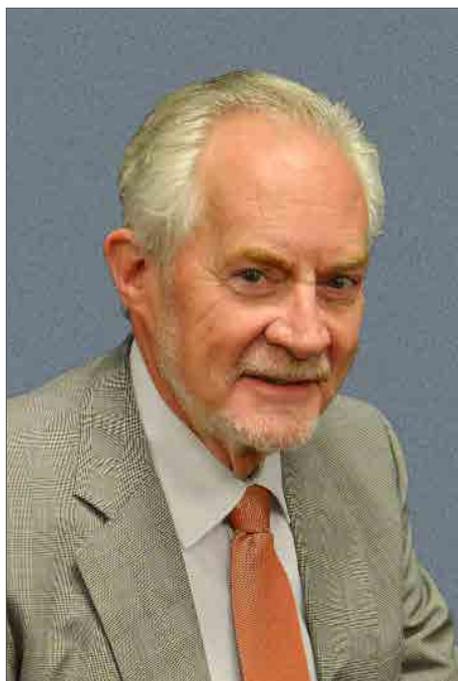
More than half a million people accessed the CTTT's website during the year while in December 2011, the CTTT moved into social media with the launch of its YouTube channel and a series of videos in English and community languages.

The Tribunal continues to work closely with its stakeholders and the community to ensure efficient service delivery and to increase public awareness about its role and services.

This report highlights the Tribunal's services, performance and achievements during 2011-2012. I would like to thank all Tribunal Members and staff for their contributions throughout the year.

Anthony Roberts
Minister for Fair Trading

Chairperson's Review



I provide this report as Acting Chairperson following the resignation of the former Chairperson, Ms Kay Ransome, on 17 August 2012 to take up an appointment as the Principal Member of the Refugee Review Tribunal and Migration Review Tribunal.

This report marks a major milestone for the Tribunal as 10 years of our operation was passed in February 2012. This has been one of the most challenging and busiest years for the Tribunal. We received the highest number of applications lodged in our history during a period when our budget continued to contract. We received 64,803 applications (10% more than last year), held 76,408 hearings, finalised 63,124 applications and made 94,074 orders.

In 2011-2012 the Tribunal helped over 130,000 people resolve their disputes in a cost effective and timely way.

Celebrating our 10th anniversary

On 25 February 2012, we celebrated our 10 year anniversary. This occasion was marked with a number of events, including radio interviews, media releases and open days at CTTT Registries. Many changes have occurred since the

Tribunal commenced its operations. New technologies and the way services are delivered place the CTTT at the forefront of service delivery in courts and tribunals in Australia. In 2011-2012, the focus has been on refining and adapting our process to gain efficiencies, to make it easier for people in dispute to access and use the Tribunal's services, and for Tribunal Members and staff to do their work.

Legislative changes

During the year legislative change impacted upon the Tribunal. The *Home Building Act 1989* was amended with the changes introduced in two stages on 25 October 2011 and 1 February 2012. Statute Law changes commenced on 6 January 2012 and the *Travel Agents Regulation 2011* commenced on 1 September 2011. These changes and their impact on the Tribunal are detailed in **Appendix 1**.

The *Agricultural Tenancies Amendment Act 2012* was passed by Parliament in February 2012 and commenced on 1 August 2012. The Tribunal has been given jurisdiction to resolve agricultural tenancy disputes.

Challenging fiscal environment

Like all government agencies the Tribunal is subject to contracting budgets and must operate within its available financial resources.

To lower costs and live within our budget, it was necessary during the year to consolidate hearing facilities, change listing arrangements, and reduce staff-related costs through natural attrition and voluntary redundancies. The primary aim has been to ensure that appropriate funding is allocated to running conciliation and hearing lists, and to optimise service delivery outcomes.

These strategies ensured the Tribunal ended the financial year within its budget, although some unavoidable delays in delivery of Tribunal services were experienced. We anticipate that the financial landscape will remain tight in forward years. Therefore, further savings, efficiencies and other strategies will need to be identified to ensure that the operation of the Tribunal remains sustainable.

New technology

We continued to invest in innovative technology to assist us in dealing with the Tribunal's considerable workload effectively and efficiently. The existing technology of *CTTT Online*, *InCourt* and digital sound recording was increased by a new online service called *eConnect*. We are about to pilot hearings by video conferencing and electronic document lodgement, which in the future will radically alter the way the Tribunal delivers its services.

eEnabling technology providing accessible, convenient online services continues to be embraced by people who bring disputes to the Tribunal. In 2011-2012, nearly 54% of all applications received were lodged via *CTTT Online*. Our new *eConnect* service, launched during the second half of the reporting period, allows applicants to subscribe and receive Tribunal correspondence (including notices and orders) via email. By 30 June 2012, more than 56,000 emails had been sent to *eConnect* subscribers.

Membership and professional development

During the reporting period, the Tribunal membership changed following a number of appointments and reappointments from 1 January 2012. These new Tribunal Members, including senior, full-time, and part-time Members, received an intensive induction program which included mentoring with existing Members. Regular Senior Member and Member network meetings continued through the year to discuss changes to and interpretation of legislation, particular District or Supreme Court cases and procedural refinements.

A Member Competency Framework was established based on Australasian Tribunal best practice. The framework articulates the knowledge, skills, behaviours and attitudes that Tribunal Members are expected to demonstrate in performing their role. This Framework will assist us to develop further professional development activities for Tribunal Members.

Raising awareness about Tribunal services

We continue to raise awareness about Tribunal services in the community and promote access to our services. During the year, two communications strategies were launched - a *Communications Strategy for Aboriginal Communities 2012-2016* and a *Communications Strategy for Culturally and*

Linguistically Diverse Communities 2012-2016. Both strategies provide a framework for the delivery of culturally appropriate resources, and other communication activities designed for the communication needs of these two distinct audiences. Information about these strategies and associated activities was reported back to stakeholders through our Consultative Forums. An overarching *CTTT Communications Plan 2012-2016* was also finalised during the year.

Our website (www.cttt.nsw.gov.au) draws together a range of print and electronic resources about the Tribunal's services.

In December 2011, we expanded our communication reach into social media with the launch of our YouTube channel. The channel includes *A Guide to the CTTT* - a series of 2-minute YouTube video clips explaining each step in the dispute resolution process. The videos are available in English with captions and in five community languages.

Plans are underway to expand into other social media platforms, such as Twitter and Facebook, which will complement and further extend our existing communication channels.

Inquiry into opportunities to consolidate tribunals in NSW

In October 2011, the Standing Committee on Law and Justice of the Legislative Council announced an Inquiry into opportunities to consolidate Tribunals in NSW. The Standing Committee's report, tabled in Parliament in March 2012, put forward a number of recommendations, including that the Government establish an expert panel to advise on consolidation of tribunals. The Government is expected to respond to the Inquiry recommendations during 2012-2013.

Our projects and actions throughout the year have been focussed on ensuring that the Tribunal is positioned to assist with any decision to alter Tribunal arrangements in NSW.

The achievements highlighted in this report would not have been possible without the hard work and dedication of our Tribunal Members and staff. I thank all Members and staff for making all these achievements possible.

Jeffery Smith
A/Chairperson

2011-2012 Year in Review

64,803 Applications lodged

- ▶ Most applications lodged in a single year since the Tribunal commenced in 2002.
- ▶ 10.2% increase from last year.
- ▶ 54% of all applications lodged online.
- ▶ \$2.4 million application fees collected.

76,408 Hearings held

- ▶ Over 80% of applications listed for a first hearing within or close to the divisional listing standard.
- ▶ 67 venues across NSW used for Tribunal hearings.

63,124 Applications finalised

- ▶ 72% of matters finalised within the divisional performance standards.
- ▶ 75% of matters finalised prior to or at the first hearing.

94,074 Orders made

- ▶ 78% of orders issued to parties on the day of hearing and 95% within 2 days of the hearing.

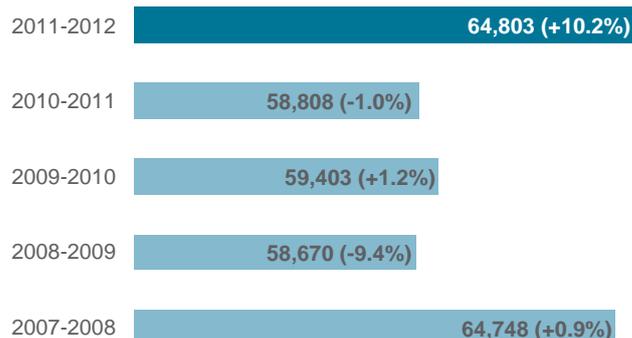
99 Community consultation forums and information sessions held

- ▶ 11% increase from last year.
- ▶ 24 Divisional, Aboriginal and community consultative forums held for stakeholder groups.
- ▶ 75 community information and education sessions participated in by Tribunal staff and Members.

510,577 Website visits

- ▶ 22% increase from last year.
- ▶ Most popular website pages were the Tribunal's 'Lodge online', 'Application forms' and 'Contact us' web pages.
- ▶ 9,929 email enquiries received.
- ▶ Over 115,000 telephone enquiries answered.

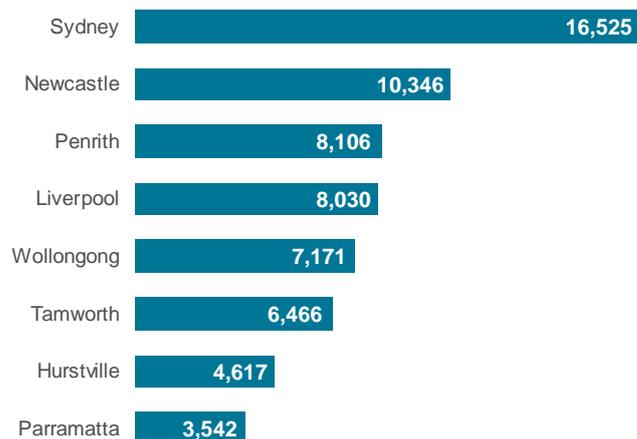
Applications - 5 year comparison



Applications by Division

Division	Applications	%
Tenancy	32,626	50.4%
Social Housing	16,084	24.8%
General	6,538	10.1%
Home Building	3,894	6.0%
Residential Parks	2,306	3.6%
Strata and Community Schemes	1,462	2.3%
Motor Vehicles	1,649	2.5%
Commercial	158	0.2%
Retirement Villages	86	0.1%
Total	64,803	100%

Applications by Tribunal Registry



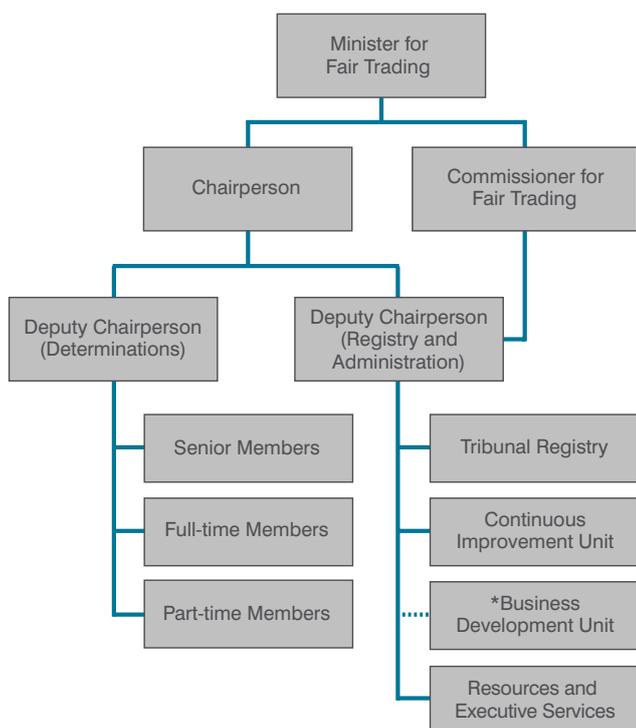
Our Organisation

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.



The Tribunal's organisational chart and reporting lines

* Business Development Unit staff are outposted from the NSW DFS – these staff are located at the CTTT Sydney Registry

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 operations 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 hear and determine applications brought before the Tribunal in accordance with the law and based on the evidence presented.

All Tribunal Members, except for the Deputy Chairperson (Registry and Administration) are appointed by the Governor under section 7 of the Act. The qualifications of Members are set out in section 8 of the Act. Members are appointed following a merit selection process.

At 30 June 2012, the Tribunal Membership comprised the Chairperson, two Deputy Chairpersons, 9 Senior Members, 10 Full-time Members and 56 Part-time Members (refer to **Appendix 2**). Members are located in Sydney, metropolitan, regional and country areas.

Senior Members

Senior Members hear legally complex cases, or matters which involve a considerable amount of money or which raise significant issues for determination. Senior Members also determine smaller disputes as required.

Senior Members assist the Chairperson and the Deputy Chairperson (Determinations) to provide guidance, leadership and mentoring to other Tribunal Members.

Members

Members hear and determine lists of cases. Hearing responsibilities vary from determining lengthy, contested formal proceedings to determining up to 30 smaller matters in a day. Members generally work across the Tribunal's nine Divisions. Members with specialist expertise may work in only one or two Divisions.

Part-time Members based in major centres, regional and remote locations enable the Tribunal to provide services across the State.

Registry and administration

The Tribunal's registry and administrative functions are part of the NSW Department of Finance and Services (DFS) within the NSW Fair Trading Division. 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 2012 there were 107 staff (reduced from 124 in previous reporting period) attached to the Tribunal's registry and administrative units.

These staff 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.
- ▶ **Continuous Improvement Unit** coordinates the Tribunal's continuous improvement regime by developing change management strategies, policies and programs in response to legislative and technological change to support Members and staff; delivering quality assurance and performance reporting, and responding to statistical requests from the media and other organisations; providing legal support and library services to Tribunal Members and staff and by providing education and information services.
- ▶ **Business Development Unit** maintains the Tribunal's computer and other technology systems; identifies and implements technological solutions for improved service delivery in cooperation with DFS's *ServiceFirst*; and provides support to Tribunal Members and staff. In July 2011 staff from this unit were identified as part of the DFS 'Out Posting' program resulting in the relocation of the budget for these positions from the Tribunal to the DFS Chief Information Office.
- ▶ **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 Clients

Over 130,000 people sought the Tribunal's help to resolve their disputes. Many of our clients are one-off users of the Tribunal's services and come from a wide variety of backgrounds and experiences. Most represent themselves during proceedings and have little or no experience with a legal environment.

Some of our clients are however regular users of the Tribunal's services such as real estate agents, technical experts, advocates, lawyers and Housing NSW officers.

Our focus is to ensure easy access to the Tribunal's services and to provide helpful educational resources to equip all people who come to the Tribunal to understand and participate in our process. Our goal is that all parties understand the key steps at the Tribunal and are best prepared to engage in the dispute resolution process.

Accessing the Tribunal

The Tribunal hears and determines a wide range of disputes for parties with differing needs. Our services have been designed so our clients can easily access the Tribunal and run their case without legal representation. The Tribunal is progressively increasing its range of eEnabling services which allow clients to transact with the Tribunal and receive information about our services on a 24/7 basis.

Quality customer services

Registry staff provide information about the Tribunal's services and hearing procedures. Staff assist clients to lodge their applications, respond to general enquiries, provide options for resolving disputes, and assist parties when they arrive for hearing.

The Tribunal's customer service charter outlines the standard of service that can be expected and the type of assistance the Tribunal can provide. Registry hours of operation are Monday to Friday, 8:30am to 5:00pm (excluding public holidays).

Improved application process

The Tribunal commenced reviewing and updating all application forms during the year to provide a more user friendly standard set of forms that capture the required information to initiate dispute resolution action in the Tribunal.

The Tribunal's application forms now include an explanatory guide to completing the form, and other helpful information about the dispute resolution process.

Applications in most Divisions can be completed and lodged online, are available in PDF fillable format on the website at www.cttt.nsw.gov.au, from Tribunal Registries or by calling 1300 135 399.

Multiple hearing locations

Tribunal hearings are conducted in metropolitan and regional locations across NSW, ensuring people can access our dispute resolution services regardless of where they live. Our hearing venues include:

- ▶ Tribunal Registries located at Sydney, Hurstville, Liverpool, Penrith, Wollongong, Newcastle and Tamworth.
- ▶ Permanent hearing rooms at Campbelltown, Dubbo, Gosford, Lismore, Queanbeyan and Wagga Wagga.
- ▶ Local court houses and a wide range of community venues and facilities located across NSW.

The Tribunal's hearing schedule and online hearing lists are available online at www.cttt.nsw.gov.au.

Alternative access to hearings

Tribunal hearings by telephone are available for parties who are unable to travel, or who are not located near the hearing venue and would otherwise incur excessive travel costs.

The Tribunal continues to move towards video-conferencing capability in hearing rooms to further expand access for parties or witnesses who are unable to attend in person, and to minimise Tribunal Member travel.

In limited cases, parties can have their case considered on the basis of written submissions in support of their application without needing to appear at a hearing.

In residential park and retirement village matters where there are a number of applications from residents about the same issues, the Tribunal will often conduct hearings 'on site' to provide more convenient access for residents and park or village owners.

Access for clients with disabilities

The Tribunal aims to ensure clients with disabilities receive the necessary assistance to access services. Some of the additional services we provided during the year included:

- ▶ Free Auslan interpreter service for hearings
- ▶ Promotion of the National Relay Service (NRS) for parties with hearing or speech impairments
- ▶ Flexible hearing options such as wheelchair accessible hearing rooms or hearings by telephone
- ▶ Publications and forms made available in alternative accessible formats
- ▶ Hearing loop access in Tribunal hearing venues upon request.

Interpreter services

A free interpreter service is provided for parties at Tribunal hearings. Requests for an interpreter can be made on the application form, in writing or by contacting the Registry as soon as practicable before the hearing date.

eEnabling services

Our clients are increasingly seeking to engage and interact with the Tribunal online. We have implemented the following innovative eServices to meet this demand.

CTTT Online

CTTT Online allows people to complete and lodge their Tribunal application online. Applications are automatically listed for hearing where possible and parties receive an electronic notice of hearing.

Organisations that regularly lodge applications with the Tribunal can register as a 'frequent user' to access additional features of the *CTTT Online* service, such as auto filling of generic information into the application form.

During this reporting period, 53.7% of all applications were lodged on *CTTT Online*, representing the highest uptake of this service since its introduction in 2008.

eConnect

eConnect, introduced in January 2012, is an automated email service for Tribunal correspondence. Applicants can subscribe to receive their notices of hearing, other case-related correspondence and orders to their nominated email account.

By the end of June 2012, about 45% of applicants subscribed to *eConnect*. This resulted in more than 56,000 emails being issued via this new service.

eNews

People interested in the Tribunal can subscribe to our *eNews* services to receive email alerts and newsletters. By 30 June 2012, there were 1,376 subscribers to our *eNews* services -

- ▶ 'What's new' alert service provides updates on Tribunal news, new services and website content.
- ▶ 'Legal Bulletin' provides summary information on significant appeal decisions.

Explaining Tribunal services

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

The Tribunal has developed a *Communications Plan 2012-2016*, providing a 4-year framework for continuing activities aimed at increasing access to and awareness about the Tribunal. This Plan builds on the success of the *Communications Strategy 2008-2010* which was instrumental in integrating the Tribunal's suite of educational resources and other communications activities.

The Plan carries forward the broader priorities from the 2008-2010 Strategy, current communication initiatives, and introduces new activities such as the expansion of community awareness through the use of social media, particularly YouTube, Facebook and Twitter.

Website

The Tribunal's website www.cttt.nsw.gov.au continues to be the primary source of information for our clients. It provides extensive information about the Tribunal for our clients and the general public and access to all Tribunal forms, publications, Chairperson's Directions, other resources and eServices. An ongoing refinement and upgrading program ensures access to up-to-date information and resources.

During 2011-2012 the website received 510,577 visitors – a 22% increase compared to the previous year. The most popular web pages were 'Lodge online', 'Application forms' and 'Contact us'.

Legal Bulletins

The Tribunal's Legal Bulletins provide a summary about significant appeals to the Supreme Court and District Court against decisions of the Tribunal. The Bulletin is a useful resource for legal professionals, students and others who are interested in the dispute resolution process.

During the year, the Tribunal promoted the Bulletin to the legal profession via the Law Society's Monday Briefs e-newsletter, which led to an increase in Legal Bulletin subscribers. A reader survey was also undertaken and resulted in improvements, including a 'fresh look' for this online Bulletin.

Publications

We produce a wide range of educational resources and information about the Tribunal and its process. A series of fact sheets and other information has been developed to explain specific aspects of the Tribunal's services. These resources are available on www.cttt.nsw.gov.au.

During 2011-2012 the following additional fact sheets and resources were developed:

- ▶ Chairperson's Direction 2012-1 *Electronic Case Management*
- ▶ Chairperson's Direction 2012-2 *Payment of rent owing prior to execution of warrant*
- ▶ Chairperson's Direction 2012-3 *Suspension of operation of order for termination to date for possession*
- ▶ *Guide to the CTTT* e-booklet and videos
- ▶ *Introducing the CTTT* brochure
- ▶ *CTTT Online*
- ▶ *CTTT 2002-2012 Significant Achievements*
- ▶ A range of translated materials
- ▶ *Communications Strategy for Aboriginal Communities 2012-2016*
- ▶ *Communications Strategy for Culturally and Linguistically Diverse (CALD) Communities 2011-2016*
- ▶ *CTTT Communications Plan 2012-2016*.

A Guide to the CTTT

In December 2011 the Tribunal launched *A Guide to the CTTT* - a social media and e-resource initiative.

A Guide to the CTTT provides a step-by-step explanation about what happens at the Tribunal, including information about how to apply, how to prepare for a hearing, and what to expect in the hearing room.

The e-resources can be accessed from the Tribunal's website and include an e-booklet and a series of short YouTube videos. Each video clip is available in English with closed captions for the hearing impaired, and translated in five community and emerging languages – Arabic, Mandarin, Farsi, Dinka and Swahili.

By 30 June 2012, the Guide e-booklet was downloaded 4,091 times, the YouTube videos were viewed 8,040 times, and the Guide website 'landing' page had 10,100 visits.

Social media

At the end of this reporting period plans were underway to expand the Tribunal's social media channels to Facebook and Twitter. This expansion will place the Tribunal at the forefront of this technology, being the first consumer Tribunal to embrace Facebook in Australia.

A policy document with guidelines for staff and Tribunal Members has been drafted, as well as Terms of Use for these new social media channels.

Information delivery

During 2011-2012 Tribunal Members and staff participated in 99 community educational and information events, including:

- ▶ information sessions conducted across NSW including presentations for Aboriginal and culturally and linguistically diverse communities
- ▶ guest speakers at functions and events arranged by the Tribunal's key industry stakeholders and various community organisations
- ▶ NSW Fair Trading community and regional access programs in various locations throughout NSW
- ▶ CTTT Stakeholder Forums.

Assisting communities

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

Aboriginal communities

The Tribunal is committed 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.

The *Communications Strategy for Aboriginal Communities 2012-2016*, launched at a CTTT outreach event in Batemans Bay in March 2012, sets the framework for spreading awareness in Aboriginal communities about the Tribunal. During this reporting period, staff and Tribunal Members presented information about our services at various outreach programs and Aboriginal stakeholder events.

We have an Indigenous section on our website covering the application process, getting help and information to assist with preparing for the hearing. A DVD *Getting a fair go at the CTTT* is also available to explain to Aboriginal communities how the Tribunal works.

Culturally and linguistically diverse (CALD) communities

The Tribunal provides services to assist people from culturally and linguistically diverse (CALD) communities to understand the role of the Tribunal and its services.

The Translating and Interpreting Service (TIS) is available for people who need assistance when contacting the Tribunal by telephone. Interpreters are provided free of charge for clients who require language assistance during Tribunal proceedings.

During the reporting period, 2,611 requests for interpreter services were arranged for 60 languages. The top languages requested were Mandarin, Arabic, Cantonese, Korean, Vietnamese, Chinese, Spanish and Farsi (refer to **Appendix 6**).

We also use the Community Language Allowance Scheme (CLAS) to support and recognise Registry staff who use their expertise in a community language to improve our customer service.

During 2011-2012 the Tribunal increased its resources and initiatives for the CALD community, including:

- ▶ *Communications Strategy for Culturally and Linguistically Diverse (CALD) Communities 2011-2016*
- ▶ Various fact sheets and web information translated into Arabic, Chinese, Dinka, Farsi, Korean, Spanish, Swahili and Vietnamese
- ▶ *A Guide to the CTTT* YouTube short videos available in Arabic, Dinka, Farsi, Mandarin and Swahili
- ▶ Tribunal information session for community workers in August 2011
- ▶ Participation in NSW Fair Trading events and presentations for CALD communities
- ▶ Information for NSW Fair Trading's 'Think Smart' Partners who represent a range of peak CALD organisations.

Stakeholder involvement

The Tribunal continued its engagement with peak stakeholders who make a significant contribution to the Tribunal through their ongoing involvement in planning and operational activities.

Our Consultative Forums comprise more than 80 organisations representing peak industry bodies, government agencies and non profit groups (refer to **Appendix 5**). Our peak divisional and Aboriginal Consultative Forum members have assisted us in achieving process enhancements that align with our continuous improvement plans and aid the delivery of an effective and responsive service.

Additionally, our Community Consultative Forums allow greater engagement at a local level. Deputy Registrars in regional and metropolitan Registries led the Community Forums, which bring together local stakeholders to discuss local issues relating to Tribunal operations and exchange ideas.

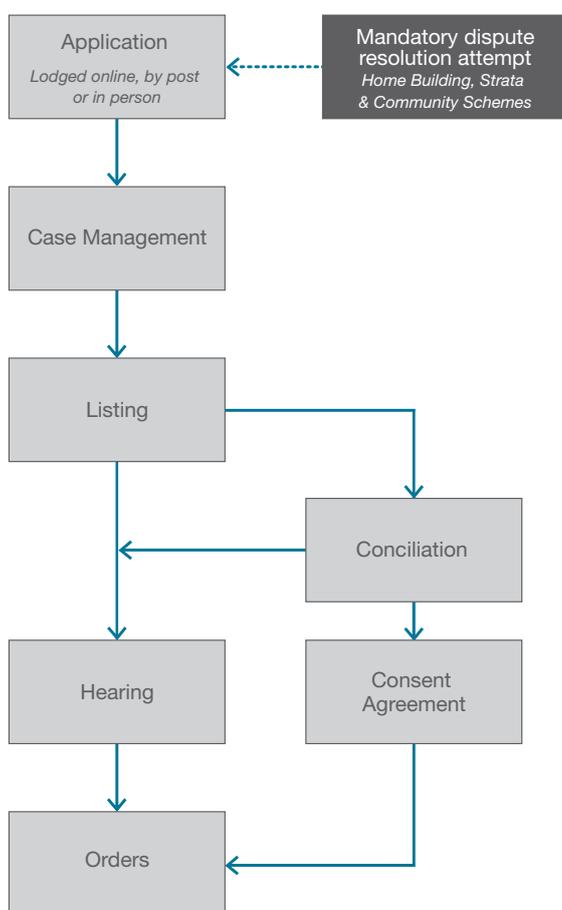
During the year, we held 24 Divisional, Aboriginal and Community Consultative Forum meetings. We also issued eight *Forum Update* e-newsletters to keep stakeholders up-to-date with current Tribunal issues.

Our Process

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 2011-2012 the Tribunal received the most applications in its ten years of operations, with 64,803 applications lodged and 76,408 hearings held at 67 locations.

The Tribunal uses a variety of dispute resolution strategies to manage its high volume workload. We have 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.



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, a conclave meeting involving a Tribunal Member (with building expertise) and the parties' experts.

All Tribunal Members and a number of key staff have recognised qualifications or extensive ADR experience.

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.

In Residential Parks disputes involving multiple applications about proposed rent increases, conciliation is often used with the parties meeting 'on site' at the park or at a nearby community facility with a view to negotiating an agreed settlement.

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 in dispute. 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 involve extensive defective or incomplete works and complex 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 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

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

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 law. 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' is where a number of cases 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,

before making binding orders by consent of the parties that reflect their agreed outcome, ensure the parties:

- ▶ fully understand the agreement,
- ▶ entered into the agreement without duress or coercion, and
- ▶ have formed a legally acceptable agreement.

If conciliation is unsuccessful the case proceeds to hearing. If only one party appears, 'ex-parte' orders may be made or the application may be dismissed by the Tribunal Member.

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 the 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 for 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, in limited cases and 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, or emailed to parties using the *eConnect* service, or by mail.

Regional Tribunal Members access the *InCourt* system using wireless internet technology via laptops in the hearing room. The orders are printed out at the nearest Registry and posted on the day, or emailed immediately if the party subscribed to *eConnect*. 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. This promotes transparency, accountability in decision making, and help parties better understand the decision.

The increasing provision of brief reasons has resulted in a reduction in the number of formal requests for written reasons under section 49 of the Act.

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, 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 intrusion 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 (time limits apply for lodging the renewal application). The Tribunal can then make another 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, their 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 to the District or Supreme Courts. During this reporting period, 84 new appeals were received, and 85 appeals were determined of which 14 were upheld/remitted and 8 were upheld and orders substituted. The number of matters appealed represents 0.11% of Tribunal hearings in 2011-2012.

Like all Australian courts and tribunals, long standing legal principles apply to the Tribunal, in particular, the principle of 'res judicata' – i.e. if a dispute is judged, the judgement is final and conclusive. There is an absolute bar to a subsequent suit for the same cause of action. This means the Chairperson is unable to change Tribunal decisions, except for minor aspects such as mathematical or spelling errors.

These arrangements mean the Tribunal can operate independently by ensuring that the decision making process is free from political, administrative or other influence.

However, redress is available through the provisions of section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001*. The Chairperson, or delegate, may grant an application for rehearing if it can be established that the applicant may have suffered a substantial injustice and the claim is for less than \$30,000.

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 and Administrative Unit staff are employed under the *Public Sector 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.

The Chairperson has the legislative authority to give directions in relation to practice and procedure.

Planning

Business plans are developed each year to guide the Tribunal's focus and priorities. During the year, the Tribunal undertook a comprehensive Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis to develop its 5 year strategic plan which included a risk management plan, human resource plan, an information technology plan and a stakeholder communication plan.

The Tribunal's *Strategic Plan 2011-2015* aligns with the State Government, Department of Finance and Services and NSW Fair Trading strategic plans.

The key focus of the Tribunal's Strategic Plan is to ensure that service delivery is maintained within budget and existing service standards, while streamlining and improving party access to the Tribunal's services, and making it easier and more cost effective for Tribunal Members and staff to do their work. This is being achieved by:

- ▶ **Managing:** Providing quality outcomes for people who use our services, and effective management and support for the Chairperson, Tribunal Members and staff within service standards and budget parameters.
- ▶ **Connecting:** Enhancing partnerships and mutually beneficial information, communication and feedback mechanisms with the Minister, the community, clients and stakeholders, and effectively engaging with Tribunal Members and staff.
- ▶ **Improving:** Improving our services by promoting a culture of continuous improvement, performance monitoring and 'good ideas' generation and innovation.
- ▶ **Leading:** Providing strategic leadership, strategies, projects and priorities that keep us ready for the immediate and emerging future.

A number of projects were commenced during the year to deliver on the initiatives identified in the plans mentioned above. A multi-disciplinary project management approach is taken to implementing change.

Managing risk

Risk management is a critical component of our corporate governance framework. The 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.

During the reporting period factors that had some impact upon the Tribunal's capacity to deliver its services were the reduced budget and the unprecedented surge in application lodgements. Action was taken to identify ways of minimising this impact.

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 over 76,000 hearings and appropriately allocate cases to Tribunal Members across 67 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 hardcopy records are retained for seven years.

Work is underway via the *eDoc* project to enable digitised documents to be received into the Tribunal's case management system. This is a long term project which will progressively see a reduction in paper based files, and off-site storage requirements.

Our Objectives and Performance

Performance reporting helps to monitor how the Tribunal is meeting its 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 case load; to monitor operational performance against the service standards; and to meet our annual reporting and statutory requirements.

Data from our case management and supporting 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.

New reporting software was introduced during the year which, when fully operational, will deliver reports in a more timely and efficient way.

The primary performance reporting measures used by the Tribunal are built around its statutory objectives and other operational requirements and are interrelated, as discussed 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
- ▶ the suitability of each venue
- ▶ the ease by which clients can lodge applications, access information and participate in Tribunal processes and proceedings.

In 2011-2012 hearings were conducted at across 67 venues in various metropolitan and regional locations. The table at **Appendix 7** shows the hearing venues used; the number of hearings held during the reporting period, and the number of hearing days.

In 2010-2011, the Tribunal reviewed the suitability of all its venues. 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. The review established that venues were accessible for parties with special needs and generally suited for Tribunal purposes. As a result, there was minimal change in hearing venues in this reporting period.

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 'Application Lodgement' 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 maintain service delivery standards.

In the reporting period, the Tribunal had an overall clearance ratio of 97%, demonstrating the increased volume of work the Tribunal received during the reporting period and the commitment to clearing this workload as quickly as possible (refer to the 'Clearance Ratio' table at **Appendix 8**).

Affordability

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 \$36; applicants in the Strata and Community Schemes Division and applicants with claims between \$10,000 and \$30,000 in the General, Home Building and Motor Vehicle Divisions paid \$74; and those with claims over this amount in these Divisions paid \$191. Pensioners and students pay \$5 and in certain circumstances the fee can be waived.

Fees have traditionally been increased from 1 July each year in accordance with the CPI (excepting the \$5 concessional fee). During 2011-2012, revenue generated from fees was \$2.4m. The Tribunal has a process in place to ensure that most fees are paid.

Net Costs

Although the Tribunal does not have an activity-based costing model in place, we assume that 95% of cases will incur a net cost of \$360; 4% of cases will incur a net cost of \$500; and 1% of cases will incur a net cost of \$1,500. A small number of complex cases will incur further costs.

Timeliness

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 a party must attend before a case is finalised
- ▶ time taken to make Tribunal decisions available to the parties.

The 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.

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.

Informality

The Tribunal's informality is measured by:

- ▶ the level of legal representation
- ▶ the level of agreements entered into by parties.

Legal representation

Leave of the Tribunal is generally required before legal representation is permitted in Tribunal proceedings. The vast majority of parties are either self represented or are assisted by free or inexpensive advocacy services such as the Tenants Advice and Advocacy Program or other consumer advocacy services. These services are promoted via the Tribunal's *Getting Help* Fact Sheet.

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. Where 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.

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. In 2011-2012 there were 94,074 orders made by the Tribunal, of which 24,498 (26%) were made by consent of the parties.

Party participation in proceedings

The Tribunal's website provides considerable information to assist parties prepare and present a case before the Tribunal. Online videos also explain each step in the process in English, captions, and in community languages. During 2011-2012 the website recorded more than 510,000 website visits which represented a 22% 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 115,000 telephone enquiries were dealt with by Registry staff during the reporting period.

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. Tribunal Members also use their own 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. Parties can also request interpreters, free of charge, for Tribunal hearings.

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 are 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.

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; Commissioner for Fair Trading, Rod Stowe; 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 the Chair of the Committee.

The Committee is required to meet at least three times per year. In 2011-2012 the Committee met four 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 the 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 there were no new referrals to the Committee. The Committee finalised two referrals from the previous reporting period. Of the two finalised referrals, one was about the conduct of two Tribunal Members. The Committee found there were no matters raised by the complainant that warranted any action against these Members. The other matter concerned comments made about a Tribunal Member in a Supreme Court decision and the Committee did not recommend any action be taken regarding the Tribunal Member.

Complaints management

We are committed to responding promptly to complaints about our services. The Tribunal's complaint management system is based on guidelines issued by the NSW Ombudsman and the Australian Standard: *Customer Satisfaction – Guidelines for complaints handling in organisations (AS ISO 10002-2006)*.

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.

During the reporting period, 492 complainants wrote to the Tribunal, representing less than 1% of the total number of hearings held. Approximately 38% 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 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.

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 2011-2012 we continued our commitment to a culture of learning and improvement across the organisation.

Tribunal Member conference

The annual Tribunal Member conference was held in August 2011. The major agenda items included personal injury damages and the Tribunal; expenses, costs and losses; Australian consumer law and how it operates across Divisions, and strata plan interpretation.

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 on 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.

eNewsletters

Regular *eNewsletters* are 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 2011-2012 flexible training approaches were used to enhance and maximise the performance of Tribunal registry and administrative staff. An integrated approach included corporate training, a Performance Development Program, eNewsletters and topical emails 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, 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.

The Registry briefing day program is highly effective in achieving consistency in procedures, the sharing of ideas and common solutions to problems, and facilitates a productive flow of information between Registry offices, particularly during times of legislative change.

Corporate training program

During 2011-2012 all senior managers completed the DFS 12-month Senior Leadership Program which involved a 360 degree feedback tool, coaching and the completion of learning modules about:

- ▶ Connecting with my leadership style
- ▶ Achievement and accountability
- ▶ Influencing with integrity
- ▶ Relationship building
- ▶ Leading high performing teams.

Deputy Registrars and Team Leaders also commenced or completed the Certificate IV Frontline Management Course.

Registry and administrative eNewsletters and emails

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

Online 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. Procedures were updated and new procedures developed during the year to assist staff in undertaking their roles.

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.

Other performance mechanisms

Other performance 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.

Continuous Improvement

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

The Tribunal's senior management team and the 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 been 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 discuss major service deliver and other issues and trends that impact on the Tribunal.

During 2011-2012 CIRG met twice to report on and analyse information and feedback about the Tribunal's activities, and to 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.

Feedback

The Tribunal has a number of mechanisms to seek feedback from and deliver information to stakeholders and parties. This includes face-to-face stakeholder forums, talks at community events, and online feedback forms.

At the end of 2011-2012 work was underway to improve the Tribunal's feedback mechanisms. The aim of the project is to identify ways to better co-ordinate the capture and use of solicited and unsolicited feedback to inform service improvements.

Service improvements

A strategic and project management approach is taken to service 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 resources receive high priority. As a result we have established an ambitious service improvement program and we work with Tribunal Members, staff and stakeholders to introduce various service improvements to the way we deliver our services.

eConnect

eConnect is an online service that allows people to subscribe to receive Notices of Hearing, orders and other Tribunal correspondence by email. It was introduced on 16 January 2012 and is currently available to online applicants in most Divisions. Work is underway to expand this service to respondents.

In the first 6 months, more than 56,000 emails were issued to *eConnect* subscribers. Emails issued via the *eConnect* system save postage and administrative costs, and ensure orders and other correspondence are immediately available to subscribers.

eDoc

The Tribunal is currently developing a digital document capture and storage capability to allow parties to electronically submit their evidence and other case-related documents online. An initial pilot of this innovation will be undertaken in partnership with Housing NSW which has digitised its entire file record. Preparation for the pilot is progressing in consultation with Housing NSW. Tribunal Members and relevant CTTT staff have been involved in briefings about the *eDoc* facility. This is new technology for the CTTT and requires careful planning and staged implementation to build confidence in this significant service change.

Video conferencing

A video conferencing capability has been established with the aim of increasing access to our services for regional consumers and traders, and to offer Tribunal Members and staff another means of communication.

The first phase of the video conferencing project was implemented during the reporting period. The facilities are being used to communicate internally via video conferencing equipment installed in all Tribunal Registries as an alternative to travelling to meetings.

In phase 2, the use of video conferencing will be expanded as a pilot for Tribunal hearings with the aim of increasing accessibility. This service will present some challenges but in the longer term will be useful for parties residing in regional and remote locations, and will reduce Tribunal Member travel and associated costs.

Green initiatives, waste management and recycling

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

During 2011-2012, we continued to promote and implement green initiatives and waste minimisation through various initiatives, including:

- ▶ minimising energy consumption where possible
- ▶ double-sided printing of Notices of Hearing and orders
- ▶ rolling out of *eConnect* that allows parties to receive correspondence from the Tribunal via email
- ▶ using website options to communicate information to the community, 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 seven 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 2011-2012

Applications

Number of applications received 32,626

• 5% increase from 2010-2011

Number of online lodgements (48%) 15,697

Application types:

• Pre-agreement matters and agreements	137
• Rent and other payments	931
• Access to residential premises	108
• Repairs	555
• Alterations and additions	29
• Security and safety	27
• Change of tenants	55
• Termination for breach under section 87	1,577
• Termination for non-payment of rent	13,586
• Termination by a co-tenant under section 102	67
• Termination for other reasons	4,209
• Mortgagee repossession	18
• Occupation fee	13
• Vesting of tenancy	5
• Abandonment of residential premises	166
• Goods left in residential premises	101
• Rental bonds	4,553
• General orders	5,417
• Residential tenancy databases	55
• Renewal	22
• Rehearing	995

Applicants:

Landlord	24,236
Tenant	7,295
Other person	570
Co-tenant	439
Prospective tenant	58
Occupant	28

Hearings

Number of hearings 36,454

Number of adjournments 8,284

Finalised matters

Number of matters finalised 32,358

Rehearings and appeals

Number of rehearings granted 448

Supreme Court / District Court appeals 24

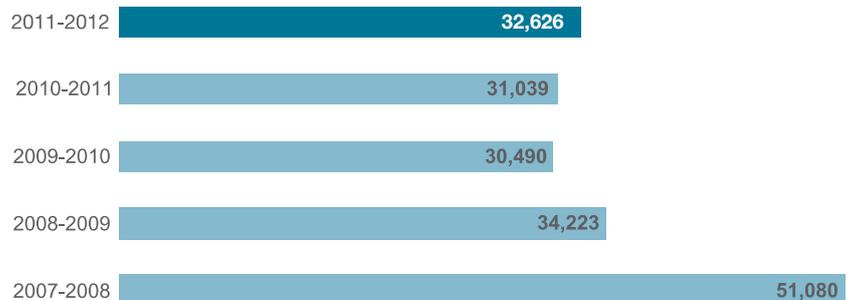
The Tenancy Division deals with disputes between landlords and tenants who have entered into a residential tenancy agreement.

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

The commencement of the *Residential Tenancies Act 2010* on 31 January 2011 introduced additional Tribunal orders about:

- ▶ co-tenants disputes
- ▶ sub-letting
- ▶ disputes about information in tenancy databases
- ▶ recognition of occupant as tenant after an apprehended violence order (AVO).

Application trends



* Since 1 October 2008, Social Housing matters are being dealt with and reported on in the Social Housing Division Section; the data prior to 2008-2009 is not directly comparable with the other reporting periods.

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

Case studies

Damage caused by mould

The *Residential Tenancies Act 2010* clearly sets out the rights and responsibilities of both tenant and landlord regarding repairs and maintenance. Section 52 provides that a landlord has an obligation to provide the residential premises in a reasonable state of cleanliness and fit habitation by the tenant.

A man rented an apartment through a real estate agency for 13 months. Shortly after ending his tenancy, the former tenant lodged an application to the Tribunal claiming a substantial rent reduction, compensation for damaged items, moving and cleaning costs. He also sought compensation for stress, disappointment and breach of privacy. The claim related to mould in the apartment.

At the Tribunal hearing, the former tenant gave evidence that as soon as he had moved into the apartment the smell of mould was overwhelming. He said that the problem continued throughout the tenancy and he found it extremely frustrating. Despite constant cleaning, damp and mould treatments, and the purchase of a dehumidifier, the mould began to affect his health and it damaged his clothing and other belongings.

The former tenant said that he regularly complained to the real estate agency about the damp and mould, but that they “kept passing off the issue” to the strata managers as a common property problem. He said that nothing was done to resolve the issue.

The real estate agent did not dispute the claim about the mould, nor that they had not disclosed the ongoing mould issues at the beginning of the tenancy. The agent however gave evidence that they had struck a deal with the tenant early on in the tenancy to reduce his rent for the inconvenience of the mould. They also regularly credited the tenant for the purchase of damp rid products, mould treatments and the dehumidifier. The agent said that strata managers had arranged for a handyman to attend the premises to increase air flow into the rooms, and that litigation was pending against the builders of the unit.

The Tribunal Member acknowledged that the mould related to issues with the common property, however they were not relevant when it came to considering the rights and obligations between the landlord and tenant. The Member found that the landlord had failed to comply with the general obligations of section 52 of the Act and in particular failed to provide the premises in a reasonable state of cleanliness and fit for habitation by the tenant.

The Tribunal Member ordered the landlord to pay the tenant \$6,000 compensation for economic loss, including for moving and cleaning costs, purchase cost for equipment to beat the mould and for damage to the tenant’s goods rendered unusable by the mould.

In relation to the rent reduction claim, the Member acknowledged the agreement struck between the landlord and tenant a few months into the tenancy and found the agreed rent represented what the parties thought to be an appropriate reduction. The claim for non-economic loss was dismissed as the evidence of distress, disappointment, loss of enjoyment and breach of privacy did not exceed the threshold to recover damages under the *Civil Liability Act 2002*.

Proof on the balance of probabilities

The standard of proof required in the Tribunal is proof on the ‘balance of probabilities’ (the civil standard) - i.e. it is more likely than not events happened as asserted. Should a respondent be unable to attend the Tribunal hearing in person, it is essential that they provide sufficient evidence in the form of statutory declaration and supporting documents if they want to contest the application.

At the end of a tenancy, a real estate agency lodged an application with the Tribunal on behalf of the landlord seeking an order that the tenant pay \$5,000 for unpaid rent, cleaning costs, and compensation for damage to blinds, door knobs and several down-lights in the kitchen.

At the Tribunal hearing, the agent appeared on behalf of the landlord. The tenant did not appear at the hearing in person. She had instead sent the Tribunal a letter denying the landlord’s claims, and had attached copies of various emails between the tenant and real estate agency.

The Tribunal Member noted that the tenant’s letter was not in the form of a statutory declaration or affidavit, and she did not provide any evidence to contradict the landlord’s application, other than to give some context to the dispute. On the other hand, the landlord’s agent gave evidence under affirmation as to the money owing for rent, and the condition of the property. The agent also produced copies of the condition reports, invoices, receipts and photographic evidence.

The Tribunal Member weighed the evidence of the agent against that of the tenant, and found that the landlord had made his case. After making an allowance for the rental bond, which had already been paid to the landlord, the Member made an order for the tenant to pay the amount of the shortfall.

Social Housing Division

Key Facts 2011-2012

Applications

Number of applications received **16,084**

• 25% increase from 2010-2011

Number of online lodgements (92%) **14,837**

Application types:

• Pre-agreement matters and agreements	4
• Rent and other payments	91
• Access to residential premises	1,513
• Repairs	284
• Alterations and additions	7
• Security and safety	8
• Change of tenants	2
• Termination for breach under section 87	611
• Termination for non-payment of rent	8,284
• Termination by a co-tenant under section 102	1
• Termination for other reasons	641
• Mortgagee repossession	0
• Occupation fee	6
• Vesting of tenancy	2
• Abandonment of residential premises	57
• Goods left in residential premises	21
• Social housing provisions	5
• Rental bonds	28
• General orders	4,243
• Residential tenancy databases	0
• Renewal	18
• Rehearing	258

Applicants:

Housing NSW	11,258
Community Housing	3,073
Aboriginal Housing	900
Tenant	833
Other person	18
Occupant	2
Prospective tenant	0

Hearings

Number of hearings **19,067**

Number of adjournments **3,719**

Finalised matters

Numbers of matters finalised **15,858**

Rehearings and appeals

Number of rehearings granted **137**

Supreme Court / District Court appeals **7**

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

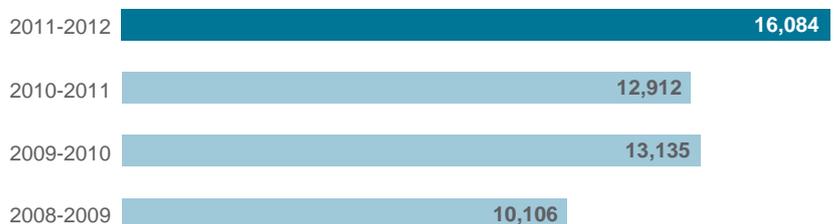
The Tribunal has jurisdiction to determine social housing disputes under the *Residential Tenancies Act 2010*. The Social Housing Division deals with disputes that relate to social housing premises where the landlord is one of the following:

- ▶ 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 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 access to premises.

Application trends



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

Case studies

Prohibited drugs on premises

A mandatory term in every social housing tenancy agreement is that the tenant agrees they shall not use, cause or permit the premises to be used for any illegal purposes. A breach of this term may justify the Tribunal making orders for the termination of the tenancy. However there are additional matters set out in Section 152 of the *Residential Tenancies Act 2010* that must be considered before such orders are made.

A social housing landlord lodged an application to the Tribunal for termination of the tenancy, alleging that the tenant was involved with the possession, storage and supply of prohibited drugs.

The application for termination was based on police evidence after they had executed a search warrant of the premises which they suspected to be a 'drug house'. The police discovered an exercise book setting out what appeared to be prohibited drug supply transactions, various prohibited drugs, digital scales, a number of small resealable bags and capsicum spray in one of the bedrooms. A small resealable bag with prohibited drugs inside was also found in the refrigerator.

The landlord claimed that the tenant was aware of all of these items and permitted her son to use the premises for an illegal purpose being the possession, storage and supply of prohibited drugs.

At the Tribunal hearing, the tenant, a 60 year old grandmother, gave evidence that her son did not live at the premises and that he only came there to visit his son (her grandson) who lived with her. She maintained that all of the drugs and equipment belonged to her son. She said that she was only aware of the small amount of drugs in the refrigerator, and that she was afraid to confront her son as he was aggressive.

In seeking the order for termination and possession of the premises the landlord submitted that while the tenant was not responsible for the illegal activities, she had nevertheless permitted them to occur at the premises, and that she may allow her son back into the premises and allow repetition of the offences.

The tenant however told the Tribunal Member that she was on a limited income and it was very important that she and her grandson stay in the social housing premises. She explained that her grandson had special learning needs which would be jeopardised if forced to move, and that there had been no other breaches in the 35-year history of the tenancy. She also confirmed she would not allow her son back into the premises or permit these events to occur again.

The Tribunal Member carefully considered all of the evidence and on balance decided to make a specific performance order for the tenant to comply with the residential tenancy agreement with a right for the landlord to relist the matter if the tenant breached the agreement again.

Right to privacy vs right to access

Tenants have a right to privacy and quiet enjoyment of their rented premises. The law restricts a landlord's access to the rental property and entry is only allowed at certain times for certain reasons and in most cases, notice must be given first. A landlord must give written notice to tenants if they require access to premises for the purposes of maintenance, repairs or health and safety.

A social housing landlord lodged an application with the Tribunal under section 60 of the *Residential Tenancies Act 2010* seeking access to the premises for maintenance and repairs, and to carry out an inspection for other possible health and safety issues.

At the hearing the landlord stated that they wanted to access the property to repair the hot water system and the stove, and to carry out a standard property inspection. As evidence, they provided the Tribunal Member with copies of various letters to the tenant requesting access to the property. They claimed that each time the tenant had refused them access to the property.

The tenant did not appear at the Tribunal hearing, but instead sent an email requesting an adjournment of the hearing as she had a medical condition. The landlord was given an opportunity to comment on the tenant's adjournment request. They said this was not the first time they had been before the Tribunal seeking access orders, and on every occasion the tenant had failed to appear at the hearing.

The Tribunal Member refused the tenant's adjournment request, given the circumstances. Orders were made permitting access to the premises on a specific date. The Tribunal allowed both parties leave to have the matter relisted if there were difficulties complying with the orders.

General Division

Key Facts 2011-2012

Applications

Number of applications received 6,538

• 4% increase from 2010-2011

Number of online lodgements (37%) 2,400

Application types:

• Goods	3,151
• Services	2,847
• Holiday parks	110
• Pawnbrokers	8
• Conveyancing	2
• Renewal	89
• Rehearing	331

Applicants:

Consumer	6,268
Other party	270

Hearings

Number of hearings 7,166

Number of adjournments 3,576

Finalised matters

Number of matters finalised 6,201

Rehearings and appeals

Number of rehearings granted 125

Supreme Court / District Court appeals 5

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 provides 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.

Application trends



Case studies

Misleading a lonely heart

A contract is a legally binding agreement between two or more people. Consumers need to be aware that signing an agreement and payment of money may mean they have signed a contract and are bound by the terms of the contract. If a party breaches a contract, the other party may seek to recover any loss. However, in limited circumstances, e.g. misrepresentation, a contract can be ended.

A woman lodged an application to the Tribunal seeking a refund of the \$790 deposit paid to a relationship consultant. She alleged that the consultant used psychological manipulation and misrepresentation to induce her to sign up to their introduction services.

At the Tribunal hearing, the consumer gave evidence that she was an older woman who had approached the relationships consultant with the hope of being introduced to a suitable partner and potential husband. At the initial meeting with the relationship consultant, the woman gave all her personal details and preferences in her quest to encounter a person with the qualities she sought in a companion. She was initially shown a number of photographs of various men that she declined. She was then promised an introduction to a man named David who sounded wonderful to her. She was told that David was “ready to go” if she signed up immediately.

It was at that moment that the woman agreed to sign up to their 4-month membership program and paid the initial \$790 deposit. However, after signing the paperwork, the dating agency revealed that David was actually unavailable as he was too busy with work. The woman stated that she felt deceived and tricked into signing up to their membership program, and now she wanted to cancel her membership.

At the hearing, the relationship consultant told the Tribunal that it was standard practice for them to tell potential clients “about someone great that they could meet” when they joined up to their membership program. The consultant also pointed out that their agreement contract clearly states “non refundable” and that they had done nothing wrong.

The Tribunal Member found that the consultant had made a false statement that David was “ready to go”, and that the false statement was made in the context of inducing the applicant to sign up immediately. Orders were made for the relationship consultant to refund \$540 to the woman, being the deposit less an allowance of \$250 for services which were provided.

Not just a series of unfortunate events

Under the Australian Consumer Law (ACL), consumers are guaranteed that services provided are rendered with due skill and care, and that the services will be fit for purpose providing that it is reasonable in the circumstances for the consumer to rely on the skill and expertise of the supplier.

A community group purchased a one day trip to the snow with a bus tour company. They planned to depart Sydney just before midnight, sleep overnight on the bus, arrive at the snow in the morning, ski all day and then travel back to Sydney - all within 24 hours.

On the day of the tour, the bus was late picking up the participants and the driver was unfamiliar with the route. The bus also appeared to have mechanical problems as it often drove slowly and had to stop for repairs. In addition, the air-conditioning was not working, making the bus interior uncomfortably cold.

The bus arrived at the snowfields three hours late. Because of the delays, the participants missed out on ski equipment hire and the pre-arranged skiing lesson. They had no choice but to sit in a lounge area and wait for the return bus trip.

The return trip to Sydney was no less eventful. The tour company decided to take a lengthy detour to assist another of the company’s buses that had broken down, despite objections from the tour participants. The group arrived back in Sydney five hours late, causing inconvenience to the participants and their families waiting to pick them up.

An application was lodged to the Tribunal seeking a refund of the tour costs and compensation for “distress and physical discomfort”. At the hearing of the matter, the Tribunal found that the tour was so poorly organised and performed, that the participants were completely denied the purpose of their trip, and in addition they suffered major hardship and discomfort.

The Tribunal noted that compensation could not be awarded for distress under the provisions of the *Civil Liability Act 2002*. However, as the participants clearly did not get what they paid for, the Tribunal made orders for the full refund of the cost of the tour.

Home Building Division

Key Facts 2011-2012

Applications

Number of applications received 3,894

- 12% increase from 2010-2011

Number of online lodgements (26%) 1,010

Application types:

• Claims under / equal to \$30,000	2,824
• Claims over \$30,000	634
• Rectification order	132
• Appeal against Director General's decision	0
• Renewal	80
• Rehearing	224

Applicants:

Consumer	2,950
Trader	858
Other party	82
Insurer	4

Hearings

Number of hearings 8,124

Number of adjournments 6,004

Finalised matters

Number of matters finalised 3,863

Rehearings and appeals

Number of rehearings granted 89

Supreme Court / District Court appeals 36

'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.

During the year, the *Home Building Act 1989* was amended with the changes introduced in two stages commencing on 25 October 2011 and 1 February 2012 (refer to **Appendix 1**).

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.

There are Chairperson's Directions setting out the procedures to be followed in home building disputes when the amount claimed is over \$30,000 and procedures for the acceptance of home building claims. These directions, available at www.cttt.nsw.gov.au, outline a range of alternative dispute resolution mechanisms and limit undue delay in proceedings.

Application trends



Case studies

Flaky paint

Under the *Home Building Act 1989* a home owner can seek compensation for rectification of defective residential building work where the tradesperson has failed to carry out work in a proper and workmanlike manner.

A couple engaged a painter to paint the outside of their weatherboard house. After the work was completed, the home owners noticed deep gouging on the surface of some weatherboards, and in some areas the paint was blistering and peeling as a result of the weatherboards not being properly prepared before painting. The home owners contacted the painter about the problems but were unable to resolve these issues.

The home owners lodged an application to the Tribunal seeking compensation for rectification of the painting and for replacement of some of the damaged weatherboards. Following the first hearing the parties were requested to negotiate a settlement and provide each other with relevant documents, such as quotes for rectification and any other documents they had that would assist in resolving the dispute. A further directions hearing was held, however the parties were unable to resolve the matter and it was set down for a formal hearing.

At the hearing, the home owners produced copies of the contract, and an expert building report written by a building consultant whose report detailed poor surface preparation, paint blistering and uncontrolled brush marks. The report included a number of photos as evidence to illustrate the problems.

The home owners advised the Tribunal Member that they had decided not to proceed with the removal of the damaged weatherboards as part of their claim.

The painter provided evidence in response to the home owners' evidence and also suggested that some of the damage to the weatherboards may have been caused by the home owners who had used a high pressure jet washer to remove flaking paint prior to the engagement of the painter.

The Tribunal Member reviewed the evidence and found in favour of the home owners'. However, whilst the home owners had claimed the full cost of engaging their building consultant, the Member found that the painter should not have to bear the full cost of engaging the expert.

Orders were made for the painter to pay the home owners the sum of \$9,950 for rectification work and some of the cost of engaging the building expert.

Disappearing builders

Home warranty insurance provides cover for loss caused by defective or incomplete work in the event of the death, disappearance or insolvency of a contractor or owner builder.

A man purchased a house from two owner builders and subsequently obtained orders from the Tribunal for defective work. He could not however enforce the judgment as the owner builders could not be located. He lodged a claim with his home warranty insurer on the grounds that the owner builders had 'disappeared'. However, the insurance claim was denied on the basis that the owner builders were found to be living overseas.

The home owner lodged a further application to the Tribunal challenging the insurer's decision. He asked the Tribunal to determine, as a preliminary matter, whether the owner builders had 'disappeared' within the meaning of the home building legislation.

At the hearing, the Tribunal agreed with the home owner's submission that the *Home Building Regulation 2004* [clause 52(3)] and the *Interpretation Act 1987* [section 12(1)], could be read together as meaning that "after due search and inquiry, the contractor, supplier or owner builder cannot be found in New South Wales".

The insurer then appealed the Tribunal's decision to the NSW District Court. Before both the Tribunal and the Court the central issue was whether, for the purposes of clause 52 of the *Home Building Regulation 2004*, the owner-builders had "disappeared" so as to allow recourse to the insurance policy.

Ultimately his Honour found no intention in the home building legislation to exclude the operation of section 12 of the *Interpretation Act 1987*. In reaching his decision, the Judge had regard to the protection of home buyers from undue expense in pursuing and enforcing their rights under the legislation.

The appeal was dismissed and the Tribunal's decision was affirmed.

Residential Parks Division

Key Facts 2011-2012

Applications

Number of applications received 2,306

- 17% increase from 2010-2011

Number of online lodgements (12%) 277

Application types:

• Excessive rent / excessive rent increase	1,875
• Termination	194
• Breach / compensation	124
• Other	60
• Recognition as a tenant	4
• Rental bond	2
• Renewal	29
• Rehearing	18

Applicants:

Resident	2,049
Park owner	251
Occupant	6

Hearings

Number of hearings 2,464

Number of adjournments 829

Finalised matters

Number of matters finalised 1,753

Rehearings and appeals

Number of rehearings granted 6

Supreme Court / District Court appeals 0

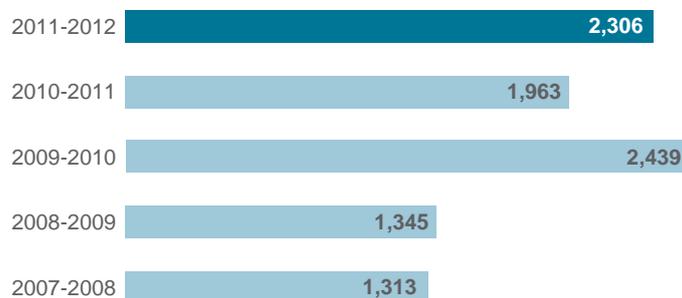
A 'residential park' may also be known as a caravan park, manufactured home estate, mobile home village or relocatable home park. Residents of a park may own their caravan or manufactured home and rent the site from the park owner. Residents may also rent accommodation that is owned by the park owner. 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 services and facilities, breaches of the agreement, termination, and alterations and additions to the moveable 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

Does your new rule bite?

A park owner makes park rules about the use, enjoyment, control and management of the park. From time to time, the park owner may wish to change or amend the park rules. If residents want to dispute park rules changes, they can lodge an application to the Tribunal under section 88 of the *Residential Parks Act 1998*.

Three park residents lodged applications with the Tribunal seeking orders under section 88 of the Act. They wanted to invalidate a new park rule about the keeping of animals, and to revert to the old park rule that only allowed birds and fish to be kept as pets.

At the Tribunal hearing, one of the residents gave evidence that the reason he had moved to this particular residential park was that there would be no dogs. He said that where he used to live there were problems with dogs barking, dog droppings and animals wandering about. The other residents stated that they were concerned about the future impact of the rule change.

The park owner told the Tribunal that the new park rule gave permission for residents to keep a small dog or cat with written consent. Permission was granted on a case-by-case basis and could be withdrawn if the animal caused a nuisance. There was also mandatory registration and vaccination of pets, no pets allowed in common areas, and rules on the proper disposal of animal droppings. Two other park residents attended the hearing and gave evidence in support of the new park rule.

The Tribunal Member acknowledged that the residents had genuine concerns, as the rule change might indeed result in an increase in the number of companion animals at the park.

However, the Tribunal Member was satisfied that the new park rule embodied a number of safeguards directed at the keeping of companion animals in such a way that nuisances would be minimised, and also that the necessity to seek approval would result in an appropriate filter to ensure only dogs of a certain kind would be permitted.

On the evidence presented the Tribunal was not persuaded that the experiences to date were such that the rule should be set aside. Reference was made to evidence which indicated that the keeping of companion animals could have a beneficial effect on the lives of their owners. The Tribunal made orders dismissing the applications.

Illegal alterations and additions

Alterations and additions to a residential park site or dwelling may require the consent of the park owner. Failure to obtain consent may result in the park owner bringing an application to the Tribunal under section 100 of the *Residential Parks Act 1998*. However, it must be proved that the resident's breach was 'serious and persistent' for termination orders to be made.

A park owner lodged an application for termination of a site agreement on the grounds that the resident had breached the agreement. The park owner claimed that the resident had illegally added an awning and landing to the rear of her caravan which exceeded the site boundaries.

At the Tribunal the park owner and resident attempted conciliation. They were unable to reach an agreement and the matter proceeded to formal hearing.

During the hearing the park owner submitted photographs and measurements he had taken of the offending structure. The park owner claimed that the resident had made alterations without consent and therefore she was in breach of the site agreement and park rules.

The resident told the Tribunal that she had lived at the park for 22 years. She stated that the awning and landing were already there when she purchased the dwelling. The resident stated that she had only made one addition to the site being the construction of a carport which had the approval of the park owner.

The Tribunal Member explained that orders for termination under section 100 of the Act could only be made if the park owner could establish that the resident's breach was "serious or persistent".

The Tribunal Member found that the park owner must have been aware of the illegal structure over the past 22 years but did nothing about it. The Member also found that the breach could not be considered "serious or persistent" given the long period of time the park owner had allowed the illegal structure to remain at the site.

Strata and Community Schemes Division

Key Facts 2011-2012

Applications

Number of applications received 1,462
• 2% increase from 2010-2011

Number of online lodgements n/a

Adjudication

• Strata scheme 1,051
• Community scheme 29

Tribunal hearings

• Strata scheme 366
• Community scheme 16

Application types:

Adjudication

• General orders and other 511
• Interim orders 179
• Appoint strata manager 148
• By-laws 109
• Meetings, decisions and records 65
• Property 51
• Contributions and levies (Strata Scheme) 17

Tribunal hearing

• Appeal 161
• Penalty 155
• Unit entitlement 36
• Initial period 16
• Other 9
• Amend or revoke Tribunal order 2
• Caretaker contract 2
• Contributions and levies (Community Scheme) 1
• Appoint managing agent (Community Scheme) 0
• Restricted property 0
• Revoke or vary management statement 0

Applicants:

Lot owner 1,014
Owners corporation 426
Other party 12
Occupier of a lot 10

Hearings

Number of hearings 665

Number of adjournments 433

Finalised matters

Number of matters finalised 1,361

Rehearings and appeals

Number of rehearings granted n/a

Supreme Court / District Court appeals 7

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 500 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 generally be attempted 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 that may be affected by the order sought, are invited to make written submissions. The Adjudicator's decision is then made 'on the papers' without the need for a hearing. The types of disputes include disputes about the by-laws or appointment of a managing agent.

The Adjudicator can refer disputes to the Tribunal for hearing, for example when complex issues are involved. Parties can also appeal to the Tribunal from an Adjudicator's decision.

Application trends



Case studies

Holiday lettings

The order making power which an Adjudicator has under sections 157 and 159 of the *Strata Schemes Management Act 1996* provides a means of redress where the original by-laws are changed in a way that may lead to an injustice.

A high-rise apartment building leasehold scheme located in Sydney's Darling Harbour was managed by a large hotel group for some time, and a number of lot owners had made their apartments available for short-term holiday leases through the hotel group.

This situation changed when the hotel group vacated the building and an extraordinary general meeting of the owners voted to adopt a special by-law to prevent short-term leases and serviced apartments. The special by-law prohibited the use of lots for commercial or retail purposes, including the use of lots as serviced apartments or short-term rentals.

A lot owner made an application for Adjudicator orders to repeal or invalidate the special by-law under section 157 or 159 of the Act, so that they could continue to lease their apartment to tourists and visitors.

The owners corporation's written submission stated that the use of serviced apartments and short-term leases created security, health and safety issues as well as adversely affecting the general amenity of the building.

Section 159 of the Act allows an Adjudicator to set aside a by-law if the owners' corporation did not have the power to make the by-law. However, section 49 of the Act also provides that a by-law cannot prevent any dealings relating to a lot.

The Adjudicator considered that the new special by-law led to restrictions that were not compatible with section 49, and was therefore outside the by-law making power of the owners corporation pursuant to section 159 of the Act. The Adjudicator also considered section 157 under which a special by-law can be repealed if it is considered that it should not have been made having regard to the interest of all lot owners in the use and enjoyment of their lots.

As the owners corporation did not provide any explanation or evidence in support of their statement, the Adjudicator was not convinced that the adoption of the special by-law was necessary for the good management of the property. Orders were made declaring the special by-law invalid.

Eighteen floors

Section 65A of the *Strata Schemes Management Act 1996* provides that an owners corporation or lot owner can add to, alter or erect a new structure on common property for improvement or enhancement purposes. However, changes can only be made if a special resolution is first passed at a general meeting of the owners corporation that specifically authorises the particular action proposed.

The applicant was the lot owner of the level 18 penthouse. This level could only be accessed via lift No. 3 which provided access to the three penthouse levels. The applicant and the other penthouse level owners claimed they had exclusive use of lift No. 3 conferred by by-law 43.

The situation changed when the owners corporation caused lift No. 3 to be reprogrammed to allow use by all other occupants of the building. The owners corporation also provided new procedures designating the use of lift No. 3 for moving furniture in and out of the building.

The applicant's submission was that there was no resolution of the owners corporation under section 65A authorising the reprogramming of the lift, that the owners corporation had interfered with by-law 43, and that lift No. 3 was not designed to service all levels.

The owners corporation submitted they had not reprogrammed the lift, and that neither the original design of the lift nor by-law 43 provided any exclusivity of use of the lift. Lift No. 3 was the larger of the three lifts and for some years the arrangement had been that it would be used for moving large items in and out of the building.

The Adjudicator determined that lift No. 3 had always been common property and remained so. The Adjudicator held that by-law 43 did not confer any special exclusive rights on the applicant as it made no reference to lift No. 3 nor any other lift.

The Adjudicator observed that this dispute had arisen as a result of the unfortunate events of one particular day when the occupant of level 18 was unable to use lift No. 3. At the time it was being used to remove furniture, resulting in the applicant having to use the fire stairs to walk up and down all 18 floors. The Adjudicator suggested it may have been useful if the concierge had notified the owner of level 18 in advance to avoid any inconvenience.

The Adjudicator did not accept that reprogramming the lift amounted to an alteration of common property. As a consequence the application was dismissed.

Motor Vehicles Division

Key Facts 2011-2012

Applications

Number of applications received 1,649

• 14% increase from 2010-2011

Number of online lodgements (35%) 581

Application types:

• Repairs	524
• Defective/faulty used cars	385
• Contractual issues	212
• Defective/faulty new cars	200
• Warranties - used cars	69
• Overcharging	65
• Warranties - new cars	55
• Renewal	37
• Rehearing	102

Applicants:

Consumer	1,600
Other party	49

Hearings

Number of hearings 2,093

Number of adjournments 1,220

Finalised matters

Number of matters finalised 1,524

Rehearings and appeals

Number of rehearings granted 32

Supreme Court / District Court appeals 4

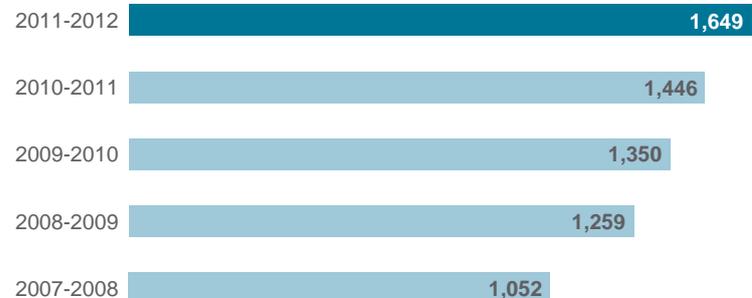
Consumers who have a dispute about a new or used motor vehicle purchased from a motor dealer, or who are unhappy with repairs done to their vehicle, can lodge an application in the Motor Vehicles Division.

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.

Application trends



Case studies

Major failure to comply

Under the Australian Consumer Law, a 'major failure' is a failure to comply with a consumer guarantee if the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure. The consequence of a major failure is that a consumer is entitled to reject the goods and obtain a refund.

A consumer purchased a used car from a motor dealer for \$3,000 which she thought had air conditioning and power steering. She found that the car did not have these features, and had various defects such as a broken indicator arm, faulty headlight lever, broken sun visor clips, and inoperative CD player. The passenger side door handle and vent also needed repair, as did the ignition surround, driver's side tail light, interior light and seat lever.

She took the vehicle back to the dealer and asked for a refund but the dealer refused. The consumer continued to drive the vehicle for some months thereafter before making an application to the Tribunal seeking an order for a refund of the \$3,000 purchase price.

At the Tribunal hearing, the dealer denied having ever promised or making any representations that the car had air conditioning and power steering. Because of the vehicle's age and mileage, it was sold without any warranty under the *Motor Dealers Act 1974*, but the dealer said he was willing to pay for the repairs as quoted by the consumer's expert report, excluding the power steering and air conditioning, totalling \$905.

The Tribunal Member was not satisfied that it was part of the contract of sale that the vehicle had air conditioning and power steering. However, the Member was satisfied that at the time of the sale the vehicle had the other defects identified by the consumer. Also, although the vehicle was sold without warranty under the *Motor Dealers Act 1974*, the transaction was governed by the Australian Consumer Law.

Further, the Tribunal Member found that the faulty mirrors and headlights when taken together with the other faults amounted to a major failure in that a 'reasonable consumer' would not have acquired the vehicle if they had known of the nature and extent of the faults.

As a consequence the consumer was entitled to a refund. The order made by the Tribunal was, taking into account the fact that the consumer had driven the vehicle for approximately 3,000 kilometres, for a partial refund of \$2,500 and for the dealer to pick up the car from the consumer.

Know your rights at auction

The benefit of purchasing a car at auction is that you can pick up a real bargain. However, the risk with buying at auction is that the vehicle is not covered by a statutory warranty, and you can't take it for a test drive.

A man was looking to purchase a motor vehicle on eBay, when he came across a listing by a motor dealer for an unregistered vehicle which included the offer of a mechanic's inspection report for an additional \$150. After some negotiation with the dealer, the man agreed to purchase the vehicle for \$6,250 through the eBay site, on the understanding that a pre-condition inspection report would be provided. He then attended the dealership and paid for the vehicle in person, and drove the car away.

Shortly afterwards, the man lodged an application with the Tribunal seeking an order for damages against the dealer and the mechanics who had undertaken the inspection of the vehicle prior to purchase. The man was claiming \$11,000 for repairs and out-of-pocket expenses as the vehicle was found to be un-roadworthy and could not be registered.

At the Tribunal hearing, the dealer argued that as the car was sold 'at auction' they were not liable for any damages. They provided statutory declarations and other documents that supported their claim that that sale was indeed a 'sale by auction'. Despite this, the dealer had offered to give the man his money back and allow him to return the car. This offer was rejected as the man had already spent a large amount of money on repairs and other inspections. As the dealer had proved that the sale was by auction, the Tribunal Member dismissed the application against the dealer.

The Tribunal Member then considered the man's claim against the mechanics who provided the pre-inspection report. The mechanics advised they were only asked to provide a report on an unregistered vehicle which they did. They did not pass the vehicle as roadworthy, nor did they agree to produce a report listing every defect. After examining all the evidence the Tribunal Member was not satisfied that the contract terms in evidence would give rise to the contractual damages as claimed. The application against the mechanics was also dismissed.

Commercial Division

Key Facts 2011-2012

Applications

Number of applications received 158

• 5% decrease from 2010-2011

Number of online lodgements n/a

Application types:

• Property, Stock and Business Agents	140
• Finance broking claims under/equal to \$30,000	4
• Finance broking claims greater than \$30,000	1
• Termination - Return of goods	2
• Travel Compensation Fund	1
• Renewal	0
• Rehearing	10

Applicants:

Consumer	138
Debtor	9
Credit provider	6
Client of broker	2
Mortgagee	2
Mortgagor	1
Director-General	0
Guarantor	0

Hearings

Number of hearings 167

Number of adjournments 103

Finalised matters

Number of matters finalised 133

Rehearings and appeals

Number of rehearings granted 3

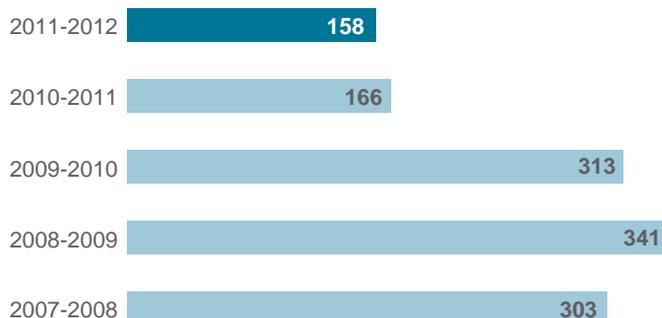
Supreme Court / District Court appeals 2

The Commercial Division has jurisdiction to deal with disputes under the *Property, Stock and Business Agents Act 2002*, *Travel Agents Act 1986* and Schedule 3 of the *Credit (Commonwealth Powers) Act 2010*, including appeals against Travel Compensation Fund decisions and commission fees charged by agents.

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

From 1 August 2012, the Tribunal will hear disputes under the *Agricultural Tenancies Act 1990*.

Application trends



From 1 July 2010 consumer credit matters were transferred to the Commonwealth. This impacted on the number of disputes dealt with by the Tribunal as noted in this graph.

Case studies

An effective cause of sale

Under section 36 of the *Property, Stock and Business Agents Act 2002* the Tribunal may determine the reasonableness of, or entitlement to, a fee or commission or part thereof, charged by a person holding a licence under the Act.

The seller of a restaurant business lodged an application with the Tribunal seeking orders that she did not have to pay \$29,500 commission to the business agent who handled the sale. The seller (the applicant) claimed that the agent was not entitled to any commission as the agent was not present for the necessary negotiations and therefore was not the effective cause of the sale of the business.

The dispute arose after the business purchaser had placed a written offer to buy the business under the restaurant's door on 22 March. The next day, the seller took the offer to the business agent with a request to investigate the potential purchaser's intentions, and if possible to enter into negotiations. An exclusive agency agreement was also signed providing that the agent's commission would be 10% on the first \$80,000 and 8% on the balance plus GST. The exclusive agency period was to commence on 23 March and terminate at midnight on 30 April.

The agent sent a 'sales advice' letter to the purchaser's solicitor and entered into negotiations during March and April which had the effect of increasing the purchaser's offer from \$320,000 to \$340,000. A deposit was paid to the agent, but it was at this stage that the seller claimed that the negotiations had stalled.

At the Tribunal hearing, the seller claimed that the agent travelled overseas shortly after the exclusive management agreement had terminated on 30 April. The seller stated that the purchaser had effectively withdrawn from the sale at that point and that all relevant negotiations which led to the final exchange of contracts on 10 August were undertaken not by the agent, but by the seller with the costly assistance of her solicitor.

The agent did not dispute that he was overseas between May and August. The documentary evidence tendered by the agent showed he did not maintain email contact during that time and that he did not communicate with the seller until 16 August after the sale had taken place. However, the agent claimed that it was his initial written contact with the purchaser that was the effective cause of the sale.

The agent argued that he did all necessary things to facilitate the exchange of contracts prior to his departure, and was therefore entitled to a full commission. The agent presented the Tribunal with a copy of a confidentiality agreement forwarded to the purchaser and a request for information that he answered on 1 April; a lease and floor plan that he forwarded on 3 April; evidence of a meeting with the purchaser on 5 April; the draft contract forwarded on 12 April; and the price of \$340,000 fixed on 18 April. The agent contended that because there had been a "meeting of the minds"

between the vendor and purchaser it was not relevant that he went overseas and was not present for the exchange of contracts.

The Tribunal Member stated to the parties that it was the agent who had to establish that there was a causal connection between the agent's efforts and the completion of the transaction. The agent had to show that he was an effective cause of the sale.

The Tribunal Member found on the evidence that the agent had not introduced the purchaser; rather it was the case that the purchaser was a local who knew the restaurant and approached the seller directly. It was established that the agent entered into negotiations with the purchaser, facilitated an agreement on the price and held the deposit in his bank account at the request of both parties. However, exchanges of contracts for sale had not taken place, nor were negotiations anywhere near finalisation.

During the agent's absence, the parties encountered significant difficulties in finalising the sale. While the agent's absence did not cause the delay, it did nothing to assist the seller and her solicitor in bringing the contract to exchange. It was advice by the seller and her solicitor concerning the lease agreement and the financing of the business that was the effective cause of the sale.

The Tribunal Member made orders that commission was not owing to the agent, and that the agent was to return to the seller the \$29,500 deposit amount that was being withheld as the commission.

Retirement Villages Division

Key Facts 2011-2012

Applications

Number of applications received **86**

• 1% increase from 2010-2011

Number of online lodgements n/a

Application types:

• Recurrent charges	27
• Payment of money and compensation	21
• Termination and vacant possession	8
• Village contract	7
• Village rules	5
• Capital maintenance and replacement	4
• Annual budgets and accounts	3
• Sale or letting	3
• Security and safety	2
• Renewal	4
• Rehearing	2

Applicants:

Resident	47
Administering authority	39

Hearings

Number of hearings	208
Number of adjournments	173

Finalised matters

Number of matters finalised	73
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Rehearings and appeals

Number of rehearings granted	0
Supreme Court / District Court appeals	0

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. Serviced premises or assisted living is sometimes also available.

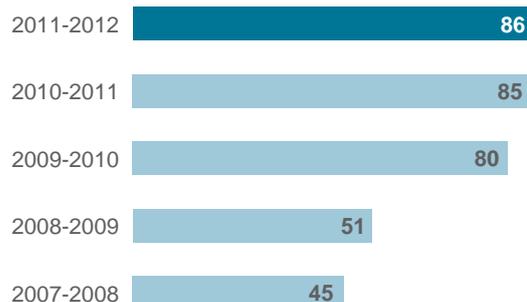
There are hundreds of villages in NSW that are home to tens of thousands of village residents. Churches, charitable organisations and community groups operate many retirement villages, but an increasing number are being operated by private companies. The Tribunal has jurisdiction under the *Retirement 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, recurrent charges, 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.

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

Application trends



Case studies

An effective cause of sale

Jurisdiction, or the power to hear and determine applications, is conferred on the Tribunal by a number of Acts. The Tribunal must be satisfied that it has jurisdiction in any application that comes before it.

Since 1958 a charitable organisation ('the Society') had owned a residential complex that was made up of 24 self-contained units. The occupants had always generally been older persons who required financial assistance for their housing needs. The complex had a shared laundry and other common areas to which occupants had access.

Around the time when the *Retirement Villages Act 1999* came into effect the Society adopted a policy to enter into standard residential tenancy agreements, thereby utilising section 5(3)(h) to exclude the effects of the retirement villages legislation.

When the Society lodged an application to the Tribunal to terminate a residential tenancy agreement of one of its occupants under the Tribunal's Tenancy Division, the occupant lodged a cross-application under the Retirement Villages Division, seeking orders that the *Retirement Villages Act* applied to his agreement.

During the Tribunal hearing, the occupant presented his residential tenancy agreement which contained a special handwritten clause stating "The terms of the *Residential Tenancies Act* do not apply to this Agreement". He also provided a Local Council brochure which referred to the complex as a "retirement village". The Society claimed that the special clause on the agreement was a mistake. They claimed that their complex was not a retirement village, and lacked the "trappings" usually associated with a retirement village. Other occupants were called upon as witnesses who gave evidence in support of the Society.

The Tribunal Member accepted that the special condition was a mistake and not what the parties had intended. However the question remained whether the agreement was caught by the *Retirement Villages Act*. There was no evidence that the complex had any of the features normally associated with a retirement village, such as a "residents committee", "village contracts", "disclosure statements" or "village rules". There were also no "recurring charges" or "departure fees" payable, and there was no paid caretaker or staff.

The Tribunal Member held that the occupant had not proved that he had entered into a contract controlled by the *Retirement Villages Act 1999*. As a consequence, the occupant's application was dismissed.

Village in a strata complex

Both the *Retirement Villages Act 1999* and the *Strata Schemes Management Act 1996* apply to strata retirement villages. The Acts operate side by side with neither one taking priority over the other. In strata retirement villages, the owners corporation is responsible for the maintenance of the common property, and individual residents are responsible for the capital items they own in their unit. In non-strata villages, the operator maintains the capital items that do not belong to residents.

The residents of a strata title retirement village consisting of 40 'assisted living' units and 120 'independent living' units, lodged an application to the Tribunal disputing the increased amount of payroll tax and other expenses in the village budget. The matter was initially listed for mediation, during which a revised budget was presented to the residents. However, the revised budget was rejected.

At the Tribunal hearing, the residents claimed that they should only pay payroll tax as a recurrent charge on the aggregate costs of wages for the whole village that is in excess of the threshold amount, and not the full amount of wages as claimed by the operator. The Tribunal Member found that the ordinary meaning of the *Retirement Villages Regulation* clause 26(d)(i) did not limit the payroll tax which may be financed by way of recurrent charges, as long as the wages were above the threshold limit. The Member dismissed that part of the residents' application.

The residents then argued that the full costs of photocopying should not be included as a recurrent charge. They tendered a letter from the former Operations Manager to the owners corporation confirming that the operator was "responsible for the maintenance and upkeep of the equipment". The Tribunal Member found that the financing of the full cost of maintaining and operating the photocopier cannot be done by way of recurrent charges, and that only the cost of consumables such as paper and toner should be financed in this manner. The Member made orders that the line item for photocopying be reduced by \$3,200.

The residents also disputed the validity of the meetings to consider the proposed budget, and the additional budget and budget notices relevant to higher charges for the assisted living unit residents. The Tribunal found that the operator had the power to call a meeting of the assisted living unit residents only, as it enabled the operator to explain aspects of the budget that were relevant to them only. The Tribunal also found that the assisted living unit residents had consented to the budget.

Orders were made amending the photocopying line item of the budget. The remainder of the application was dismissed.

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 2012:

- ▶ *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

Residential Tenancies Act 2010

Statute law changes commenced on 6 January 2012 making it clear that the Tribunal cannot find a rent increase notice invalid if it is older than 12 months and no challenge to the notice was made during that time.

Home Building Act 1989

The *Home Building Act 1989* was amended with the changes introduced in two stages; the first took effect on 25 October 2011 and the second on 1 February 2012. The changes impacted on the time limits for lodging a claim for defective or incomplete building work at the Tribunal, clarified the definition of completed and also the definition of developer.

Consumer, Trader and Tenancy Tribunal Act 2001

From 6 January 2012 an applicant can now withdraw a strata or community scheme application under section 28 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Travel Agents Regulation 2011

The *Travel Agents Regulation 2006* was repealed and the *Travel Agents Regulation 2011* commenced on 1 September 2011. This Regulation has provided for applications to be lodged in the Tribunal's Commercial Division seeking to appeal against a decision of the Travel Compensation Fund Board in relation to a claim for compensation for persons who suffer a pecuniary loss by reason of an act or omission of a Travel Agent.

Agricultural Tenancies Amendment Act 2012

The *Agricultural Tenancies Amendment Act 2012* was passed by NSW Parliament in February 2012 and is expected to commence early in the next reporting period. The Tribunal is being given jurisdiction to deal agricultural tenancy disputes. The Tribunal will resolve disputes under the *Agricultural Tenancies Act 1990* such as land deterioration or condition, weed growth, financial benefits flowing from the use of the land or making of improvements, and termination of the tenancy.

Appendix 2

Tribunal Members

As at 30 June 2012, the Tribunal's Membership, in addition to the Chairperson and the two Deputy Chairpersons, comprised 9 Senior Members, 10 full-time Members and 56 part-time Members.

Chairperson

Ransome, Kay

Deputy Chairperson (Determinations)

Balding, Margaret

Deputy Chairperson (Registry & Administration)

Wilson, Garry

Senior Members

Bordon, John

Buckley, Richard

Correy, Norman

Goldstein, David

Harrowell, Mark

Meadows, Geoffrey

Paull, Christine

Smith, Jeffery

Vrabac, Nick

Full-time members

Charles, David

Eftimiou, Maritsa

Gray, Fiona

Hennings, Simon

Howe, Bruce

Ross, Katherine

Rosser, Kim

Simon, Theresa

Smith, Peter

Thode, Sabine

Part-time members

Anforth, Allan

Anthony, Kevin

Bailey, Robyn

Barnetson, Diane

Bassett, Graham

Beckett, Angela

Briggs, Phillip

Brophy, Moira

Bryant, Garry

Bullen, Mark

Butler, Rex

Campbell, Cathy

Carpentieri, Antony

Conley, Jennifer

Corley, Susan

Cunningham, Shane

De Jersey, Sancia

Gilson, Mark

Hanstein, Sharon

Harris, Ronald

Harvey, Danae

Holles, Francis

Holwell, Kim

Hunter, Penny

Ilett, Mik

Keher, Christopher

Kinsey, Graham

Lennard, Jann

Levingston, John

Lynch, Joanne

Marzilli, Claudio

McCue, Margaret

McMillan, John

McMurrin, Alan

Moss, Deborah

Mulock, Mark

Nagy, Miranda

Nolan, Dennis

O'Connor, Michael

Pratt, Douglas

Price, Jennifer

Rickards, Kim

Ringrose, John

Sarginson, Gregory

Sheehan, Desmond

Smith, Stephen

Sponza, Walter

Springett, David

Taylor, William

Thompson, John

Topolinksy, Vadim

Turley, David

Williams, Louise

Wilson, Graham

Xuereb, Charles

Ziegler, Deborah

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 over the internet via the online lodgement system at www.cttt.nsw.gov.au, by post, 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 Registry offices, providing a local focus for the resolution of disputes.

Listing

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

Conciliation

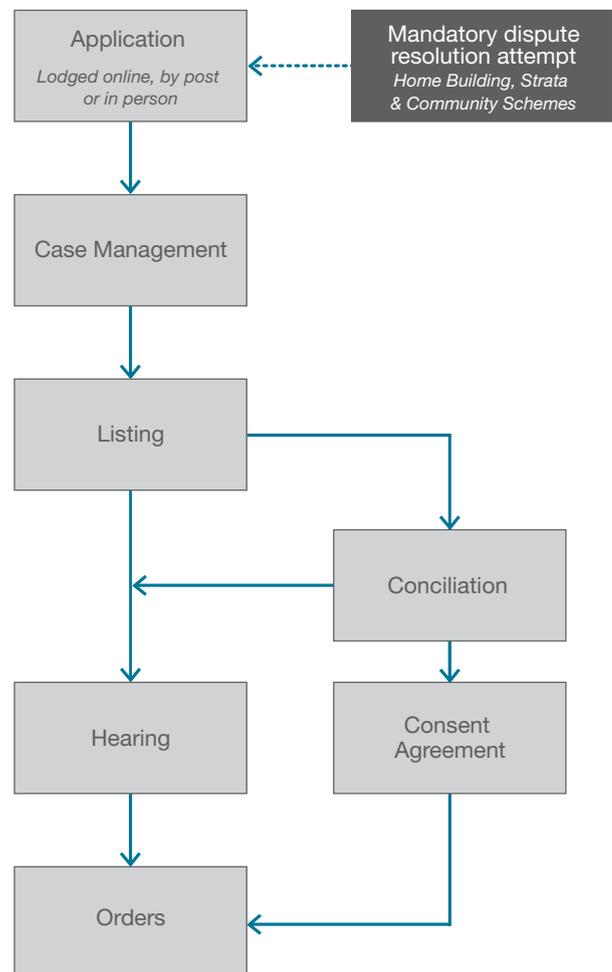
- ▶ If conciliation is successful the Member will make an order on the day without the need for a hearing.
- ▶ Tribunal Members will check that agreements are made without coercion, are legal, and parties understand the agreement.
- ▶ Where conciliation and other forms of dispute resolution are unsuccessful 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 email or post.
- ▶ In complex matters the Tribunal Member may reserve their decision.



Appendix 4

Access to information

All parties to a Tribunal 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.

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 CTTT 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 CTTT 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 CTTT 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.

The *Government Information (Public Access) Act 2009* (the GIPA Act) commenced on 1 July 2010 and 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 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 CTTT comes under the umbrella of the Department of Finance and Services (DFS). Members of the public may visit the DFS website 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 CTTT 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.

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. There is no fee payable for viewing a file however photocopy fees do apply for copies of any documents on the file.

Appendix 5

Consultative forums

The organisations represented on the Tribunal's consultative forums as at 30 June 2012 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 Aboriginal Land Council - Northern Zone
 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
 Consumer Credit Legal Centre
 Disability Council of NSW
 Fair Trading Advisory Council
 Financial Counsellors Association of NSW
 LawAccess NSW
 Legal Aid NSW
 NSW Fair Trading
 Office of Migration Agents Registration Authority
 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
 Law Society of NSW
 Master Builders Association

Master Painters Association
 Master Plumbers Association of NSW
 Moray & Agnew
 National Electrical and Communications Association of NSW
 National Wood Flooring Association
 NSW Bar Association
 NSW Fair Trading
 Paint Solutions & Association
 Royal Australian Institute of Architects NSW Charter
 Russo and Partners
 Shaw Reynolds Bowen & Garathy Lawyers
 Strata and Community Australia (NSW)
 Swimming Pool and Spa Association
 Suncorp

Motor Vehicles Division

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

Residential Parks Division

Affiliated Residential Park Residents Association
 Caravan & Camping Industry Association NSW
 ARPRA 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 & 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
 Management Rights Association (NSW) Inc
 NSW Fair Trading
 Owners Corporation Network
 Property Owners Association of NSW
 Strata Community Australia (NSW)
 UDIA (NSW)

Tenancy and Social Housing Divisions

Argyle Community Housing Ltd
 Common Equity New South Wales
 Dtarawarra Pty Ltd
 Estate Agents Cooperative
 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 2011-2012 reporting period, the Tribunal engaged a total of 2,611 interpreter services for parties needing language assistance during proceedings in 60 different languages. The Tribunal's usage of interpreters during the reporting period is set out below.

Language	Usage	Language	Usage
Mandarin	626	Nepalese	9
Arabic	382	Tongan	8
Cantonese	224	French	8
Korean	220	Urdu	6
Vietnamese	151	Lao	6
Chinese	100	Khmer	6
Spanish	99	Swedish	5
Persian (Farsi)	86	Romanian	4
Italian	70	Filipino (Tagalog)	4
Greek	67	Fijian	3
Russian	62	Burmese	3
Turkish	58	Bengali/Bangla	3
Macedonian	40	Amharic	3
Croatian	32	Somali	2
Serbian	30	Maltese	2
Assyrian	29	Kurdish	2
Japanese	26	Kirundi	2
Indonesian	26	Hungarian	2
Polish	21	Hebrew	2
Punjabi	20	Hazaragi	2
Tamil	19	German	2
Dari	19	Czech	2
Dinka	18	Swahili	1
Auslan (Australian Sign Language)	18	Norwegian	1
Hindi	16	Malay	1
Portuguese	15	Krio	1
Thai	13	Karen	1
Bosnian	11	Finnish	1
Gujarati	10	Dutch	1
Samoan	9	Albanian	1
		TOTAL	2,611

Appendix 7

Hearing venue usage

During the 2011-2012 reporting period, hearings were conducted in across 67 locations throughout New South Wales. The table below lists the hearing venues and the number of hearings held.

Hearing venue	Number of hearings	Hearing days at venue
Sydney	19,187	240
Penrith	7,180	156
Liverpool	5,823	192
Hurstville	5,423	193
Newcastle	5,278	167
Parramatta	4,503	157
Gosford	3,991	185
Wollongong	3,497	141
Campbelltown	3,411	98
Lismore	1,502	124
Tweed Heads	1,205	64
Maitland	1,069	54
Coffs Harbour	1,052	76
Dubbo	955	55
Wagga Wagga	911	60
Port Macquarie	886	66
Albury	797	48
Nowra	773	53
Tamworth	773	66
Queanbeyan	735	51
Taree	572	41
Orange	558	35
Bathurst	467	26
Kempsey	414	21
Muswellbrook	406	24
Blacktown	394	21
Batemans Bay	330	25
Grafton	325	21
Armidale	314	24
Katoomba	309	24
Griffith	282	15
Moss Vale	280	22
Goulburn	269	19
Bega	225	24

Hearing venue	Number of hearings	Hearing days at venue
Moree	220	23
Leeton	169	12
Mudgee	167	18
Cooma	155	13
Broken Hill	128	18
Forbes	124	17
Kiama	103	10
Narrabri	103	19
Inverell	98	14
Cowra	89	14
Gunnedah	85	18
Lithgow	82	8
Glen Innes	79	15
Deniliquin	76	13
Tumut	73	9
Parkes	70	12
Coonamble	58	9
Walgett	54	6
Bourke	41	7
Wentworth	41	19
Condobolin	38	6
Cobar	37	6
Yass	36	8
Nyngan	33	6
Coonabarabran	31	7
Singleton	31	6
Cootamundra	30	7
Brewarrina	18	5
Tenterfield	17	5
Young	15	6
Wilcannia	7	1
Hay	3	1
West Wyalong	1	1
TOTAL HEARINGS	76,408	2,927

Appendix 8

Tribunal performance

Application lodgement

The table below shows applications received by Division and Registry for the 2011-2012 financial year.

Division	Hurstville	Liverpool	Newcastle	Parramatta*	Penrith	Sydney	Tamworth	Wollongong	TOTAL
Tenancy	2,735	4,322	4,827	1,977	4,301	8,608	2,879	2,977	32,626
Social Housing	657	2,449	2,411	726	2,540	2,631	1,819	2,851	16,084
General	505	606	825	454	587	2,469	453	639	6,538
Home Building	402	326	519	220	380	1,318	364	365	3,894
Residential Parks	25	8	1,398	0	58	56	686	75	2,306
Strata & Community Schemes	138	76	126	29	28	904	94	67	1,462
Motor Vehicles	139	228	187	127	200	422	156	190	1,649
Commercial	10	10	36	6	9	75	8	4	158
Retirement Villages	6	5	17	3	3	42	7	3	86
TOTAL	4,617	8,030	10,346	3,542	8,106	16,525	6,466	7,171	64,803

* Parramatta Registry ceased operations at the end of March 2012, with its workload and staff resources redistributed to the CTTT's other registries.

Clearance ratio

The table below shows the Tribunal's clearance ratio by Division for the 2011-2012 financial year.

Division	Clearance Ratio
Tenancy	99%
Social Housing	99%
General	95%
Home Building	99%
Residential Parks	76%
Strata & Community Schemes	93%
Motor Vehicles	92%
Commercial	84%
Retirement Villages	85%
TOTAL	97%

100% = keeping up with workload

<100% = accumulating cases

>100% = reducing existing workload

Appendix 9

Fees and charges 2011-2012

The Tribunal's fees and charges are reviewed each year. This schedule indicates the Tribunal's application fees and charges from 1 July 2011 to 30 June 2012. 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	\$36.00
Strata and Community Schemes Division	\$74.00
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) \$36.00 • Claims or disputes between \$10,000 and \$30,000 \$74.00 • Claims or disputes more than \$30,000 \$191.00 NB. – The maximum claim in the General Division is \$30,000 – The maximum claim in the Motor Vehicles Division is \$30,000 except when the 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) \$36.00 • Claims or disputes between \$10,000 and \$30,000 \$74.00 • Claims or disputes more than \$30,000 \$191.00 	
Pensioners and Students (all Applications)	\$5.00
Rehearings and Renewal Proceedings	Same as original application fee

Charges

Copy of documents	\$2.00 per page (or \$28.00 whichever is greater)
Issue of summons	\$40.00
Sound Recording <ul style="list-style-type: none"> Standard (10 working days) \$24.00 per CD Premium (5-7 working 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

Tribunal publications

The Tribunal provides a wide range of publications to help people access the Tribunal's services. Below is a list of publications:

General Fact Sheets:

- ▶ Conciliation
- ▶ CTTT Online
- ▶ Customer service charter
- ▶ Engaging an expert
- ▶ Getting help
- ▶ Glossary of terms
- ▶ Hearings by telephone
- ▶ Making a complaint
- ▶ Preparing for hearing
- ▶ Rehearing and appeals
- ▶ What we can and cannot do: CTTT Registry staff

Divisional Fact Sheets:

- ▶ Home building division: Claims or disputes under \$30,000
- ▶ Home building division: Conclaves
- ▶ Retirement villages
- ▶ Strata & community schemes division: Adjudication

Other Publications:

- ▶ Introducing the CTTT
- ▶ A guide to the CTTT
- ▶ Ten top tips for conciliation
- ▶ Divisional jurisdiction table

Chairperson's Directions:

- ▶ Acceptance of building claims
- ▶ Adjournments
- ▶ Conciliation and hearing by the same Members
- ▶ Electronic Evidence
- ▶ Expert witness code of conduct
- ▶ Home building disputes over \$30,000
- ▶ Online lodgement
- ▶ Payment of rent owing prior to execution of warrant
- ▶ Personal identifiers in written reasons and reserved decisions
- ▶ Summons
- ▶ Suspension of operation of termination order
- ▶ Termination for non-payment of rent.

Publications for Indigenous and CALD communities:

- ▶ Indigenous: *Getting a fair go at the CTTT*
- ▶ Indigenous: *What happens to a CTTT application?*
- ▶ CALD: below publications are available in the following languages: Arabic, Chinese, Dinka, Farsi, Korean, Spanish, Swahili, Vietnamese
 - o Preparing for hearing
 - o Rehearing and appeals
 - o What we can and cannot do

Appendix 11

Financial summary 2011-2012

The audited financial reports required under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Finance and Services Annual Report 2011-2012.

SALARY AND RELATED PAYMENTS	\$'000
Salaries	7,338
Statutory appointees	5,104
Annual leave	989
Overtime	4
Long service leave	1,098
Superannuation	1,400
Workers compensation	181
Payroll tax	840
Fringe benefit tax	32
Voluntary redundancy	102
	<hr/> 17,088
OPERATIONAL EXPENSES	
Office accommodation	4,053
Postage and couriers	371
Telephones	74
Minor computer purchases and consumables	83
Fees	766
Security services	509
Training and development fees	7
Motor vehicles expenses	(1)
Travel expenses	127
Printing and stores	238
Minor miscellaneous expenses	159
	<hr/> 6,385
Depreciation	596
Ex Gratia payments	31
Total operational expenses	<hr/> 24,100
Corporate administrative on costs	3,386
Total recurrent expenditure	<hr/> 27,486
Capital expenditure	161
TOTAL EXPENDITURE	<hr/> 27,646
FUNDING	
Lodgement fees	(2,390)
Contribution from Consolidated Funds	(3,018)
Contribution from Rental Bond Board	(12,923)
Contribution from Home Building Service	(1,589)
Contribution from Motor Vehicle Repair Industry Authority	(145)
Contribution from Statutory Interest Account	(6,984)
	<hr/> (27,050)
Net Cost of Services	596
Less Non Cash Transactions	596
Depreciation	596
CASH DEFICIT	-

Appendix 12

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 a 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.



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

Follow NSWCTTT   

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

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