



**CTTT**

Consumer, Trader &  
Tenancy Tribunal

Consumer, Trader and Tenancy Tribunal

# **Annual Report**

2007 - 2008

# Minister's Foreword



I am pleased to introduce the 2007-2008 Annual Report of the Consumer, Trader and Tenancy Tribunal, my first as the Minister for Fair Trading.

The Tribunal offers the people of New South Wales an accessible, efficient and affordable conciliation and resolution service for disputes arising from the supply of goods and services and issues relating to residential property.

The Tribunal has had a record year, receiving more than 64,700 applications. This is the highest number of applications since its establishment in 2002.

This signals heightened public awareness of the Tribunal and the assistance it provides to the community. It was involved in 76 community consultation and information sessions to promote greater understanding of its services. The Tribunal will continue to work hard over the coming year, using publications and other communication tools to help people prepare for the dispute resolution process.

In late June 2008, the Consumer, Trader and Tenancy Tribunal Amendment Bill 2008 was passed by Parliament. The NSW Government's reform package builds on a significant review of the Tribunal's legislation and operations.

Accountability will be strengthened in a number of ways, including the establishment of a Professional Practice and Review Committee to enhance member performance, education and professional development.

The Tribunal continues to lead Australia in terms of accessibility. More divisions within its jurisdiction accept electronic lodgement of applications, with 43 per cent now lodged online.

These measures are in keeping with the NSW Government's commitment to delivering better services and a fairer marketplace, and support the role of the Consumer, Trader and Tenancy Tribunal.

Virginia Judge  
**Minister for Fair Trading**

## Letter to the Minister



**CTTT**  
Consumer, Trader &  
Tenancy Tribunal

The Hon Virginia Judge MP  
Minister for Fair Trading  
Minister for Citizenship  
Minister Assisting the Premier on the Arts  
Level 36, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

I am pleased to present the Annual Report for the Consumer, Trader and Tenancy Tribunal for the year 2007-2008.

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

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

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## Chairperson's Report



The year has been another busy one for the Consumer, Trader and Tenancy Tribunal with an increase in the number of applications lodged. The Tribunal has focussed on a number of key areas for enhancing service delivery.

### **CTTT Amendment Act – key features (eg Social Housing Division, peer review) – passage of legislation - implementation of changes in 2008-2009**

Changes to the Consumer, Trader and Tenancy Tribunal Act, developed following an extensive consultation process, were passed by the Parliament in June. These significant reforms will further enhance the Tribunal's capacity to deal effectively with disputes, and streamline administrative procedures. Implementation of the changes will be undertaken between July and December 2008. A key reform is the creation of a new Social Housing Division which will require technological and procedural changes as well as a communication strategy to ensure social housing providers and tenants are informed about the new Division. A Professional Practice and Review Committee will also be established and have a more extensive role than the existing Peer Review Panel. The new Committee will provide an excellent platform not only for performance management, but ongoing education and professional development for Tribunal members, as well as providing enhanced oversight of the Tribunal.

### **Operations Review – implementation update, Review of Professional development**

Implementation of recommendations of the 2006 Review

into the Operations of the CTTT gained momentum with 80% of the sixty-seven recommendations actioned by 30 June 2008. A Professional Development Framework for Tribunal members was developed in consultation with members and senior executives. This provides a structured process that will ensure Tribunal member, community and organisational needs inform professional development priorities and resources are appropriately allocated and used to best advantage. As a result, the Tribunal will be well placed to respond to changing external and internal factors such as developments in case management practice, application of new technology or changes in community expectations. One new approach introduced is a regular e-newsletter aimed at improving communication between myself and the Tribunal members, many of whom are part time and work in regional New South Wales. A conference being planned for the first half of 2008-2009 will also provide members with the opportunity to discuss many issues relevant to their daily work.

### **Communications Strategy – launch of Strategy, initial products**

In January 2008, an Open Day at the Newcastle Registry was chosen for the launch of the Tribunal's new Communications Strategy and conciliation products. The then Minister for Fair Trading, the Hon Linda Burney, launched the Strategy which was developed in response to independent market research that confirmed consumers want tips and advice on what to expect at the Tribunal and how to participate in the dispute resolution process. The three year framework set in the Strategy will guide

the development of a range of information products to meet the needs of service users and increase community awareness and understanding about the Tribunal and its processes. The research identified an urgent need for more information about the conciliation process, and the first set of educational products developed under the Strategy, the '10 Top Tips for Conciliation' and the 'Conciliation Fact Sheet', were also launched in January. Financial stress being experienced by many in the community prompted the development of another new information product which was launched by the Minister in May at a financial counselling conference. The event offered a good opportunity to draw attention to the new 'Consumer Credit Hardship Fact Sheet' that helps people through the process of applying to vary their loan repayments when they encounter temporary repayment difficulties.

#### **Aboriginal initiatives – increased consultation and a new Forum**

During 2007 and early 2008, the Tribunal held a series of meetings with representatives from Aboriginal Tenancy Services from south west and northern New South Wales, Local Aboriginal Land Councils on the south coast, and representatives from the Aboriginal Housing Office. These meetings sought to encourage a better understanding about the Tribunal's services, and provided an opportunity to develop a partnership between the Tribunal and organisations working with Aboriginal communities.

This consultative program culminated in a "Have Your Say Get Together" event at the Tribunal's Sydney offices. It brought together representatives from various Aboriginal organisations working in areas relevant to the Tribunal's operations. It was a very productive meeting and I was pleased with the level of participation and the many ideas that were generated about the information and other needs of Aboriginal organisations and consumers. "Get Together" participants agreed an ongoing and productive partnership between Aboriginal organisations and the Tribunal is important. This led to the establishment of a new Aboriginal Consultative Forum in June 2008. Funding of \$30,000 from the Office of Fair Trading will assist the Tribunal, in consultation with forum members, to develop a range of culturally appropriate information products specifically tailored to meet the needs of Aboriginal tenants, consumers and organisations.

#### **Technology – enhancements, new approaches and increased online lodgement**

Technology was once again important in helping the Tribunal achieve its service objectives. A new Case Management System custom designed to support the Tribunal's business processes was implemented in September 2007. The system provides improved speed and stability, and has enabled the seamless integration of our online lodgement website and InCourt system whereby parties receive their orders in writing at the end of the hearing. The project impacted upon all operational areas and its successful implementation was due to the co-operation and assistance of all Registry staff and members.

#### **Statistical trends 2007-2008**

This year the Tribunal dealt with the largest number of applications since its establishment in 2002. More than 64,700 applications were received and tenancy continued to be the busiest Division. Online lodgement via the CTTT website also increased, with 43% of applications lodged over the internet. This report includes a detailed breakdown of applications for each of the eight Tribunal Divisions.

None of the achievements of the Tribunal would be possible without the considerable skill and dedication of the members and staff. The Tribunal works in a difficult environment dealing with issues that affect people's daily lives. Emotions can run high and sometimes the outcome is not what the person had hoped for. The members and staff of the Tribunal are to be congratulated for the professionalism they show in dealing with the Tribunal's large workload.

Kay Ransome  
**Chairperson**

## Key Statistics for 2007-2008

### 64,748 applications lodged

- 1% increase from last year
- 43% of all applications lodged online – up from 37% last year

### 77,961 hearings held

- 21 days average time between lodgement and first hearing
- 75 venues across New South Wales were used for Tribunal hearings in this year

### 68,997 applications finalised

- 77% of matters finalised prior to or at the first hearing
- 69% of matters finalised within 35 days – up from 68% last year

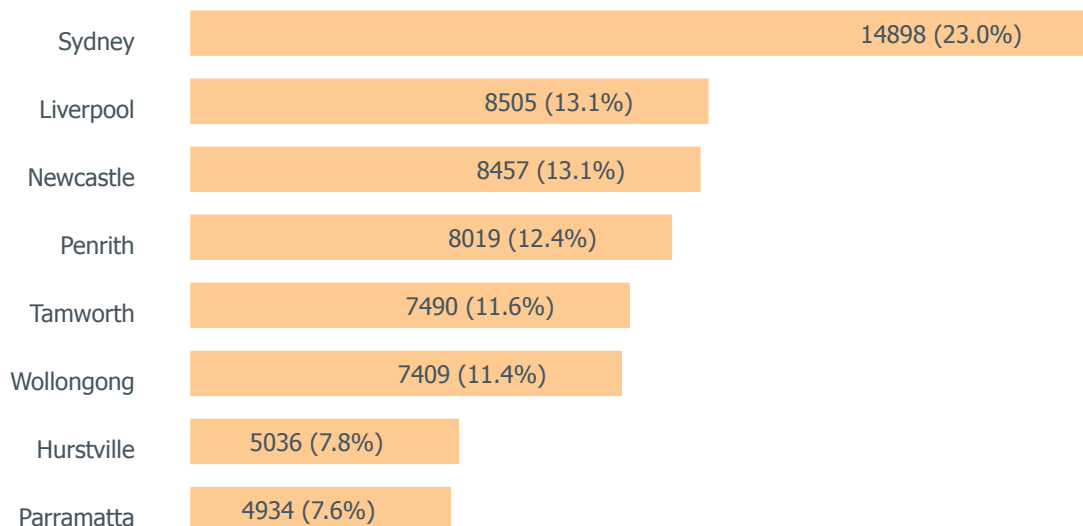
### 76 community consultation & information sessions held

- 21 divisional and regional consultative forums held for stakeholder groups
- 58 community information and education sessions involving staff and/or Tribunal members

### 184,300 website visits

- 8% increase from last year
- Most website hits were for application forms and hearing schedule pages

## Applications by CTTT Registry

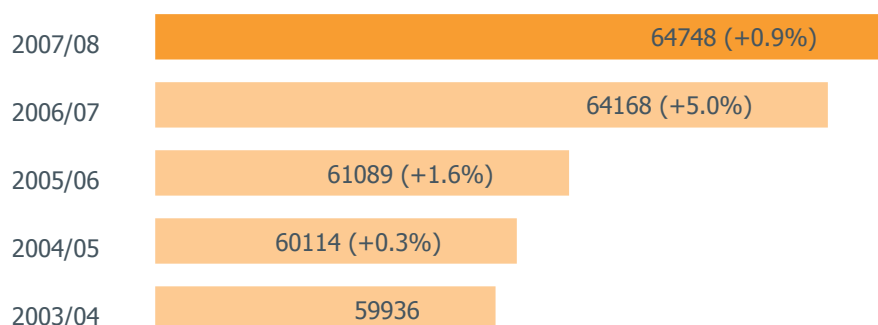


## Applications by Division

DIVISION	Number	% of total
Tenancy	51080	78.9%
General	5971	9.2%
Home Building	3610	5.6%
Residential Parks	1313	2.0%
Strata & Community Schemes	1374	2.1%
Motor Vehicles	1052	1.6%
Commercial	303	0.5%
Retirement Villages	45	0.1%
<b>Total</b>	<b>64748</b>	<b>100.0%</b>

## Applications – 5 year comparison

This graph shows percentage increases in total applications received each year compared to the previous year.





## Our Objectives



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

Nineteen pieces of legislation, listed in Appendix 1, give the Tribunal jurisdiction to resolve disputes brought to its eight Divisions – Tenancy, General, Home Building, Residential Parks, Strata & Community Schemes, Motor Vehicles, Commercial, and Retirement Villages. Changes to the Act that passed through the Parliament at the end of June 2008 provide for a ninth Division that will handle residential tenancy disputes relating to social housing premises. The Social Housing Division will commence operation from 1 October 2008.

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

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

### Accessibility

The Tribunal meets this objective through its broad geographic accessibility, the way in which proceedings are conducted, the assistance it provides to people with additional needs, and the ready availability of information about Tribunal processes.

### Geographical Access

The Tribunal's eight registries receive applications and provide a local focus for the case management of matters which are allocated to the Registry nearest to where the goods and services were provided, or in the case of tenancy, the location of the rental property. Applications can also be lodged with the 25 Fair Trading Centres operated by the Office of Fair Trading or any of the State's 149 Local Courts. Fair Trading Centres can also provide information on the role of the Tribunal, options available for resolving disputes and steps in lodging an application. Online lodgement is possible for most applications and this facility is accessed through the website [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au).

Hearing rooms are located at each of our eight registries, in addition to hearing venues located at Blacktown, Campbelltown, Dubbo, Gosford, Lismore, Queanbeyan and Wagga Wagga. Hearings are conducted in various metropolitan and regional locations ensuring our services are delivered locally across the State. In 2007-2008 hearings were held at over 75 locations and 40% of Tribunal members were regionally located, providing a prompt service in regional New South Wales. The high number of part-time members allows greater flexibility in allocating members to hearings according to seasonal demand.

Telephone hearings enable access by parties who may not be located near the place of dispute. The Tribunal regularly conducts hearings and takes evidence from witnesses by telephone.

## Additional Needs

The Tribunal offers a range of services to assist people with additional needs to access its services.

### • Culturally and Linguistically Diverse Communities

Professional interpreters are available free of charge to assist parties during hearings and provide language services via telephone when requested. In 2007-2008, a total of 4,360 requests for interpreter services were received, with the most common languages being Mandarin, Arabic, Cantonese, Korean, Vietnamese, Spanish and Greek. In addition, Tribunal staff can provide assistance in 11 languages.

The Tribunal's CD entitled 'CTTT – We're talking YOUR language' is available in Arabic, Cantonese, Greek, Korean, Mandarin, Spanish and Vietnamese. It offers an easy-to-understand guide to the Tribunal's services and information on how to prepare for a hearing. The CD can be accessed from our website and copies are also available from the Tribunal's offices. The CD complements other general information available from the Tribunal.

### • Hearing Impaired

Auslan interpreters are provided free of charge for people with a hearing impairment, and 42 interpreters were used during the year. A TTY telephone and hearing loop service is also available. The CD 'We're talking YOUR language' provides information in visual format.

### • Residential Parks

As in previous years, in 2007-2008 the Tribunal responded to the additional needs of applicants in residential parks who often lodge applications in relation to rent increases. Generally a large number of applications are lodged at the same time and in order to streamline the management of these matters and to enable residents to support each other through the hearing process, these hearings were held on residential park grounds or in venues nearby.

### • Aboriginal and Torres Strait Islanders

During the year the CTTT stepped up its activities to increase awareness of, and accessibility to, dispute resolution services for Aboriginal people. In addition to information sessions, there was a series of consultations

with Aboriginal organisations located across New South Wales. A 'Have Your Say Get Together' event held in March 2008 involved Aboriginal organisations from around the State, and resulted in the establishment of the CTTT Aboriginal Consultative Forum. This Forum will be consulted on new information products about Tribunal services to meet the needs of these communities. The Forum will also help the Tribunal to provide culturally appropriate services that are and accessible by Aboriginal people.

During 2007-2008 the Tribunal established and filled the position of Deputy Registrar, Aboriginal Conciliation. The Conciliator assists people to resolve their disputes through conciliation (talking and coming up with acceptable solutions), and also has an important role in informing Aboriginal consumers and community workers about the Tribunal's services.

## Technology enhances accessibility

Technology is helping the Tribunal to make its proceedings more accessible and transparent. In Tribunal venues which are linked to the IT network, hearings are sound recorded and the member makes orders using the InCourt software system which enables orders to be captured and stored electronically in the Case Management System database. In many cases the order is printed and provided to the parties as they leave the hearing room. Around 44% of orders are issued through InCourt which operates at all Registry locations.

Other jurisdictions have shown interest in this technology, and during the year members from the Victorian Civil and Administrative Tribunal and the ACT Law Courts and Tribunals visited the CTTT to see InCourt, the Case Management System, and the Online Lodgement System in action.

Sound recording of proceedings will also increase as a result of amendments to the Consumer, Trader and Tenancy Tribunal Act passed by the Parliament on 24 June 2008. In future, the Tribunal will be required to make sound recordings of all hearings, as far as is reasonably practicable, and to keep the recordings for seven years. This will enhance the transparency of Tribunal hearings and will be facilitated through the

rollout of laptop computers with wireless recording capability to all Tribunal members. This wireless network will also enable InCourt to be expanded, allowing Tribunal members to make orders using InCourt at any hearing location in NSW.

Parties can purchase copies of the recording and transcripts of their hearing, and may also request a statement of reasons in relation to their matter. Reserved decisions and decisions where parties have requested written reasons are published on the Australasian Legal Information Institute's website [www.austlii.edu.au](http://www.austlii.edu.au).

## Access to Information and Services

"CTTT online" is one of a suite of Tribunal services available from the website at [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au).

The website continues to be a valuable source of information for parties and the broader community. During 2007/08, 184,300 website visits were recorded – an 8% increase in visitors to the website compared to the previous year. The most popular web pages were:

- Application forms
- Hearing schedule
- Preparing for a hearing

The CTTT's new look website was launched in April 2008 to comply with the NSW Government Website Style Directive and the recommendations of the Ipsos client research undertaken in 2006/07. As a result, the website has a fresh modern look and feel, with a simplified menu structure allowing users to more easily find information.

Applications can be lodged online through the website by individuals and organisations. This facility enables applications to be registered immediately and many users receive information about their hearing automatically. In 2007/08, 43% of all applications were lodged online – the highest usage since online lodgement was introduced.

### Increasing uptake of online lodgement

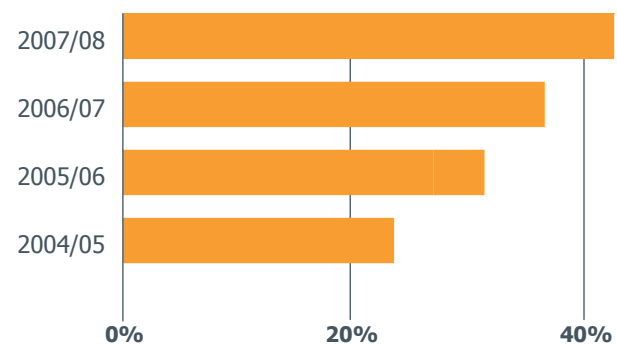
Online lodgement of applications to the CTTT commenced on 23 October 2003 for Tenancy Division applications. In 2004/05 the service was enhanced to also accept Residential Parks Division applications. Further expansions of the service in 2006/07 added General, Home Building, and Motor Vehicle Divisions, allowing applications for five Tribunal Divisions to be lodged online.



In April 2008, the CTTT's Business Development Unit won an award in the Team Innovation section at the 2007 Commerce Service and Excellence Awards. The award was presented for the development and implementation of the InCourt System.

CTTT online

### Growth in online lodgement 2004/08



A new Case Management System implemented in September 2007 was custom designed to support the Tribunal's business processes and provide better speed and improved stability for users. The Online Lodgement website and the InCourt system are seamlessly integrated with the Case Management System.

## Communications Strategy 2008-2010

The launch in January 2008 of the CTTT's Communications Strategy 2008-2010 provides a more structured approach to the delivery of information to a broad audience. It will also help guide consultation with clients and stakeholders to ensure access to services and operations reflect community needs and expectations. The Strategy was informed by various information sources, particularly qualitative market resource conducted by Ipsos Australia Pty Ltd (Ipsos) into clients' experience of the Tribunal.

In the first six months of the Strategy, the following new publications were released:

- 10 Top Tips for Conciliation
- Fact Sheet – Conciliation
- Hardship Variation Fact Sheet.

Other publications under development at the end of the reporting period included two for Aboriginal audiences, a new 'Getting Help Fact Sheet', and material relating to changes arising from the Consumer, Trader and Tenancy Tribunal Amendment Bill 2008 passed by the Parliament in late June 2008.

## Information Sessions and Guest Speakers

The Tribunal is actively involved in building and maintaining working relationships with the community through the provision of information. In 2007-2008, the CTTT conducted information sessions, participated in inter agency activities, and responded to requests for guest speakers. Highlights this year included:

- I. Information sessions:
  - General public information sessions in the Illawarra, Western and South Western Sydney, Sydney and New England regions.
  - Division specific information sessions in the Hunter, North Coast and Sydney Regions involving sessions tailored to meet the needs of specific groups on various issues – including home building in relation to flooding, and residential park matters.

- An information session for community workers and organisations to provide assistance to those who provide support and services to persons from culturally and linguistically diverse backgrounds.

- II. Open days at the Sydney, Penrith and Wollongong Registries during Law Week in March/April 2008 to help people learn more about the Tribunal and provide an opportunity to speak to staff face to face.
- III. Participation in 21 Community and Regional Access Programs for real estate agents and private landlords, and community stalls and expos organised by the Office of Fair Trading. Locations visited included Canterbury, Kempsey, Wyong, Toronto, Lidcombe and the Nepean area.
- IV. Guest speakers were made available on 37 occasions to a wide variety of organisations, including the Master Builder's Association, Chinese Australian Services Society, Joint Aboriginal Housing, Housing NSW, Real Estate Institute and the Aboriginal Housing Office.



**Kay Ransome, Chairperson, presenting at a CTTT Information Session**

## Consultative Forums

The Tribunal continued its active consultation program with key stakeholders, and in 2007-2008 a total of 21 divisional and regional consultative forums were held for stakeholder groups. Consultative Forums continued to have a key role in ensuring ongoing dialogue with community and industry peak bodies. During the year, an e-newsletter was introduced to keep forum members informed about activities and developments relevant to these stakeholder groups. Planning for the first meeting of the new Aboriginal Consultative Forum was also underway towards the end of the reporting period. A list of all organisations represented on the Forums for each Division is provided at Appendix 5.

## Timeliness

The Tribunal's Guarantee of Service identifies performance timeframes within which parties can expect their applications to be listed for hearing and finalised. For example, generally the first hearing date will occur

within 10 to 28 days of the date an application is received by the Registry. The following tables indicate the Tribunal's timeliness in dealing with applications during 2007/08.

Finalisation Period – percentage of applications from lodgement to finalisation	0-28 days	29-35 days	36-49 days	50+ days
Tenancy	71%	6%	7%	16%
General	41%	9%	14%	36%
Home Building =<\$25K	28%	11%	12%	49%
Home Building >\$25K	6%	3%	4%	87%
Home Building other	65%	6%	7%	22%
Residential Parks	19%	8%	12%	61%
Strata & Community Schemes	23%	4%	6%	67%
Motor Vehicles	16%	11%	18%	55%
Commercial	35%	9%	10%	46%
Retirement Villages	24%	15%	13%	48%
<b>All Divisions</b>	<b>63%</b>	<b>6%</b>	<b>8%</b>	<b>23%</b>

Finalised prior to or at first hearing	% of applications
Tenancy	79%
General	72%
Home Building =<\$25K	62%
Home Building >\$25K	29%
Home Building other	90%
Residential Parks	77%
Strata & Community Schemes	87%
Motor Vehicles	64%
Commercial	70%
Retirement Villages	76%
<b>All Divisions</b>	<b>77%</b>

Clearance Ratio	% of applications
Tenancy	102%
General	101%
Home Building	98%
Residential Parks	106%
Strata & Community Schemes	93%
Motor Vehicles	99%
Commercial	98%
Retirement Villages	102%
<b>All Divisions</b>	<b>101%</b>

**\*\*Note: The clearance ratio relates incoming volume with the Tribunal's capacity to finalise its cases. The statistics in this table include cases carried over from the previous year and finalised in 2007-2008.**

## Consistency

Tribunal members operated within a legislative framework to achieve the Tribunal's objective of providing consistent and fair decisions. Tribunal members are subject to standards of behaviour set out in a Code of Conduct. The Code also provides guidance to members in the performance of their statutory functions and in identifying and resolving situations which may present ethical conflicts.

The Tribunal has a wide range of formal and informal mechanisms to enhance and monitor its performance in achieving its objective of fair and consistent decision making. For example, Chairperson's Directions issued under section 12 of the Act prescribe the procedures to be followed by Tribunal members and parties. These Directions are available from the website. Translated versions are also available in Arabic, Chinese and Vietnamese.

Indicators of Tribunal performance include the rate of applications for rehearing, appeals to the Supreme Court and letters of complaint concerning Tribunal decisions.

In 2007/08 there were:

- 1774 applications for rehearing, representing 2.7% of all applications received. Of the 1648 rehearing applications determined during the year, 39% were approved for rehearing by the Chairperson or delegate.
- 50 known appeals to the Supreme Court, 13 of which were upheld/remitted which represented 0.02% of all Tribunal decisions in 2007-2008.
- 967 written complaints (including ministerials) from Tribunal clients, with a common complaint being dissatisfaction with decisions not made in the complainant's favour. This represents 1.5% of the total number of applications received.

Changes to the Consumer, Trader and Tenancy Act which passed through the NSW Parliament in late June 2008 provided for the establishment of a Professional Practice and Review Committee to replace the existing Peer Review Panel. The new Committee will have a broader role and will bring an independent approach to professional development and performance building for Tribunal members.

Members were required to participate in a member Performance Assessment and Review process with the Chairperson, which met the obligation under the Act for members to enter into and comply with a performance agreement. Members also participated in a continuous cycle of reviews of decisions, outstanding decisions and reserved decisions. A member's intranet site kept members up to date on legal and procedural issues, and on precedents and impacts of decisions made in other jurisdictions. Members also participated in a number of training activities during the year.

During the year, the Tribunal developed and implemented a comprehensive complaints management policy. The policy provides guidance to staff and management when handling complaints or customer dissatisfaction. The new policy is reflected in printed materials such as the 'Making a Complaint Fact Sheet' and other material available on the intranet and website. The complaints management system adopted allows the Tribunal to add value by using complaints data to identify areas where our business processes and systems can be improved. A diagram of the complaints handling process is available at Appendix 4.

## Informal

Tribunal hearings are conducted in an informal manner which allows people to best present their evidence at the hearing. The Tribunal is not bound by formal requirements such as the strict rules of evidence. Before a matter comes before the Tribunal, every effort is made to resolve the dispute in the more informal environment of conciliation and other forms of alternative dispute resolution. Alternate strategies in the Home Building Division include expert conclaves which are held on the site of the dispute and are often facilitated by a Tribunal member.

Tribunal members aim to conduct hearings in a way that ensures the evidence of both parties is heard and that people who are putting forward their own cases are not fettered by unnecessary or unhelpful procedures and protocol. Most matters are heard without legal representation although the Tribunal may grant the right to representation.

## Inexpensive

The Tribunal offers a low cost service to its users. Application fees in most Divisions were \$32 in 2007-2008, and pensioners and students only paid \$5 for their applications.

Some 77% of matters were finalised prior to or at the first hearing. This significantly reduced the time and cost for clients, particularly in terms of travel and time taken off work to attend hearings. Ready access to hearing venues also reduces travel costs for parties, and telephone hearings are conducted. Interpreters and hearing impaired services are provided at no cost to the parties, and as legal representation is not required this also helps to make the Tribunal an inexpensive forum for dispute resolution.

# Our People

## Kay Ransome

Chairperson since September 2002. Kay has worked in a number of tribunals since 1990 and is presently the Chair of the Council of Australasian Tribunals.

The Chairperson is responsible to the Minister for Fair Trading for the efficient and effective operation of the CTTT and the management of the CTTT's work. This includes member management and performance, the application of a Code of Conduct for members and issuing Chairperson's Directions to enhance consistency in Tribunal decisions and processes.

*"The Tribunal's main emphasis this year has been upon enhancing the information we provide to people so they can participate fully in the Tribunal's proceedings. At the same time, I have been focusing on the training and skills development of members so that the Tribunal's services can be delivered in a consistent, professional way across the State. To me it is vitally important that the Tribunal's procedures are transparent and capable of being understood by the average party. Members must also possess the skills to ensure the proceedings are conducted fairly."*



## Nick Vrabac

Deputy Chairperson (Determinations) since February 2002. Nick has had extensive experience as a legal practitioner in both the private and public sectors.

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

*"In every dispute before the Tribunal the charter is given to assist parties reach an agreement by negotiation or to make a decision according to equity, good conscience and the substantive matters of the case. My priority is to work closely with the Members to ensure that we have the right people in the right place applying their particular expertise in administering the charter."*



## Elizabeth Tydd

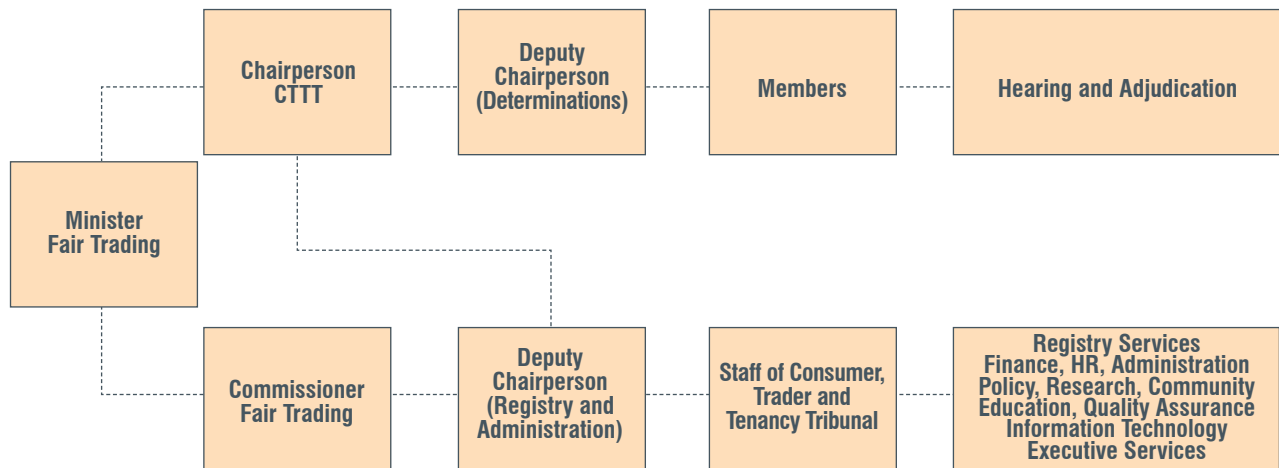
Deputy Chairperson (Registry and Administration) from February 2002, in June 2008 Elizabeth moved from the Tribunal to take up an Assistant Commissioner position within the Office of Fair Trading.

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

*"This year was another busy and exciting one for me and my team. Some significant milestones were reached - including the January 2008 launch of the CTTT Communications Strategy to guide information delivery about the Tribunal and its processes, and the establishment of a new Aboriginal Consultative Forum to provide a conduit between the CTTT and Indigenous communities. Another milestone was the passage of a package of changes to the Consumer, Trader and Tenancy Tribunal Act through the Parliament in late June 2008. The changes will enhance the CTTT's delivery of a proportionate, accessible and timely dispute resolution service, and will also lead to efficiencies for the Tribunal."*







## Registry and Administration

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

At 30 June 2008, there were 124 staff attached to the Tribunal.

The focus of the Registry is to provide administrative support to the dispute resolution and hearing functions. The Registry also manages resources and budget, provides strategic direction and delivers a range of essential services.

The Registry consists of the following five key areas of performance and accountability:

- **Registry Services:** Responsible for the case management of applications and management of the eight CTTT Registry offices, staff and conciliators.
- **Continuous Improvement:** Education and information services, policy and program development, quality assurance and performance reporting.
- **Business Development:** Delivery of technological solutions for improved performance reporting and service delivery.
- **Executive Services:** High level support to the Minister, Chairperson, Commissioner for Fair Training, and the CTTT executive – including responding to complaints.
- **Resource Management:** Management of human resources, financial resources and administrative services, and compliance with Department of Commerce's governance requirements.

## Tribunal Members

In addition to the Chairperson and two Deputy Chairpersons, as at 30 June 2008 the Tribunal had 5 Senior Members, 11 full-time members, and 58 part-time members. A full list of members is provided at Appendix 2.

Senior members assist the Chairperson and the Deputy Chairperson (Determinations) in member professional development and mentoring, and hear more complex cases.

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

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



**Senior Members**

(back row) Reg Connolly, Tania Sourdin, Graeme Durie  
(front row) Christine Paull, Margaret Balding, John Bordon

# Our Work

## Dispute Resolution

One of the aims of the Tribunal is to assist parties to a dispute to engage in conciliation to come to a mutual agreement and achieve early settlement. Conciliation has many benefits including increased control by the parties over the outcome of the dispute, more likelihood of a negotiated agreement that is acceptable to both parties, and a reduction in the use of Tribunal resources. Conciliation is also a legislative requirement.



**Tribunal conciliation process in action**

Conciliation is used at the Tribunal for matters in the General, Tenancy, Home Building, Commercial, and Motor Vehicles Divisions. Conciliation is also used for matters involving multiple applications about the same dispute, for example residential parks and retirement villages matters.

Before an application is lodged with the Tribunal for the Home Building and Strata & Community Schemes Divisions, it is compulsory for the parties to attempt to resolve their dispute. The Home Building, Strata & Community Schemes and Motor Vehicles Divisions include dispute resolution processes facilitated by the Office of Fair Trading.

In complex home building matters, mediation and case conferences are also used as an alternative to a formal hearing. In large home building cases experts may be engaged in what is called an 'expert conclave of the parties'. This process is conducted by a specialist Tribunal member and utilises the skills of people who have extensive experience in the industry and in home building matters.

Following recommendations from the 2006 Tribunal Operational Review, during the year the Tribunal launched a Conciliation Consent Orders Pilot. This program enabled the Deputy Registrar (Conciliation) in the Newcastle Registry to make consent orders following the successful

conciliation of matters, rather than the parties being referred back to a Tribunal member to make the orders. The aim of the pilot was to establish whether the making of consent orders by Deputy Registrars instead of members would reduce hearing times and increase efficiency and user satisfaction.

The pilot was commenced in Newcastle in May 2008 and was limited to matters within the Tenancy, General and Home Building Divisions. The pilot period ended in August 2008, and a formal evaluation is currently underway.

## Hearings

In some cases where conciliation is not successful or where it is not suitable, a dispute between parties will be heard by a Tribunal member. Both parties are given the opportunity to present their evidence to a member who will then make a decision based on the evidence and the relevant legislation, for example in home building matters the *Home Building Act 1989*.

In most cases, where the amount being disputed is less than \$25,000, the first hearing will be a 'group listing' when a number of matters are listed at the same time before a Tribunal member. If the parties reach an agreement, the member will make consent orders. Where the parties do not reach an agreement the member may proceed to hear the matter on the day or stand the matter over for a formal hearing at a later date.

Special fixtures or formal hearings are used where attempts at settlement have failed, the matter cannot be finalised on the day and more time is required to hear the case. These hearings can run over a few hours or over several days.

Directions hearings are used in complex matters and these hearings involve the member in providing 'directions' on matters such as: whether the Tribunal has jurisdiction to hear the matter; what the issues of the dispute are; how long the hearing will take; or directions for the exchange of evidence between the parties. 'Directions hearings' are usually used in large home building and complex strata matters.

Matters can also be determined 'on the papers' if the parties to a dispute agree to this. This is where all the evidence of both parties is provided in documentary form. The material is considered by a member who then provides a written decision to the parties.

All applications for adjudication in the Strata & Community Schemes Division are dealt with 'on the papers'; applications for rehearing in all Divisions are also dealt with in this way.



**Tribunal hearing**

The Tribunal continues to explore new and innovative ways to improve service delivery and access to the Tribunal. For example, during the year a video conferencing pilot project was undertaken to test the use of video conferencing at hearings where participants were at remote locations. The pilot results indicated current video conferencing technology is not yet developed to the level of automation and flexibility required to serve the needs of the Tribunal and the parties.

## Decisions and Orders

In most cases the Tribunal member makes a decision on the day of the hearing. Decisions are usually accompanied by brief oral reasons and are delivered in the form of an order that is provided to the parties in writing. Tribunal members are increasingly using the InCourt facility. In 2007-2008, 44% of orders were issued via InCourt and this assisted the efficiency of Tribunal processes in various ways, including reducing risk of error and problems associated with parties not receiving orders sent by post.

In some more complex matters the decision may be reserved and made available in writing to the parties at a later date. Reserved decisions include reasons explaining how the member came to the decision.

Tribunal decisions are legally binding. The Chairperson may grant an application for a rehearing if it can be demonstrated that the applicant may have suffered a substantial injustice. A party may lodge an appeal with the Supreme Court only on a matter of law. From 1 September 2008, appeals will

be to the District Court following changes in the *Courts and Crimes Legislation Amendment Bill 2008* passed by the Parliament on 25 June 2008.

Where a decision requires one of the parties to pay an amount of money to another party, an order is made. If the amount is not received by the date specified in the order, upon request a certified money order is issued to the party who is to receive the amount. The money order can be enforced through the Local Courts. Where a work order is made and the party who is required to do the work does not comply with the order within the time specified, the aggrieved party may seek to renew the proceedings so that the Tribunal can make another order, which may include a money order.

## The Tribunal Process

### Applications

- Applications can be lodged by post, through *CTTT online*, at one of the Tribunal's eight registries, a local Fair Trading Centre or Local Court.
- Home Building and Strata & Community Schemes disputes must undergo an external dispute resolution process before an application can be lodged with the Tribunal.

### Case Management

- Applications are case managed by one of the Tribunal's eight registries.

### Listing

- The majority of applications, mainly consumer and tenancy matters, are listed for conciliation and hearing.

### Conciliation

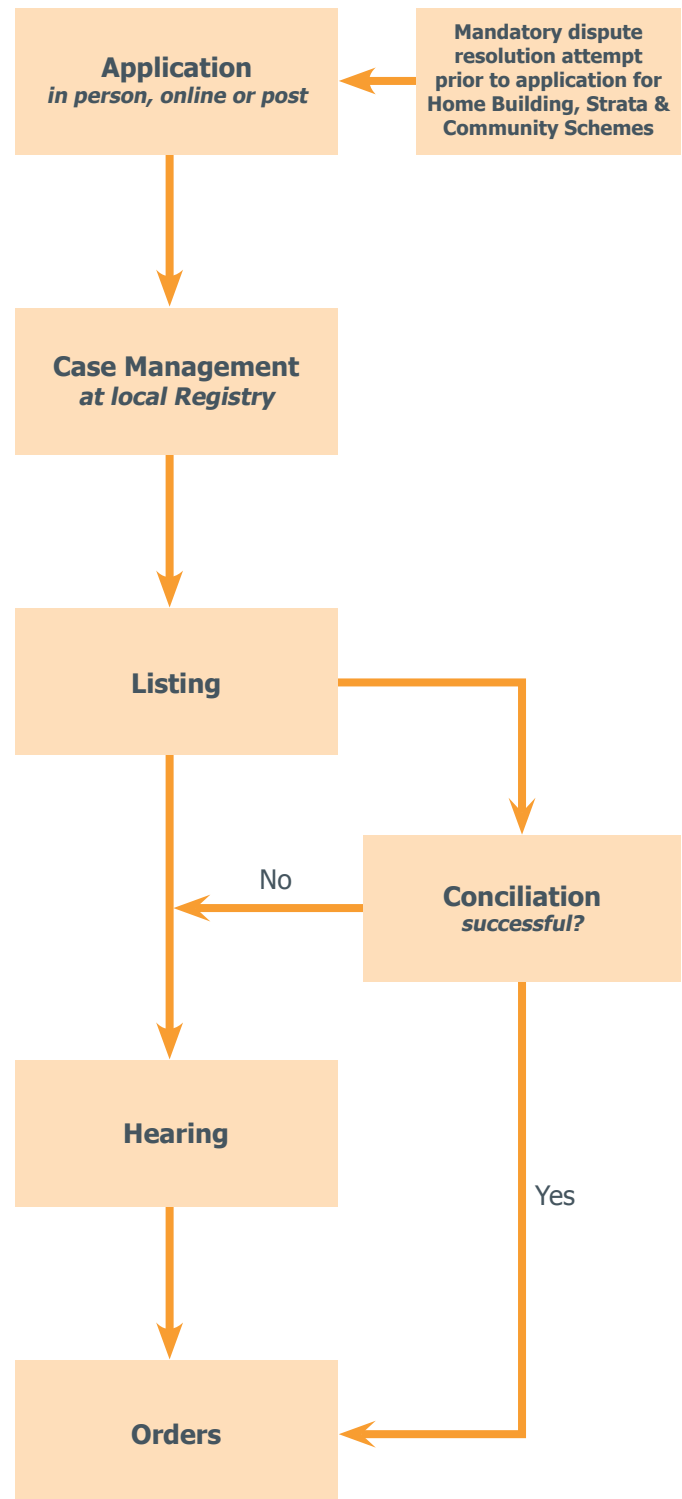
- If conciliation is successful the member will make an order on the day without the need for a hearing.
- Where conciliation and other forms of dispute resolution are unsuccessful the matter goes to a hearing.

### Hearing

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

### Orders

- In very complex matters members may reserve their decision.
- In certain circumstances a rehearing may be granted by the Chairperson or an appeal lodged in the Supreme Court.



# Tenancy Division

## Jurisdiction

- Residential Tenancies Act 1987
- Landlord and Tenant (Rental Bonds) Act 1977

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

## Key Facts 2007 - 2008

### Applications

Number of applications received 51,080  
 • 3% increase from 2006-2007

#### Application types:

• Termination	26,676
• Breach/Compensation	8,590
• Rental Bond	5,312
• Special Social Housing Provisions	4,961
• Other	1,901
• Access to Premises	1,353
• Excessive Rent Increase	375
• Excessive Rent	317
• Abandoned Premises/Goods	250
• Renewal	68
• Recognition as a Tenant	59
• Rehearing	1,218

#### Applicant:

• Landlord	42,996
• Tenant	8,021
• Occupant	63

Number of online lodgements 25,628

### Hearings

Number of hearings	59,302
Number of adjournments	11,898

### Finalised Matters

Number of matters finalised	55,363
Final Orders:	
• Made at hearing	32,776
• By consent	13,334
• Withdrawals	9,253

### Key Performance Indicators

90% listed for hearing within 28 days  
 79% finalised prior to or at first hearing  
 77% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted	505
Supreme Court appeals determined	17

## Overview

Living in a rental property means that a tenant has entered into a 'residential tenancy agreement' with a landlord. The Tenancy Division deals with disputes between landlords and tenants who have entered into such an agreement.

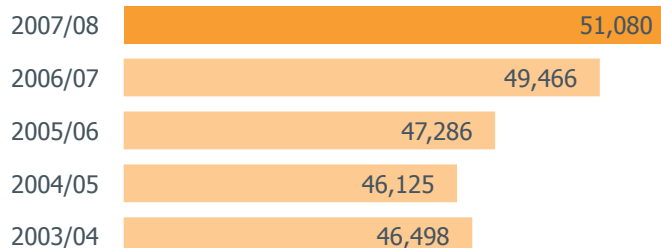
The Tribunal can hear and determine applications from landlords, tenants and occupants. The common types of issues that arise in this Division include not fulfilling promises under lease agreements, excessive rent increases, termination of rental agreements and return of rental bonds.

The Tenancy Division receives the bulk of applications to the CTTT, and during the reporting period 79% of all applications were dealt with in this Division.

Changes to the *Consumer, Trader and Tenancy Tribunal Act 2001* at the end of 2007/08 introduced a new Division that will change the operation of the Tenancy Division. The new Social Housing Division, scheduled for implementation from 1 October 2008, will in future deal with applications from public housing tenants and Housing NSW, and other social, community and Aboriginal housing providers and tenants.

Once the new Social Housing Division commences, only private landlords and their tenants will lodge applications in the Tenancy Division.

## Applications in the Tenancy Division 2003/04 to 2007/08



## Case studies

### Eviction of a tenant...

*The Residential Tenancies Act 1987 outlines the rights and responsibilities of a tenant and a landlord. If a landlord wishes to terminate a residential tenancy agreement, the landlord must comply with the provisions of the Residential Tenancies Act 1987.*

A young man, who had entered into a residential tenancy agreement with his landlord, fell behind in paying his rent. Although he had discussed the situation with the landlord, the landlord locked the tenant out of the rented premises. The landlord put the tenant's belongings, including books and electrical equipment, outside and they were damaged by rain.

The tenant lodged an application for an urgent hearing at the Tribunal claiming the landlord had breached the *Residential Tenancies Act 1987* by terminating the agreement in a way that was contrary to that Act.

When the tenant's application was first heard, the Tribunal member adjourned the matter and directed the landlord to provide the tenant with access to the premises. Before the next hearing was held a Tribunal conciliator sat down with the tenant and the landlord to help them to reach an agreement. This process enabled the landlord and the tenant to discuss the situation, and resulted in them reaching an agreement whereby the tenant agreed to pay the landlord the outstanding rent and the landlord agreed to pay the tenant the total sum of \$2000 for the damaged goods. The Tribunal issued an order confirming these agreed actions.

### Excessive rent...

*Under the Residential Tenancies Act 1987 tenants can apply to the Tribunal for orders that a rent increase is excessive.*

A married couple with young children rented a house from a landlord at \$160 per week. Some months later, the landlord increased the rent to \$220.00 per week. The next year, the landlord again notified the tenant of a rent increase which meant the new rent would be almost double the original agreed rent. The tenants decided to lodge an application at the Tribunal for orders that the rent increase was excessive.

Under the *Residential Tenancies Act 1987* the Tribunal may consider several factors when determining whether a rent increase is excessive. These include matters such as rents for comparable premises in the locality, the value of the premises, work done to the premises and state of repair and general condition of the premises. At the hearing, the Tribunal listened to the evidence presented by both parties in relation to these factors.

The Tribunal found that the rent increase notified by the landlords was excessive. In finding that the rent increase was excessive, the Tribunal noted that the house was run down, in need of repair and had been improved through the efforts of the tenants. The Tribunal allowed the landlord to increase the rent by \$20 per week for twelve months.

### Cleaning and repairing a rented premises...

*The Residential Tenancies Act 1987 requires tenants to return premises in the condition set out in the condition report, excepting for fair wear and tear. The Tribunal regularly hears claims from landlords and tenants relating to rental bonds.*

A landlord and tenant entered into a residential tenancy agreement. Several years later, the tenant decided to end the agreement and move out of the premises. The landlord subsequently sent a list to the tenant outlining the repairs that needed to be carried out to return the premises to the condition in which they were provided to her at the beginning of the tenancy. The landlord claimed that damage to the walls required repair, the kitchen stove required cleaning and that paint needed to be removed from external bricks. The tenant was permitted return to the premises to carry out the necessary repairs. However, after the tenant had carried out the repairs the landlord informed the tenant her attempts to address the repairs were not satisfactory and that a claim would be made against the bond for the cost of additional cleaning and repairs.

The tenant lodged an application at the Tribunal seeking orders that the bond be returned to her. The tenant and landlord were unable to reach agreement during conciliation and the matter proceeded to hearing.

At the hearing, the Tribunal considered the evidence of the tenant and the landlord. Under the *Residential Tenancies Act 1987*, a tenant must leave premises as nearly as possible in the same condition, excepting fair wear and tear, as set out in the condition report.

The Tribunal found that the condition of the kitchen stove constituted fair wear and tear given the length of the tenancy and was satisfied that the tenant had employed a professional cleaner. However, the Tribunal found that the damage to the walls and the paint on the external bricks could not be attributed to fair wear and tear.

The Tribunal ordered that \$200 of the bond be paid to the landlord for repair of walls and the removal of the paint from the external bricks. The balance of the bond was returned to the tenant.

## General Division

### Jurisdiction

- *Consumer Claims Act 1998*
- *Holiday Parks (Long-term Casual Occupation) Act 2002*
- *Pawnbrokers and Second-hand Dealers Act 1996*
- *Conveyancers Licensing Act 2003*

### Key Facts 2007 - 2008

#### Applications

Number of applications received 5,971

- 7% decrease from 2006-2007

Application types:

• Goods	2,966
• Services	2,591
• Holiday Parks	101
• Renewal	47
• Pawnbrokers	29
• Conveyancing	3
• Rehearing	234

Applicant:

• Consumer	5,746
• Other Party	225

Number of online lodgements 1,266

#### Hearings

Number of hearings 7,057

Number of adjournments 3,276

#### Finalised Matters

Number of matters finalised 6,052

Final Orders:

• Made at hearing	2,852
• By consent	1,557
• Withdrawals	1,643

#### Key Performance Indicators

64% listed for hearing within 28 days

72% finalised prior to or at first hearing

50% finalised within 35 days

#### Rehearings and Appeals

Number of rehearings granted 63

Supreme Court appeals determined 6

### Overview

Consumer claims against businesses regarding the supply of goods or services make up the bulk of disputes dealt with in the General Division. Disputes cover a range of issues and can be about any goods or services – including goods purchased over the internet.

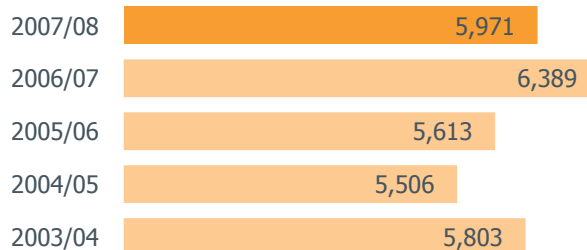
A consumer's claim must be against a supplier carrying on a business and not a private person. The common types of orders the Tribunal can make in this Division are:

- an order for money to be paid
- an order that money owed does not have to be paid
- an order for goods or services to be provided.

Other disputes in this Division concern:

- 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
- disputes about costs payable in respect of conveyancing work.

### Applications in the General Division 2003/04 to 2007/08



## Case studies

### “Supplier” or “Provider”...

*Section 3A of the Consumer Claims Act 1998 enables claims to be made to the Tribunal against someone who is not a direct supplier of goods and services.*

A group of international students responded to an advertisement in a local newspaper advertising an aged care course. The students were advised that if they successfully completed the course, the qualification they received would qualify them to work in the aged care sector. Part way through the course, students were advised that all remaining classes had been cancelled and they were not told if, or when, the classes would recommence. A number of students applied to the Tribunal seeking a refund of the fees paid, to be able to complete the course or to receive a certificate of completion. Interpreters were made available at the hearing at no cost to the parties.

A complicating factor in this matter was a dispute between the promoter of the course and the education provider. The Tribunal found the international students were consumers, and the education provider was a supplier, within the meaning of the *Consumer Claims Act 1998*. The Tribunal also found against the company that had an agreement with the provider to supply the course. The students established that they had suffered a loss, so students who had completed the course were awarded certificates of attainment, and the students who had not yet finished their course were provided with a full refund of course fees paid.

### Grave undertaking...

*The Tribunal may make orders under the Consumer Claims Act 1998 which require work to be performed or services to be supplied.*

An elderly lady wanted to ensure that she could be buried with her husband when they both died. Being of the Jewish faith, she purchased a right of burial within the Jewish section of a memorial park and at the time she was advised that two people could be buried in the grave. Later when her husband died, she went to the memorial park to organise a plaque in his memory. It was during this visit that she discovered that only one interment per grave was allowed in the Jewish section, which was different to her understanding.

The elderly lady made an application to the Tribunal under the *Consumer Claims Act 1998*. She asked for orders that the memorial park allow two interments in the single grave or, alternatively, provide an adjacent grave. The parties were unable to reach an agreement through conciliation. After considering the terms of agreement, the Tribunal ordered the memorial park to provide the elderly lady with a right of burial in an adjacent grave at no cost.

### Consequences for misleading website...

*The Tribunal can hear claims from consumers who have received goods or services that do not meet their reasonable expectations.*

A consumer approached a travel agent to book a luxury holiday at a European ski resort for himself and his fiancée. They were getting married, so he requested the honeymoon suite. The travel agent referred him to a resort website which advertised luxury accommodation. There was no honeymoon suite available, so the next best room was booked by the travel agent through its supplier. However, when they arrived at the resort, the couple were not satisfied with the standard of the accommodation and did not feel it was the luxury style they had booked.

On arriving back in Australia they lodged an application with the Tribunal. At the hearing they explained to the Tribunal that the room they were given had two single beds, and did not have in-room facilities, a bathtub, bathrobes, full-length mirror, laundry services or facilities for making telephone calls. The travel agent argued that it did not promise any particular standard of accommodation, and the travel supplier argued that the applicant received the best accommodation available.

The Tribunal did not accept that the travel agent had broken its agreement with the consumer. However, the Tribunal found:

- the travel supplier did breach its agreement with the consumer by misrepresenting the standard of accommodation it would provide;
- the travel agent and travel supplier had made certain assurances regarding the standard of the accommodation available; and
- the consumer had suffered loss as a result of relying on the promises made to him.

The travel agent and the supplier were ordered to pay money to the consumer for the disappointment experienced due to the substandard quality of accommodation provided.



# Home Building Division

## Jurisdiction

• Home Building Act 1989

## Key Facts 2007 - 2008

### Applications

Number of applications received 3,610

• 3% decrease from 2006-2007

Application types:

• Claims under/equal to \$25,000	2,660
• Claims over \$25,000	633
• Renewal	63
• Rectification Order	61
• Appeal against DG decision	6
• Rehearing	187

Applicant:

• Consumer	2,480
• Trader	1,024
• Other party	102
• Insurer	4

Number of online lodgements 365

### Hearings

Number of hearings 7,487

Number of adjournments 6,216

### Finalised Matters

Number of matters finalised 3,535

Final Orders:

• Made at hearing	1,499
• By consent	1,165
• Withdrawals	871

### Key Performance Indicators

54% listed for hearing within 28 days

58% finalised prior to or at first hearing

36% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 58

Supreme Court appeals determined 21

## Overview

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

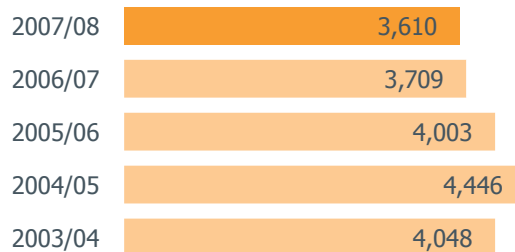
Disputes between consumers, traders and insurers concerning residential building work up to the value of \$500,000 are dealt with in this Division. Typical scenarios include a builder who asks the Tribunal to require a home owner to pay for building work, or a home owner who wants the Tribunal to make an order to rectify defective work or where the building work has been completed but not as detailed in the building contract.

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

All disputes must be referred in the first instance to the Office of Fair Trading's Home Building Service. The CTTT is required to provide the Service with a copy of all orders made against a builder.

Chairperson's directions set out the procedures to be followed in home building disputes when the amount claimed is over \$25,000. These directions assist a range of alternative dispute resolution mechanisms and limit undue delay in proceedings.

## Applications in the Home Building Division 2003/04 to 2007/08



## Case studies

### Cooling off...

*In determining building claims, the Home Building Act 1989 allows the Tribunal to consider reports prepared by an inspector, to appoint an independent expert or consider other reports, in certain circumstances.*

A man entered into a contract with a builder and paid for a home to be built on a vacant block of land. The home was built and the owner moved into his new home. However, he was unhappy with aspects of his home, including the location of a light and the installation of the air conditioner ducting. He noticed that the ceiling light was off centre due to the position of the air-conditioning vent. He also wanted the air-conditioning ducting to extend to the upper level of the house and paid a contractor to carry out this extension. Once this work was done the owner felt the extension detracted from the look of the room, so he again paid a contractor to relocate the light, to replace the ceiling and repaint it. The air-conditioning ducting and the relocation of the light cost the owner several thousands of dollars and he decided to lodge an application at the Tribunal to reclaim the amount from the builder.

At the hearing, the builder argued that the original location of the light did not amount to a defect and that he should not be held responsible for the repairs. The builder also argued that although the lights were shown in the centre of the room on the plan, this was diagrammatical only. After hearing and considering the evidence of the parties, including expert reports, the Tribunal accepted that the builder had not installed the light according to reasonable building practice. The Tribunal ordered the builder to pay the cost of the repairs to the ceiling which amounted to over \$4000.

The Tribunal was satisfied that it was not a term of the contract to extend the air conditioning ducting to the upper level of the house. In relation to this part of the owner's claim, the Tribunal found that the builder had met its obligations under the contract and did not have to pay the cost of extending the air-conditioning ducts.

### Swimming pool delays...

*Under the Home Building Act 1989, the Tribunal has jurisdiction to resolve home building disputes. A party may apply to the Tribunal to recover losses if he or she can establish that the other party did not have authority to terminate the contract.*

A couple engaged a swimming pool builder to build a pool. The builder agreed that he would organise all of the necessary approvals. The builder took steps to arrange these approvals but when he tried to obtain the necessary construction certificate the process was delayed. The builder also arranged for the engineering drawings to be prepared but they did not meet the couple's requirements and they were amended, causing further delay. The couple was unhappy that the pool had not been completed and decided to end their contract with the builder on the basis that the builder had not completed the work within the timeframe set out in the contract.

In considering whether the couple were entitled to end the contract, the Tribunal took into account the agreement and the evidence provided by the builder and the couple regarding the steps taken to comply with the terms of the agreement. The Tribunal found that, although construction of the pool had been delayed, this was not enough to entitle the couple to terminate the contract. The builder succeeded in his claim for payment and the couple was ordered to pay over \$5000 to the builder.

### Charges...

*Under the Home Building Act 1989, the Tribunal can determine building claims and has power to make orders requiring one party to pay a sum of money to another party.*

A homeowner engaged a contractor to carry out repairs to the electrical wiring in her home. The repairs were recommended in a pre-purchase inspection report. After the repairs were carried out, a dispute arose regarding the amount charged by the contractor for carrying out the necessary work.

The homeowner believed that she had been overcharged for the work and should not have to pay the builder. She refused to pay the amount claimed and lodged an application at the Tribunal. The homeowner obtained two quotes after the work had been carried out and asked the Tribunal to find that she should only have to pay the amount set out in the quote, rather than the amount claimed by the contractor.

At the Tribunal hearing, the homeowner claimed that the contractor agreed to complete the work on a 'do and charge' basis. However, the homeowner told the Tribunal that the contractor did not carry out the work diligently and stopped regularly to talk on his mobile phone. She claimed that she would not have engaged the contractor to do the work if he had told her that he would take one to two days to complete it. The contractor claimed that he told the homeowner that the work would take one to two days but that he would try to complete it in one day. The contractor claimed that the work required was extensive. He claimed that his charges (including those for materials) were in accordance with industry rates.

The Tribunal considered the evidence provided by the homeowner and the contractor. The Tribunal was not satisfied that the contractor failed to be diligent and refused to reduce the number of hours claimed by the contractor for the work carried out. The Tribunal accepted the contractor's evidence regarding his calculations of the cost of the material. Although the quotes obtained by the homeowner were lower, the Tribunal was satisfied those contractors may not have appreciated the condition of the wiring and the work required.

The homeowner was ordered to pay the contractor the amount claimed for the work carried out.

# Residential Parks Division

## Jurisdiction

- Residential Parks Act 1998
- Landlord and Tenant (Rental Bonds) Act 1977

## Key Facts 2007 - 2008

### Applications

Number of applications received 1,313  
 • 26% decrease from 2006-2007

#### Application types:

• Excessive Rent / Increase	904
• Termination	165
• Breach/Compensation	135
• Other	33
• Renewal	10
• Recognition as a Tenant	5
• Rental Bond	1
• Rehearing	60

#### Applicant:

• Resident	1,075
• Park Owner	232
• Occupant	6

Number of online lodgements 114

### Hearings

Number of hearings 1,648  
 Number of adjournments 1,038

### Finalised Matters

Number of matters finalised 1,395

#### Final Orders:

• Made at hearing	940
• By consent	323
• Withdrawals	132

### Key Performance Indicators

30% listed for hearing within 28 days  
 77% finalised prior to or at first hearing  
 27% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 4  
 Supreme Court appeals determined 1

## Overview

A 'residential park' may also be known as a caravan park, manufactured home estate, mobile home village or relocatable home park. Residents of a park may own their caravan or manufactured home and rent the site from the park owner. Residents may also rent accommodation that is owned by the park owner.

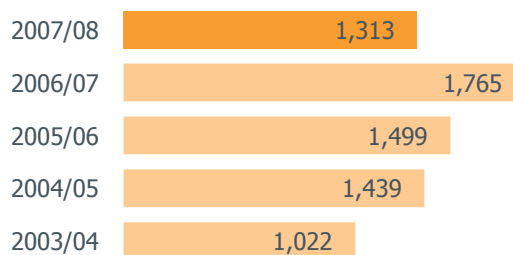
The resident and park owner are required by law to sign a 'residential site agreement', 'moveable dwelling agreement' or a 'residential tenancy agreement' depending on the situation.

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

The Tribunal hears and determines applications from both park residents and park owners. The common types of issues that arise include excessive rent claims, breaches of the residential tenancy agreement, notices of termination, alterations and additions to dwellings, rent and bond issues.

The Tribunal often receives a large number of concurrent applications from a group of residents from the one park concerning the same issue. Generally, excessive rent claims are case managed collectively to minimise disruption to the parties.

## Applications in the Residential Parks Division 2003/04 to 2007/08



## Case Studies

### Maintaining parks and disregarding orders...

*The Residential Parks Act 1998 requires a park owner to provide and maintain a residential park in a reasonable state of repair having regard to the age, rent and prospective life of the premises.*

The residents of a residential park believed that the park owner was not maintaining the park, as required under the *Residential Parks Act 1998*, and believed the work was not being done in an attempt to encourage residents to leave the premises. The residents applied to the Tribunal and asked that the park owner be ordered to maintain the park. The Tribunal ordered the park owner to maintain the property by providing rubbish bins, maintain an amenities block, provide working toilets and showers, and provide hot water facilities.

The park owner did not comply with the Tribunal's orders and in so doing committed an offence under the *Consumer, Trader and Tenancy Tribunal Act 2001*\*\* . The Commissioner for Fair Trading took action against the park owner and director for failure to comply with the Tribunal orders. The matter was heard by the Local Court which found the park owner had breached this section by failing to comply with the Tribunal's orders. The Local Court ordered the director of the owner of the companies to pay a large fine and to pay the costs of the proceedings.

*\*\* Under the Consumer, Trader and Tenancy Tribunal Act 2001 (s52) it is an offence to wilfully contravene or fail to comply with an order of the Tribunal.*

### Excessive rent increases...

*Under section 58 of the Residential Parks Act 1998 the Tribunal has power to determine whether a rent increase is excessive. The Tribunal may order that rent paid must not exceed an amount specified by the Tribunal.*

Residents of a residential park received a notice that rent for sites located within the park would increase by five dollars per week from a particular date. Many of the residents objected to the increase and they lodged applications to the Tribunal. The residents argued that the increase was excessive.

The residents and the park owner participated in conciliation. As a result, the parties reached an agreement that was acceptable to both parties. During conciliation, the parties agreed that the rent would not exceed an agreed amount before a particular date. After that date, both parties agreed that the rent would be increased by the agreed amount. Both parties also agreed that any rent that had been paid by the residents in excess of the agreed amount would be refunded to them.

### Alterations and improvements...

*Alterations and improvements to moveable dwellings located in residential parks may require the consent or permission of the park owner. The Tribunal assists park owners and residents to resolve disputes relating to changes to residents' dwellings.*

A couple bought a relocatable dwelling in a residential park and, over the years, made several alterations to their dwelling. Four years after the couple became residents of the park, the park owner issued a termination notice to them on the basis that they had breached the conditions of their residential tenancy agreement. The park owner claimed that the couple had made additions and alterations to the dwelling without the consent of the park owner and that the alterations had contravened local government regulations. The park owner lodged an application at the Tribunal for orders terminating the agreement.

The Tribunal found that the couple had indeed made alterations and additions to their dwelling and the site. The alterations included a new window, a new kitchen, a new awning and a new covered timber deck.

The Tribunal considered whether the couple was required to obtain the consent of the park owner before undertaking the work to make alterations and improvements. There was no written residential tenancy agreement between the couple and the park owner at the time the alterations were made. Under section 16 A(3) of the *Residential Parks Act 1988* an agreement not in writing includes standard terms found in the *Residential Parks Regulation 1999*. The standard terms include clauses which require residents to obtain consent to make alterations that are visible from the outside and obtain permission to renovate or add to the residential site.

The park owner and the couple could not agree whether the park owner had provided consent. The park owner claimed that the couple failed to obtain consent before making the alterations and undertaking renovations. The couple claimed that consent had been obtained from the park managers. Based on the evidence provided, the Tribunal was satisfied that the park owner gave implied consent to the alterations and could not use lack of consent as grounds on which to terminate the tenancy agreement.

The Tribunal then considered whether the agreement between the park owners and the couple should be terminated on the basis that the dwelling did not comply with the local government regulations. The Tribunal found that the dwelling was closer to other sites than allowed under the regulations. However, the Tribunal was not satisfied that the agreement should be terminated. Factors that the Tribunal took into account were the length of time that the structures had been in place and the fact that the council inspected the site and said that the structure could remain in place.

# Strata & Community Schemes Division

## Jurisdiction

- Community Land Management Act 1989
- Strata Schemes Management Act 1996

## Key Facts 2007 - 2008

### Applications

Number of applications received 1,374

- 12% increase from 2006-2007

Adjudications 967

• Strata Scheme 931

• Community Scheme 36

Hearings 407

• Strata Scheme 380

• Community Scheme 27

Application types:

Adjudication

• General Orders & Other 456

• Interim Orders 179

• By-laws 123

• Appoint Strata Manager 81

• Meetings, Decisions & Orders of

Owners Corporation 48

• Property 43

• Contributions & Levies 35

• Insurance 2

Tribunal Hearing

• Appeal 176

• Penalty 157

• Unit Entitlements 38

• Amend or Revoke Order 12

• Initial Period 11

• Caretaker Contract 5

• Other 5

• Appoint Managing Agent 2

• Invalid Resolution or Election 1

Applicant:

• Lot Owner 885

• Owners Corporation 453

• Other Party 21

• Occupier of a Lot 15

Number of online lodgements n/a

### Hearings

Number of hearings 624

Number of adjournments 448

### Finalised Matters

Number of matters finalised 1,272

Final Orders:

• Made at hearing or adjudication 1,032

• By consent 75

• Withdrawals 165

### Key Performance Indicators

87% finalised prior to or at first hearing

27% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted n/a

Supreme Court appeals determined 2

## Overview

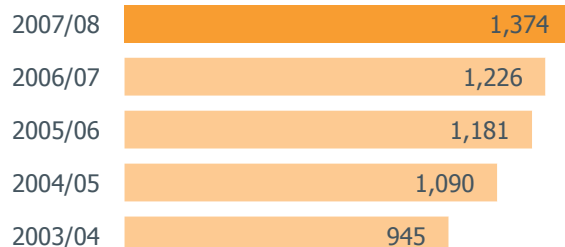
The word 'strata' literally means 'air space'. Strata title is a system of property ownership that usually relates to units where the owner owns the 'air space' bounded by the walls of the unit but all unit owners collectively own the 'common property' of the building.

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 gated communities with recreational facilities such as tennis courts or golf courses. There are approximately 500 community schemes in New South Wales.

Most disputes 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.

The Act specifies that in most of these applications, the parties must attempt mediation first. The adjudicator can also refer disputes to the Tribunal for hearing when, for example, complicated issues are involved.

## Applications in the Strata & Community Schemes Division 2003/04 to 2007/08



## Case studies

### Lot changes...

*In a strata scheme, a lot owner owns their own unit, but most external parts of a unit, form part of the common property which is owned by the Owners Corporation on behalf of all the owners in the strata scheme. If the lot owner makes additions or amendments to a lot without approval or consent of the Owners Corporation, the Tribunal may make orders requiring the additions to be removed and the lot to be returned to its original state.*

The owner of a strata scheme lot decided to make some changes to the appearance of his lot. He did not obtain the approval of the Owners Corporation and did not obtain consent from the local council to perform the work. The owner removed the bathroom window and replaced it with a new one, removed an internal wall and painted the entrance door a different colour to other lots located in the strata scheme.

The Owners Corporation objected to the changes on the basis that the changes damaged the common property and were not consistent with the appearance of other lots in the scheme. The Owners Corporation applied to the Tribunal for orders requiring the lot owner to return his lot to its original state.

The Tribunal Adjudicator found the lot owner had damaged and altered the common property by removing the window and changing the colour of the entrance door. The Tribunal ordered the lot owner to restore the original window and repaint the entrance door to the lot. In relation to the removal of the internal wall, the owner was ordered to obtain a report on the effect of the removal of the internal wall as it may have resulted in some effect to the structural integrity of the building.

### Disturbing the neighbours....

*The Tribunal can hear appeals from an order of an Adjudicator and can make orders requiring an owner to comply with certain by-laws, including those relating to noise that disturbs other occupants and owners.*

A couple bought a unit in a strata scheme and decided to move there with their young son. After they moved into the unit, the couple decided they need to replace the carpet as their young son was allergic to carpet. The couple approached the Owners Corporation to ask for consent to replace the carpet in the living room. They assumed that the Owners Corporation would not object and replaced the carpet with floorboards before the Owners Corporation had given its consent. The Owners Corporation did object and was very concerned that noise transmission from the floorboards disturbed the occupants of other units and was in breach of the by-laws.

The matter was dealt with by an Adjudicator and subsequently by the Tribunal. At the hearing, the Tribunal found that the evidence indicated that the new floorboards allowed noise to travel. For that reason, the Tribunal ordered the couple to make sure that the floor was covered so that the noise did not disturb their neighbours. However, the couple was not required to replace the floorboards with wall to wall carpet.

### Dogs and strata schemes...

*Under the by-laws of a Strata Scheme, a lot owner may be required to obtain consent from the Owners Corporation to keep pets, including small companion animals. Under the Strata Schemes Management Act 1996, an adjudicator may make orders relating to the keeping of animals.*

A couple living in a strata scheme decided that they would like to buy a dog. The couple approached the Owners Corporation asking for permission to keep the dog.

The managing agent wrote to each of the lot owners asking them to comment on the request. Based on the responses received from the majority of lot owners, the Owners Corporation did not give permission to keep the dog. Importantly, a decision to refuse permission was never considered at a general or executive meeting. The couple were keen to obtain permission to keep the dog and applied for orders from a Strata Schemes Adjudicator. The Strata Schemes Adjudicator considered the matter and, on the basis of the material before her, refused to make orders permitting the owner to keep the dog.

The couple appealed the decision of the Strata Schemes Adjudicator. Although the request had never been considered at a meeting, the Tribunal proceeded on the basis that the Owners Corporation had refused the request as both parties had treated the lack of permission as a refusal by the Owners Corporation. The Tribunal found that the owners corporation had sufficient reason to refuse the owners' request. These reasons included the fact that there were no other dogs in the scheme, the age of the surrounding neighbours and that the dog would be unsupervised for much of the day.

# Motor Vehicles Division

## Jurisdiction

- Consumer Claims Act 1998
- Fair Trading Act 1987
- Motor Dealers Act 1974
- Motor Vehicle Repairs Act 1980

## Key Facts 2007 - 2008

### Applications

Number of applications received 1,052

- 14% decrease from 2006-2007

Application types:

• Claims under/equal to \$25,000	897
• Claims over \$25,000	74
• Renewal	14
• Rehearing	67

Applicant:

• Consumer	1,021
• Other party	31

Number of online lodgements 218

### Hearings

Number of hearings 1,365

Number of adjournments 775

### Finalised Matters

Number of matters finalised 1,038

Final Orders:

• Made at hearing	546
• By consent	234
• Withdrawals	258

### Key Performance Indicators

17% listed for hearing within 28 days

64% finalised prior to or at first hearing

27% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 17

Supreme Court appeals determined 0

## Overview

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

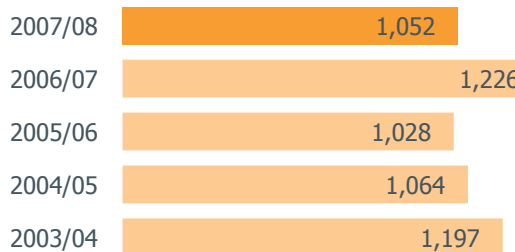
This Division deals with disputes about vehicles that are used primarily for private use. A 'motor vehicle' can mean a new or used car, motorcycle, tractor or other powered vehicle on wheels. The types of issues that may arise in this Division include unsatisfactory repairs and maintenance, defective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

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

Applications to the Motor Vehicles Division are initially referred to the Office of Fair Trading if the dispute is about sales or warranties.

Referral to the Office of Fair Trading often results in an early resolution of the dispute, giving parties an opportunity to settle before attending the Tribunal for hearing. If there is no resolution both organisations may provide reports to the Tribunal which may be of assistance during the determination of the matter.

## Applications in the Motor Vehicles Division 2003/04 to 2007/08



## Case Studies

### Implied warranties...

*Under the Fair Trading Act 1987, there is an implied warranty that services will be provided with due care and skills and that materials provided will be reasonably fit for the purpose for which they are supplied.*

A motorist broke down on the side of the road and called a mobile mechanic for assistance. The car was towed to a street near the motorist's home.

The motorist took the car to a local mechanic who gave him a quote on how much it would cost to repair the car. The mechanic worked on the car. After the motorist had collected it from the mechanic, the car broke down again and "exploded". The motorist drove the car to a specialist mechanic who told him steel wool had been used as a gasket and that it had damaged the exhaust system. A dispute about the cost of the repairs arose between the motorist and the local mechanic who had done the original work. This resulted in the motorist lodging an application at the Tribunal.

The Tribunal accepted the evidence of the specialist mechanic that the damage to the exhaust system was caused by the use of the steel wool as a gasket. The Tribunal considered whether the local mechanic had used due care and skill in providing his services to the motorist (as required under section 40S of the *Fair Trading Act 1987*). An issue in dispute at the Tribunal was whether the local mechanic or the motorist suggested, or insisted, that the steel wool be used in place of a gasket. The local mechanic denied that it was his suggestion and he claimed the motorist insisted the steel wool gasket be used to repair the vehicle. The Tribunal noted that even if the motorist insisted the steel wool should be used, the mechanic should not have complied.

On the evidence provided, the Tribunal concluded that the local mechanic had failed to provide the services to the standard of due care and skill required under the *Fair Trading Act 1987*. The local mechanic was ordered to pay the motorist \$400 which was assessed on the basis of evidence provided by both parties.

### Question of quality...

*Goods supplied to a buyer must be of merchantable quality and the Tribunal considers the evidence submitted by both parties to determine whether the goods reach this standard.*

A prospective traveller bought a demonstration motorhome from a builder and supplier of motor-homes and campervans. The prospective traveller was happy with his new purchase until he noticed some parts on the motorhome required repair. These parts were subsequently repaired but the traveller was unhappy with the result and he noticed that other repairs were needed. He decided to lodge an application at the Tribunal, and asked the Tribunal to order the supplier to provide a refund of the full purchase price of the vehicle or to replace his existing motorhome with a new motorhome. He also claimed the motorhome did not comply with required standards and was not of merchantable quality.

The Tribunal considered each of the defects very carefully by listening to the evidence of the parties and an automotive consultant's report which was submitted by one of the parties. After considering all the evidence, the Tribunal found that some of the motorhome's problems could not be considered defects. For example, the roof was not defective as it was made in a standard and acceptable way at the time the vehicle was manufactured. Whilst the Tribunal found that some items could be considered defective, including the water tank bracket and the frame of the gas bottle door, these were not sufficient to justify a full refund or replacement. The motorhome supplier told the Tribunal that it would carry out all of the work to rectify the alleged defects.

The Tribunal then considered the traveller's allegation that the vehicle was not of merchantable quality. The Tribunal found that the supplier had obtained a compliance certificate from the relevant government body for the motorhome and that the motorhome could be considered roadworthy on the basis of that certificate. The Tribunal found that the motorhome was of merchantable quality.



## Commercial Division

### Jurisdiction

- Consumer Credit Administration Act 1995
- Consumer Credit (New South Wales) Act 1995
- Credit Act 1984
- Credit (Home Finance Contracts) Act 1984
- Travel Agents Act 1986
- Property, Stock and Business Agents Act 2002

### Key Facts 2007 - 2008

#### Applications

Number of applications received 303

- 13% decrease from 2006-2007

#### Application types:

• Consumer Credit Code	191
• Property, Stock & Business Agents	70
• Credit Act	22
• Credit - Home Finance	5
• Finance Brokering	3
• Renewal	2
• Repossession	1
• Termination - Return of Goods	1
• Waive Notice	1
• Rehearing	7

#### Applicant:

• Debtor	210
• Interested/affected party	43
• Mortgagee	24
• Mortgagor	13
• Credit provider	12
• Lessee	1

Number of online lodgements n/a

#### Hearings

Number of hearings 425

Number of adjournments 313

#### Finalised Matters

Number of matters finalised 296

#### Final Orders:

• Made at hearing	90
• By consent	89
• Withdrawals	117

#### Key Performance Indicators

59% listed for hearing within 28 days

70% finalised prior to or at first hearing

44% finalised within 35 days

#### Rehearings and Appeals

Number of rehearings granted 3

Supreme Court appeals determined 1

### Overview

The Commercial Division deals with six pieces of legislation primarily concerning credit matters, appeals against Travel Compensation Fund decisions and commission fees charged by agents.

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

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

During the year the CTTT published a new 'Hardship Variation Fact Sheet'. Its aim is to help people experiencing temporary difficulty in meeting credit repayments to lodge an application to the Tribunal to have their credit contracts varied.

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

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

### Applications in the Commercial Division 2003/04 to 2007/08



## Case studies

### Urgent cash advances

*The Consumer Credit Code regulates a wide range of credit transactions. The Code was developed to standardise credit practice across Australia. Consumers can apply to the Tribunal to hear matters relating to credit contracts. The Tribunal can make orders under the Code and may impose certain penalties in relation to unjust contracts.*

A married couple took out a home loan with a well known credit provider to buy their first home. The couple found it difficult to meet the repayments as their income was relatively low, and it wasn't long before they received a notice from their home loan providers stating they had defaulted on their home loan. Shortly after receiving the notice, the couple decided to respond to a credit provider's television advertisement that was offering urgent cash advances. The couple applied for some money to refinance their home mortgage account and to pay the amount demanded in the default notice. The credit provider told the couple that they could get a short-term loan but mentioned that the loan would have to be for a business. The couple told the credit provider that they had run a small business and could use this business to obtain the short-term loan.

The couple signed the credit provider's paperwork without questioning it - including a declaration to the effect that the short-term loan was for a business and that the Consumer Credit Code did not apply. They spent the money on their home loan repayments and other debts. The couple tried unsuccessfully to contact the credit provider to ask about a refinancing loan. They also discovered that they could not obtain a refinancing loan from another credit provider due to their previous home loan and the terms of the short-term loan with the credit provider. The couple made an application to the Tribunal for orders to release them from the short-term loan.

Although the declaration signed by the couple indicated the Code did not apply, the declaration was not in the proper form and the Tribunal found the short-term loan was still subject to the Code. The Tribunal also found the credit provider did not disclose to the couple important matters as required under the Code, asked the couple to sign the business declaration and knew, or should have known, that the purpose of the loan was not for business.

After hearing the couple's evidence, the Tribunal member accepted that the couple could not afford to repay the short-term loan based on their income, had limited bargaining power, could not negotiate the terms and conditions and the credit provider did not explain the terms.

The Tribunal accepted that the credit provider had engaged in misleading and deceptive conduct by leading the couple to believe that they would obtain another loan to help them to refinance. The couple was released from its agreement with the credit provider and the couple was not required to make any further payments to the credit provider.

### Temporary financial hardship ...

*Consumers who are experiencing temporary personal hardship may have difficulty making loan repayments. These consumers can ask the Tribunal to change the terms of the loan agreement by lodging a "hardship variation application".*

A consumer obtained a car loan from a credit provider. The consumer purchased a car and was confident that he could make the repayments on his existing salary. He budgeted carefully each month to make sure that he could make the repayments.

Some months later, the consumer became very ill and while he had some sick leave entitlements he was still unwell when the time came to return to work. His employer allowed him to take leave-without-pay to enable him to recuperate. Unfortunately, without a regular income, he was unable to meet his financial obligations. To make repayments, he resorted to obtaining short-term loans, at high interest rates, to supplement his dwindling savings. He took this action because he was scared that, without the car which he needed for work purposes, he would be unable to return to work when the time came.

The consumer asked the credit provider to change their agreement so that he did not have to make any repayments for a few months. By this time his health had improved and his doctor advised him that he would soon be well enough to return to work. The credit provider refused the consumer's request.

The consumer decided to lodge a hardship variation application at the Tribunal requesting that the terms of the credit contract be changed by postponing the repayment dates. The credit provider and the consumer agreed to participate in conciliation. During the discussion the consumer explained that as he had returned to work he could now make small repayments while he got back on his feet. The credit provider and the consumer agreed to extend the period of the credit contract and to reduce the amount of each repayment.

# Retirement Villages Division

## Jurisdiction

• Retirement Villages Act 1999

## Key Facts 2007 - 2008

### Applications

Number of applications received 45

• 15% increase from 2006-2007

Application types:

• Breach	11
• Budget Dispute	6
• Termination	4
• Residence Rules	2
• Renewal	1
• Other	20
• Rehearing	1

Applicant:

• Resident	32
• Administering Authority	13

Number of online lodgements n/a

### Hearings

Number of hearings 53

Number of adjournments 48

### Finalised Matters

Number of matters finalised 46

Final Orders:

• Made at hearing	16
• By consent	8
• Withdrawals	22

### Key Performance Indicators

39% listed for hearing within 28 days

76% finalised prior to or at first hearing

39% finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 0

Supreme Court appeals determined 2

## Overview

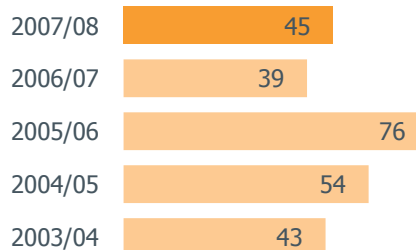
A 'retirement village' is a residential complex where the majority of residents are retired persons aged 55 years and older. These residents have entered into a contract with the owner or operator of the village for the provision of certain services. Most retirement villages consist of self-contained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

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

The Retirement Villages Division hears disputes between the retirement village administration and one or more residents. The types of disputes brought to the Tribunal may include terms of the retirement village contract, the legality of a village rule, proposed expenditure for the next financial year, and the sale or lease of a village premises.

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

## Applications in the Retirement Villages Division 2003/04 to 2007/08



## Case studies

### Watching costs...

*Under the Retirement Villages Act 1999 the operator of a retirement village must bear certain costs, such as the cost of replacing or improving the fixed assets. The village operator must also give each resident a statement outlining how they will spend money obtained from the residents, and a notice containing reasons for any changes to the expenditure.*

The residents of a retirement village, who had made ongoing payments to a village operator, were provided with a "Statement of Proposed Expenditure" outlining how their ongoing charges were to be spent in the following year. The Statement included: repair of electrical and plumbing work; refurbishment of carpets; repainting of village units; replacement of fly-screen and security doors; replacement of patios; and the repair of driveways, roads, pathways, fences, car-park covers, and roof tiles.

The residents objected to the items on the Statement and lodged an application at the Tribunal. The residents objected to the village operator using their payments to paint the outside of the village units. They argued that the cost of maintaining painted surfaces and washing pre-finished surfaces was the replacement of assets, so the village operator had responsibility for those costs and could not include them in the Statement. The Tribunal considered the definitions in the *Retirement Villages Act 1999*, the *Retirement Villages Regulation 2000*, as well as previous decisions of the Tribunal. The Tribunal concluded that painting of exterior walls was "maintenance" and therefore it could be included in the statement.

The other objection from the residents concerned the village operator using their payments to replace fly-screen, security doors and patios and to repair driveways, roads, pathways, car-park covers, and roof tiles. The Tribunal commented that while the cost of "repairing" and properly "maintaining" assets could be funded from ongoing charges, the village operator was proposing to "replace" items. These costs must be covered by the village operator. The Tribunal ordered the village operator to refund to the residents the money for those items.

### Read the fine print...

*Section 123 of the Retirement Villages Act 1999 enables a resident of a retirement village to apply to the Tribunal for an order setting aside part of a retirement village contract that is 'harsh, oppressive, unconscionable or unjust'. Village operators are also required to ensure that all residents respect each other's right to quiet enjoyment.*

A retiree saw an advertisement for a retirement village. The village was described as quiet and serene so she decided to retire there, entered into a village contract and became a resident of the village. After moving into the village, the retiree found the retirement village to be very noisy and made several complaints to the operator. The retiree did not feel the village operator took adequate action in relation to her complaints, and subsequently moved out of the village and sought a refund of the shares purchased.

The retiree applied to the Tribunal arguing that the village contract was "harsh and unconscionable". The Tribunal found that the disclosure statement contained in the contract clearly stated that the operator was entitled to retain \$35,000 and that the contract was not "harsh, oppressive, unconscionable or unjust".

The retiree also claimed that she was denied quiet enjoyment of the property. However, as the retiree had already left the village, the Tribunal found that it could not order the operator to comply with its obligation to ensure the resident's quiet enjoyment of the property.

## Appendix 1. Legislation

The CTTT'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 2002*.

The following nineteen Acts confer jurisdiction on the Tribunal.

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

### New and Amended Legislation

#### **Consumer Claims Amendment Act 2007**

Amendments were made to the *Consumer Claims Act 1998* which applied from 1 March 2008. The main amendments:-

- give the Tribunal jurisdiction if the goods or services were supplied or intended to be supplied in NSW
- extend the time period so that it is now three years from the date when the cause of action accrued however action must be commenced within ten years of the supply of the goods or services
- clarify the definition of a 'consumer claim'
- give the Tribunal the power to make orders between respondents, for example a retailer and a manufacturer
- confirm that the Tribunal may hear a claim against a supplier who did not directly supply the goods, such as a distributor or manufacturer.

#### **Consumer Claims Regulation 2007**

The *Consumer Claims Regulation 2007* came into force on 1 September 2007. It increased the jurisdiction of the Tribunal from \$25,000 to \$30,000 in consumer claims matters and made other minor amendments. The new limit applies in the General and Motor Vehicles Divisions.

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

Amendments to the *Strata Schemes Management Act 1996* and *Home Building Act 1989* will take effect from 1 August 2008. The main amendments:-

- ensure on-site caretakers are covered by the Act even if they use a different title such as 'building manager'.
- restrict the making of by-laws in the initial period which would give a right to park vehicles on common property
- prevent terms being included in the sales contract that require the purchaser to give proxy voting rights to the developer of the strata scheme
- require executive committee members to disclose any personal, business or financial connection they have with the developer or caretaker
- allow individual lot owners to lodge building disputes with the Office of Fair Trading and arrange for an inspection of building work in common areas. Previously only the Owners Corporation or Community Association could lodge an application.

#### **Community Land Management Regulation 2007**

The amendments commenced on 1 September 2007. The main amendments:-

- simplify records management requirements
- make minor changes to fees payable

#### **Consumer Credit (New South Wales) Special Provisions Regulation 2007**

The amendments commenced on 1 September 2007. This was in accordance with statutory rules which require regulations to be reviewed every 5 years and changes of a minor drafting nature were made.

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

The Bill was passed by the Parliament on 24 June 2008, and includes a range of amendments that will improve the efficiency and effectiveness of the CTTT. These amendments are expected to take effect in the latter part of 2008. The changes will:

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

## Appendix 2. Tribunal Members

### Members

As at 30 June 2008, the Tribunal's membership, in addition to the Chairperson and the two Deputy Chairpersons comprised 5 senior members, 11 full-time members and 58 part-time members.

#### Senior members

Balding, Margaret	Connolly, Reg	Paull, Christine
Bordon, John	Durie, Graeme	

#### Full-time members

Borsody, Agnes	Howe, Bruce	Reid, Judy	Smith, Peter
Eftimiou, Maritsa	McIllhatton, Susan	Rosser, Kim	Thane, Kathy
Hennings, Simon	O'Keeffe, Gregory	Smith, Jeffery	

#### Part-time members

Adderley, Georgia	Carney, Catherine	Ilett, Mik	Sainsbury, Murray
Anforth, Allan	Carpentieri, Antony	Keher, Christopher	Sheedy, Tracy
Anthony, Kevin	Chenoweth, Rieteke	Kelly, Tom	Sheehan, Desmond
Barneston, Diane	Cipolla, John	Lennon, David	Shipp, Bernard
Bassett, Graham	Cohen, Totti	Lynch, Joanne	Smith, Stephen
Beckett, Angela	Conley, Jennifer	Marzilli, Claudio	Thompson, John
Bell, Diana	Corley, Susan	McMillan, John	Turley, David
Blair, Robert	Courtney, Michael	Moore, Ted	Walsh, William
Bordon, George	Farey, Janet	Nicholls, Louise	Walton, Julie
Brady, Brian	Flynn, David	Nolan, Dennis	White, Tony
Briggs, Phillip	Forbes, Deborah	Pickard, Bryan	Williams, Kerry
Brophy, Moira	Gilson, Mark	Plibersek, Raymond	Williams, Louise
Bryant, Garry	Halliday, John	Ringrose, John	Wilson, Robert
Bullen, Mark	Harvey, Danae	Ross, Katherine	
Butler, Rex	Holwell, Kim	Ross, Kim	

#### ***The following persons ceased to be members during the reporting year:***

Abela, Carol - *part-time member*  
 Murphy, Cameron - *full-time member*  
 Newhouse, George - *part-time member*  
 Sourdin, Tania - *senior member*  
 Taylor, Lyndal - *part-time member*

## Appendix 3. Access to Information

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

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

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

The Chairperson may elect to provide the Minister, Commissioner for Fair Trading, Director General of the Department of Commerce, or an authorised agent or representative of a party, with information as set out in sections 70, 72 and 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001*. Requests from other third parties are dealt with under section 73 of the Act and the Privacy and Personal Information Principles, which restrict disclosure of information.

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

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

- written reasons and reserved decisions are published on the Australasian Legal Information Institutes' website [www.austlii.edu.au](http://www.austlii.edu.au)
- information about party names are published daily on the hearing lists and on the Tribunal's website;
- the police are investigating an allegation about perjury in the Tribunal and request access to any record;
- the media's request for information about a matter had been approved by the Registrar.

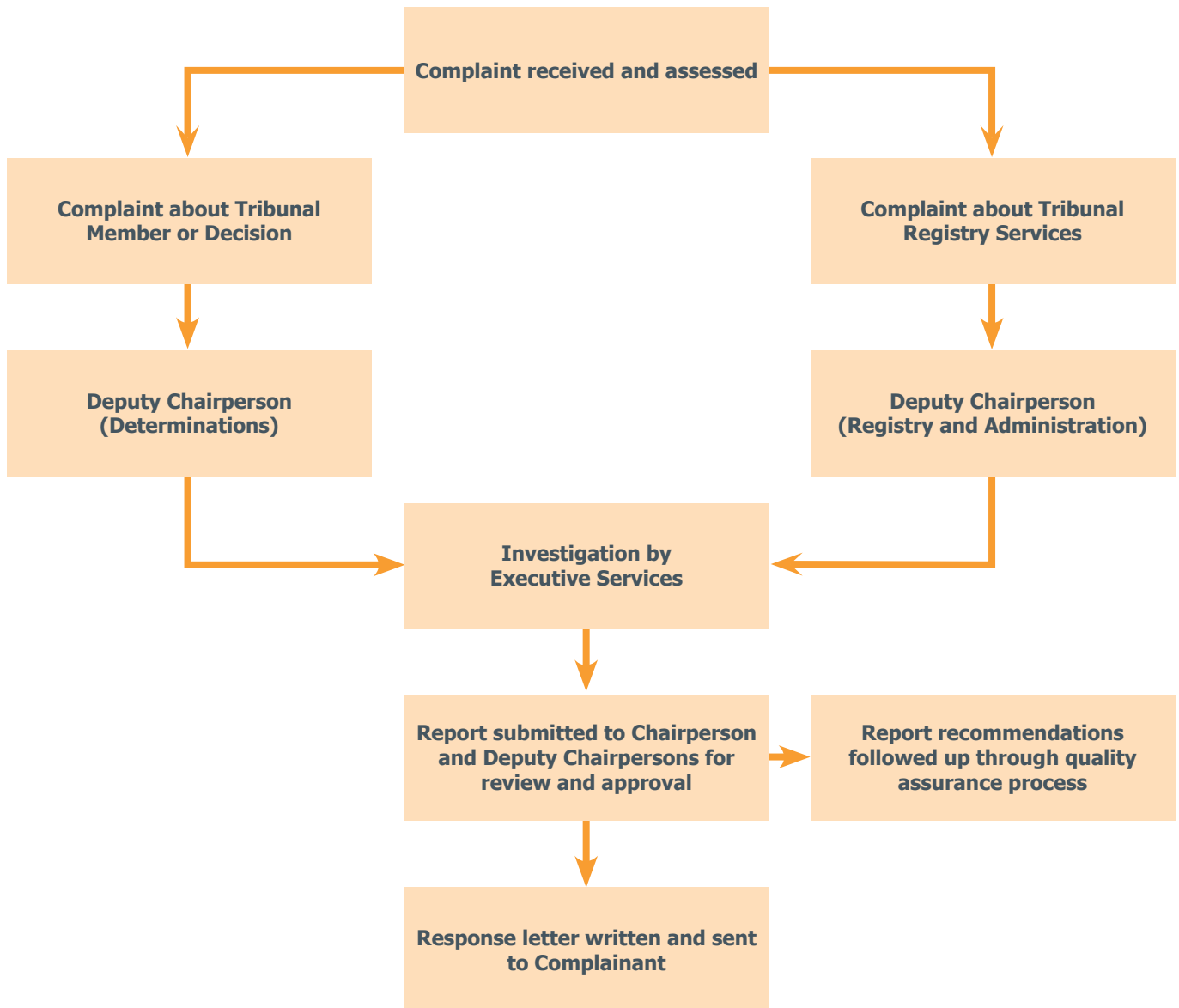
Freedom of Information requests should be made in writing and addressed to the Registrar, Consumer, Trader and Tenancy Tribunal, GPO Box 4005, Sydney, 2001.

CTTT publications can be accessed at [www.cttt.nsw.gov.au](http://www.cttt.nsw.gov.au)



## Appendix 4. Complaints Handling Process

The diagram below outlines the Tribunal's complaints handling process.



# Appendix 5. Divisional Consultative Forums

The organisations represented on the consultative forums are set out below.

## Commercial Division

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

## General Division

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

## Home Building Division

Australian Institute of Building  
Building and Construction Council of NSW  
Civil Contractors Federation  
Home Building Service, NSW Office of Fair Trading  
Housing Industry Association  
Institute of Building Consultants  
Institute of Engineers Australia  
Institute of Strata Title Management  
Law Society of NSW  
Master Builders Association  
Master Painters Association  
Master Plumbers & Mechanical Contractors Association of NSW  
National Electrical & Communications Association of NSW  
National Wood Flooring Association  
NSW Bar Association  
NSW Office of Fair Trading  
Royal Australian Institute of Architects NSW Charter  
Russo and Partners  
Swimming Pool and Spa Association  
Vero Insurance

## Motor Vehicles Division

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

## Retirement Villages Division

Aged Care Association Australia (NSW)  
Aged Care Rights Service  
Aged & Community Services Association of NSW & ACT  
Bougainvillea Retirement  
Combined Pensioners & Superannuants Association of NSW Inc  
Consumer Affairs  
Council on the Ageing (NSW) Inc  
NSW Office of Fair Trading  
Retirement Village Association of NSW & ACT  
Retirement Villages Residents Association  
Wesley Mission

## Strata & Community Schemes Division

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

## Tenancy Division

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

## Residential Parks Division

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

## Aboriginal Consultative Forum

Aboriginal Legal Services  
Anaiwan Local Aboriginal Land Council  
Bungree Aboriginal Association Inc  
Dtarawarra Aboriginal Resource Unit  
Murra Mia Tenant Advocacy Service  
NSW Aboriginal Housing Office  
NSW Aboriginal Land Council - Eastern Region  
NSW Aboriginal Land Council - Northern Zone  
NSW Aboriginal Land Council - Southern Zone  
NSW Aboriginal Land Council - Western Region  
NSW Department of Aboriginal Affairs  
NSW Office of Fair Trading  
Wollongong Fair Trading

## Appendix 6. Application Fees & Charges

### Consumer, Trader and Tenancy Tribunal fees and charges schedule 1 July 2007 – 30 June 2008

Fees and charges are reviewed each year. The fees and charges below increased from 1 July 2008. Current fees are shown on the CTTT website.

#### Application fees

Tenancy, Residential Parks and Retirement Villages	\$32.00
Strata & Community Schemes	\$65.00

#### General, Home Building and Motor Vehicles Divisions

Claims or disputes not exceeding \$10,000 (or no specific amount claimed)	\$32.00
Claims or disputes between \$10,000 and \$25,000	\$65.00
Claims or disputes exceeding \$25,000	\$172.00

#### Commercial Division

Claims or disputes not exceeding \$10,000 (or no specific amount claimed)	\$32.00
Claims or disputes between \$10,000 and \$25,000	\$65.00
Claims or disputes exceeding \$25,000	\$172.00
For applications under section 86 or 86A of the <i>Credit Act 1984</i>	\$574.00
For applications under the <i>Consumer Credit (NSW) Code</i> except –	\$72.00
For applications under section 101 of the <i>Consumer Credit (NSW) Code</i> if the application is made by a credit provider.	\$574.00

#### Pensioners and students

All application fees are \$5.00

**Fees for rehearing and renewal of proceedings applications are the same as the substantive applications.**

**General Division:** The maximum claim in the General Division is \$30,000

**Motor Vehicles:** The maximum claim in the Motor Vehicle Division is \$30,000 except when the dispute relates to the supply of a new private motor vehicle.

**Commercial Division:** No fee is payable for an application under:

- (a) s74, s115 or s116 of the *Credit Act 1984*; or
- (b) s68 or s88 of the *Consumer Credit (NSW) Code*; or
- (c) s5 or s6 of the *Credit (Home Finance Contracts) Act 1984*.

#### Charges

Copy of documents	\$2.00 per page (with a minimum charge of \$24.00)
Issue of summons	\$36.00

#### Sound recording and transcripts

Sound recording – standard (10 days)	\$24.00 per CD
Sound recording – premium (5 days)	\$66.00 per CD
Transcripts	\$300.00 per hour of hearing time

**NB:** Full estimated cost of a transcript is payable prior to processing of request. Transcripts can cost \$2,000 per day.

# Appendix 7. Financial Summary 2007-2008

The audited financial reports required under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Commerce Annual Report 2007-2008.

<b>Salary and Related Payments</b>	<b>\$'000</b>
Salaries	6,821
Statutory Appointees	5,016
Employment Agencies/Security Services	720
Annual Leave	896
Overtime	46
Meal Allowance	-
Long Service Leave	442
Superannuation	1,285
Workers Compensation	108
Payroll Tax	871
Fringe Benefit Tax	85
	<u>16,290</u>
<b>Operational Expenses</b>	
Office Accommodation	3,463
Postage and Couriers	316
Telephones	329
Minor Computer Purchases and Consumables	152
Fees	671
Training and Development Fees	76
Motor Vehicles Expenses	61
Travel Expenses	176
Minor Equipment, Consumables and Stores	217
Minor Miscellaneous Expenses	522
	<u>5,983</u>
Depreciation	596
Total Operational Expenses	22,869
Administrative On Costs	1,821
Total Recurrent Expenditure	<u>24,690</u>
Capital Expenditure	722
<b>TOTAL EXPENDITURE</b>	<u><b>25,412</b></u>
<b>REVENUE</b>	
Lodgement Fees	(1,938)
Contribution from Consolidated Funds	(2,967)
Contribution from Rental Bond Board	(8,578)
Contribution from Home Building Service	(1,700)
Contribution from Motor Vehicle Repair Industry Authority	(567)
Contribution from Statutory Interest Account	(9,066)
	<u>(24,816)</u>
<b>Net Cost Of Services</b>	596
<b>Less Non Cash Transactions</b>	596
Depreciation	596
<b>CASH DEFICIT</b>	<b>(0)</b>

# Notes

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

**Sydney Registry**

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

**Liverpool Registry**

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

**Hurstville Registry**

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

**Tamworth Registry**

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

**Parramatta Registry**

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

**Penrith Registry**

Level 1, 308 High Street  
Penrith NSW 2750  
PO Box 988, Penrith 2751

**Wollongong Registry**

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

**Newcastle Registry**

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

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