



CTTT
Consumer, Trader &
Tenancy Tribunal

Consumer, Trader and Tenancy Tribunal

Annual Report

2009 - 2010

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

Dear Minister,

I am pleased to submit the Annual Report for the Consumer, Trader and Tenancy Tribunal for the year ended 30 June 2010.

This report summarises the Tribunal's performance during 2009-2010 and the outcomes achieved.

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

Yours sincerely,

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

Kay Ransome
Chairperson
Consumer, Trader and Tenancy Tribunal

Minister's Foreword



I am pleased to introduce the 2009-2010 report on the Consumer, Trader and Tenancy Tribunal.

The Tribunal provides accessible, quick and cost effective dispute resolution services relating to the supply of goods and services, and issues relating to residential property. The valuable work undertaken by the Tribunal supports a fairer marketplace in this State.

During this year, the Tribunal members and staff helped many thousands of people to resolve their disputes through conciliation and by conducting around 74,000 hearings in over 70 different locations across the metropolitan area and in regional NSW.

Hearings are informal and tailored to resolve common disputes over goods or services purchased, or residential properties. Tribunal hearings are sound recorded using digital technology and this year the Tribunal implemented enhancements to software and hardware to improve quality and reliability for members using laptops to sound record and produce Tribunal orders in regional locations.

Throughout the year, the Tribunal has continued to inform the community about its services. In 2009-2010 Tribunal

Members and staff participated in over 50 community consultative forum and information sessions aimed at increasing public awareness of the Tribunal's role and services. Feedback received from the community and parties is used to inform future sessions.

The Tribunal's website contains educational fact sheets and information about each step in the dispute resolution process. In September 2009 I launched the Aboriginal DVD *Getting a fair go at the CTTT* which provides clear and concise information about the Tribunal processes. It is available to view at www.cttt.nsw.gov.au or a copy can be obtained through the Tribunal Registry.

The Tribunal's online lodgement system *CTTT Online* enables an application to be lodged over the internet and almost 45% of applications lodged this year utilised this service. The Tribunal has a number of exciting technological enhancements planned for the future to make it easier for people to use its services and for members and staff to do their work.

This report highlights the initiatives introduced and projects undertaken by the Tribunal during 2009-2010. I congratulate the Chairperson, Tribunal members and staff for their efforts and achievements throughout the year.

Virginia Judge
Minister for Fair Trading

Chairperson's Review



2009-2010 proved to be another busy and challenging year for the Tribunal, bringing more change largely driven by innovation, technological improvements and legislative amendments.

I am very proud to lead the Tribunal as it performs a significant role within the NSW justice system. The provision of a low cost and efficient dispute resolution service that is accessible to the community is very important. Without tribunals such as the Consumer, Trader and Tenancy Tribunal, people would either have to go to court, which is not an affordable or accessible option for many, or they would have nowhere to resolve their disputes.

With around 60,000 applications each year across a diverse jurisdiction, and with the majority of people who come to Tribunal being unrepresented, it is a challenge to ensure parties can exercise their right to be heard in a setting that provides a quick turnaround.

We have done a lot of work throughout the year to help parties feel more comfortable about using the Tribunal's services. We have focused on helping people understand the purpose of the hearing event they are attending, so they can prepare and actively participate in the dispute resolution process.

It goes without saying that Tribunal decisions must be impartial, and legally and procedurally correct. It is equally important to ensure people feel they have had a fair hearing. We have worked hard on producing orders and reasons for decisions in plain English, so that people can easily understand the decisions and directions being made.

Workload

In 2009-2010 there was a small increase in the total number of applications lodged, with marked differences in application numbers in each division compared with the previous year.

There was an increase in applications in the Social Housing (30%), Motor Vehicles (7%), General (4%), Retirement Villages (57%), Residential Parks (81%) and Strata and Community Schemes Divisions (10%). Applications in the Tenancy Division were down by 11%, and applications in the Home Building and Commercial Divisions were 3% and 8% below 2008-2009 respectively.

Legislative change

Considerable legislative change this year impacted significantly upon the Tribunal, and will continue to do so in the near future.

Consumer, Trader and Tenancy Tribunal Regulation 2009

The *Consumer, Trader and Tenancy Tribunal Regulation 2009* came into effect on 1 September 2009 remaking the 2002 Regulation with modifications of an administrative nature.

Retirement Villages Amendment Act 2008 and Retirement Villages Regulation 2009

The *Retirement Villages Amendment Act 2008* and the *Retirement Villages Regulation 2009* commenced on 1 March 2010, introducing a number of new rights and obligations for retirement village operators and residents, including several new orders established in the Tribunal's Retirement Villages Division.

Residential Tenancies Bill 2010

In June 2010 the NSW Parliament passed the *Residential Tenancies Bill 2010*. The new Act is expected to

come into effect during 2010-2011 after the necessary supporting regulations are made. We are working hard to ensure all the necessary systems are in place when the Act commences.

Credit (Commonwealth Powers) Bill 2010

The *Credit (Commonwealth Powers) Bill 2010* is due to commence on 1 July 2010 and will refer certain matters relating to consumer credit and other financial transactions to the Commonwealth. This will mean that the Tribunal will no longer deal with a range of consumer credit applications. New dispute resolution systems in relation to credit matters are being established by the Commonwealth.

There were a number of other legislative amendments affecting the Tribunal's jurisdiction requiring operational changes. More detail on these changes can be found in Appendix 1.

Innovation

The Tribunal has a continuous improvement ethos and a number of enhancements were made during the year to make it easier for the community to access and use our services, and to simplify the way Tribunal members and staff do their work.

We continued our program of technological improvements to provide a seamless integration of our online application system, *CTTT Online*, with our case management system.

The Tribunal's *InCourt* system is a leading-edge service as it allows parties to receive printed orders directly after their hearing. During the year, we further enhanced the *InCourt* system by integrating it with wireless technology. As a result, regional Tribunal members are also able to enter orders at the hearing, regardless of the location of the hearing.

We also invested in software to manage the hearing allocation of Tribunal members in a more effective and sophisticated way. This much improved reporting and monitoring system has resulted in significant efficiencies in the allocation of resources and the planning of future hearing commitments.

Communications strategy

The Tribunal's *Communications Strategy 2008-2010* has provided us with a framework for the development of many new information products and enhancements to our website to better meet the general needs of the community.

During the year we developed several new fact sheets and brochures, including *Preparing for hearing*, *Rehearing and appeals* and *Glossary of terms* fact sheets. One notable success of the communications strategy was a 24% increase in visits to the Tribunal's website over the past 12 months, which built on the 43% increase in 2008-2009.

A new five-year communications strategy is currently being drafted that will focus on expanding our information services through the use of mobile communications technology and social media.

Stakeholder engagement

Our stakeholders play a pivotal role in helping us provide an effective and responsive service that meets the needs of the people who use the Tribunal. During the year we held 17 Divisional, Aboriginal and community consultative forum meetings.

Our consultative forum meetings promoted effective two-way exchange of information with stakeholders and gave them the opportunity to share views and concerns about operational and policy issues.

Aboriginal initiatives

The *Communications Strategy for Aboriginal Communities 2009-2011* and two resources developed under that Strategy were prepared in consultation with our Aboriginal Consultative Forum members.

The DVD *Getting a fair go at the CTTT* and companion brochure were launched by the Minister for Fair Trading, Virginia Judge, in the latter part of 2009. The DVD uses storytelling to illustrate the Tribunal's dispute resolution process, and the brochure provides a straightforward explanation of the processes depicted in the DVD.

Access and equity

We are committed to ensuring our services are accessible to every member of the community. The Tribunal has implemented tailored systems designed to meet the needs of all community members, including people with disabilities, seniors and parents with prams and young children.

During the year, we conducted an extensive review of the accessibility of all Tribunal hearing venues located across NSW. Our new Accessible services webpage provides comprehensive information about accessibility for people with a disability or mobility-related need to ensure they receive equal access to our services.

Future directions

In the coming year we will continue to explore other innovative methods of service delivery. Planned future development of our *CTTT Online* system will integrate the information available on our website for use during the application lodgement process. We are also commencing a staged implementation for the electronic lodgement of documents.

We also plan to pilot network based videoconferencing, as well as undertake work to ready the Tribunal for the future provision of services utilising social media such as 'Twitter' and mobile technology.

Our fundamental focus will be the ongoing development of our services and delivery channels to make it easier for anyone in NSW to access and utilise our services. We will continue to work closely with our stakeholders to help us achieve this goal.

I conclude by thanking Tribunal members and staff for their support during the past year. I look forward to working with them to further enhance the services we provide.

Kay Ransome

Chairperson

2009-2010 Year in review

59,403 Applications lodged

- ▶ 1.2% increase from last year
- ▶ 45% of all applications lodged online
- ▶ \$1.98 million application fees collected

73,822 Hearings held

- ▶ 26 days average time between lodgement and first hearing
- ▶ Over 70 venues across NSW used for Tribunal hearings

62,068 Applications finalised

- ▶ 75% of matters finalised prior to or at the first hearing
- ▶ 64% of matters finalised within 35 days

85,835 Orders made

- ▶ Enhancements to *InCourt*, which enabled Tribunal members to type orders into the case management system at hearing, ensured that 80% of final orders issued within 1 day of the final hearing

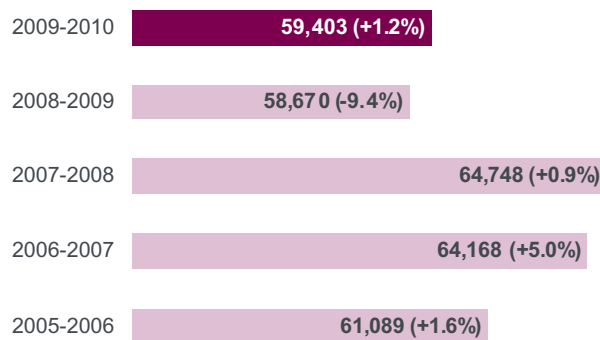
67 Community consultative forums and information sessions held

- ▶ 17 divisional, Aboriginal and community consultative forums held for stakeholder groups
- ▶ 50 community information and education sessions convened or participated in by staff and/or Tribunal members

327,530 Website visits

- ▶ 24% increase from last year
- ▶ Most popular website pages were Tribunal application forms, 'Contact us' and the hearing list web pages
- ▶ 8,237 email enquiries received

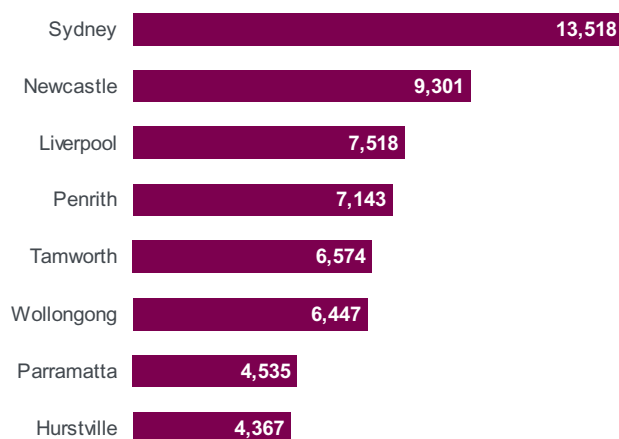
Applications - 5 year comparison



Applications by Division

Division	Applications	%
Tenancy	30,490	51.3%
Social Housing	13,135	22.1%
General	6,676	11.3%
Home Building	3,451	5.8%
Residential Parks	2,439	4.1%
Strata and Community Schemes	1,469	2.5%
Motor Vehicles	1,350	2.3%
Commercial	313	0.5%
Retirement Villages	80	0.1%
Total	59,403	100%

Applications by Tribunal Registry



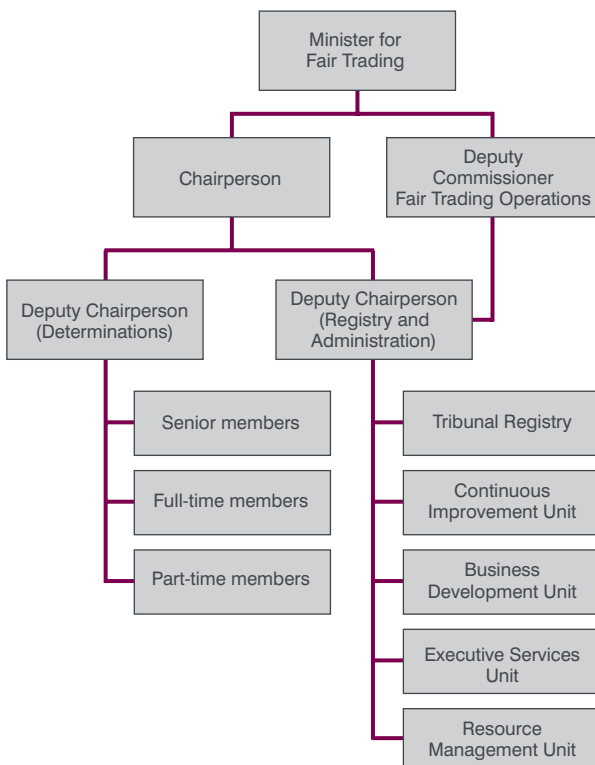
Our Organisation

The Consumer, Trader and Tenancy Tribunal is an accessible tribunal that resolves disputes about the supply of goods and services, and issues relating to residential property. The Tribunal's powers, functions and procedures are set out in the *Consumer, Trader and Tenancy Tribunal Act 2001 (the Act)* and the *Consumer, Trader and Tenancy Tribunal Regulation 2009*.

There are a number of Acts that confer jurisdiction on the Tribunal (refer to **Appendix 1** for a full list). The Tribunal resolves disputes brought to its nine divisions - Tenancy, Social Housing, Home Building, General, Residential Parks, Strata and Community Schemes, Motor Vehicles, Commercial, and Retirement Villages.

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

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



The Tribunal's organisational chart and reporting lines

Kay Ransome Chairperson

Chairperson since September 2002, Kay has extensive experience working in tribunals and related fields.



The Chairperson is responsible to the Minister for Fair Trading for the efficient and effective operation of the Tribunal and the management of the Tribunal's work. This includes Tribunal member management and performance, the application of a Code of Conduct for members and issuing Chairperson's Directions to ensure that the Tribunal's procedures are fair, informal and as speedy as practicable.

Nick Vrabac Deputy Chairperson (Determinations)

Deputy Chairperson (Determinations) since February 2002, Nick has been a legal practitioner in both the private and public sectors.



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

Garry Wilson Deputy Chairperson (Registry and Administration)

Deputy Chairperson (Registry and Administration) since October 2008, Garry has broad experience across the Commonwealth and State Government sectors. Garry is also a part-time teacher with NSW TAFE. Garry has a Masters Degree in Commerce and a Graduate Certificate in Management.



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

Tribunal members

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

All Tribunal members are appointed by the Governor on either a full-time or part-time basis. The qualifications of members are set out in section 8 of the Act.

The Tribunal membership, as at 30 June 2010, included the Chairperson, two Deputy Chairpersons, 8 Senior members, 10 full-time members and 62 part-time members (refer to **Appendix 2** for a full list). Senior Members hear more complex cases and support the Chairperson and the Deputy Chairperson (Determinations) in member professional development and mentoring.

Registry and administration

The Tribunal's registry and administrative functions sit within the NSW Department of Services, Technology and Administration (DSTA) 'super agency'. The Deputy Chairperson (Registry and Administration) reports to the Deputy Commissioner Fair Trading Operations within DSTA. Staff are employed under the provisions of the *Public Sector Employment and Management Act 2002*.

As at 30 June 2010 there were 125 staff positions attached to the Tribunal's registry and administrative units. The Tribunal's registry and administrative units consist of the following key functions:

- ▶ **Tribunal Registry** provides case management and operational support to the Tribunal's dispute resolution and hearing activities. The Registry assists parties to access and use our services; provides administrative assistance to Tribunal members; processes applications; lists hearings; maintains file records; issues notices and orders, warrants and certified money orders; and provides copies of written reasons for decisions.
- ▶ One of the main challenges facing staff is providing quality client service and procedural information without giving

legal advice or information to parties on how to run their case. This is summarised in the fact sheet *What we can and cannot do: CTTT Registry Staff*.

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



Registry officers Kristina Petrucci and Meena Jao at the Tribunal's Parramatta Registry

Our Clients

Our range of service initiatives, along with innovation and commitment to excellence in quality service delivery, assists the 60,000 people who bring their disputes to the Tribunal each year.

Accessing the Tribunal

We are committed to providing a low-cost, accessible and efficient service, and delivering high quality and expert decisions to parties.

Tribunal applications can be lodged with *CTTT Online* at www.cttt.nsw.gov.au. Applications can also be lodged at any Tribunal Registry or Fair Trading Centre. Fair Trading Centres provide people with information about the Tribunal, including the steps in lodging an application and options available for resolving disputes.

A number of our eight Tribunal Registry offices are co-located with Fair Trading Centres, offering a one-stop-shop for people who want information and assistance with their disputes. There is a clear separation between the Tribunal and NSW Fair Trading, ensuring that we maintain our independence and impartiality.

Hearings are conducted at over 70 venues in various metropolitan and regional locations ensuring that our services are accessible across the State. Hearing locations include the hearing rooms at the eight Registries and

permanent hearing rooms at Blacktown, Campbelltown, Dubbo, Gosford, Lismore, Queanbeyan and Wagga Wagga. A range of other venues across NSW are also used for Tribunal hearings including court houses.

Where appropriate, hearings are conducted by telephone, providing access to parties who are unable to travel or who are not located near the hearing venue. During 2009-2010 more than 1,500 telephone hearings were conducted, which is an increase of almost 50% from last year. This reflects a Tribunal policy change allowing parties to request a telephone hearing if they would otherwise need to travel for more than two hours to attend a face-to-face hearing.

Promoting Tribunal services

We are committed to increasing awareness about our dispute resolution services for people who have a dispute they cannot resolve themselves.

Our commitment to increasing awareness has been supported by the Tribunal's *Communications Strategy 2008-2010* that has served as an overarching framework for the development of a range of integrated education and information resources.

Information exchange

During 2009-2010 Tribunal members and staff participated in over 50 community education and information events. These included:

- ▶ Tribunal information sessions conducted across NSW, for example, sessions targeting Aboriginal and culturally and linguistically diverse communities
- ▶ Functions and events arranged by the Tribunal's stakeholders and various community organisations where Tribunal members and staff participated as guest speakers
- ▶ NSW Fair Trading's community and regional access programs held at various locations throughout NSW.

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



The Tribunal's Sydney Registry and Hearing Rooms



Deputy Registrar (Case Management) Debbie House and Tribunal member Peter Smith presenting at the 2010 Law Week information session

Website

Our website www.cttt.nsw.gov.au continues to be the primary source of information for the public about the Tribunal and its operations. During 2009-2010 we received a record number of 327,530 visitors to our website.

The website provides extensive information about the Tribunal including our nine divisions and their related legislation, jurisdictional limits and case management practices. The website also contains direct links to our daily hearing lists which are automatically updated as changes are made.

During 2009-2010 a number of enhancements were made to the website, including several new web pages, to provide comprehensive information about the Tribunal's role, procedures and processes.

Multimedia

The website contains the following multimedia resources about the Tribunal and its dispute resolution services:

- ▶ *Get it sorted* shows how the Tribunal can assist parties in resolving their dispute.
- ▶ *We're talking your language* provides Tribunal information to people from culturally and linguistically diverse backgrounds, and is available in a range of community languages.

- ▶ *Getting a fair go at the CTTT* provides information to Aboriginal people on how disputes are resolved at the Tribunal.

CTTT Online

CTTT Online is the Tribunal's online application lodgement system that enables people to lodge Tribunal applications at their own convenience and receive an electronic Notice of Hearing where matters are automatically listed. In 2009-2010, 45% of all applications were lodged with *CTTT Online*.

Publications

We produce a wide range of educational resources and information about the Tribunal and its processes. During 2009-2010 the following fact sheets and brochures were developed:

- ▶ *What we can and cannot do: CTTT Registry staff*
- ▶ *Customer service charter*
- ▶ *Getting a fair go at the CTTT*
- ▶ *Glossary of terms*
- ▶ *Home Building Division: Conclaves*
- ▶ *Preparing for hearing*
- ▶ *Rehearing and appeals*
- ▶ *Retirement villages*
- ▶ *Social housing*



Tribunal fact sheets

Stakeholder involvement

The Tribunal's stakeholder involvement assisted with ongoing improvements during the year. We liaised and consulted with stakeholders and parties about a range of issues, procedural changes and new publications.

We issued 12 *CTTT Forum Update* e-newsletters to keep our stakeholders informed about the Tribunal's operations and other relevant activities such as legislative change, new information products and management reports.

Our stakeholders also provided us with valuable feedback during our evaluation of the new Social Housing Division. As a result of this feedback, changes were made to our application forms and the information provided on the Tribunal's website.

Inter-Agency liaison

Pursuant to section 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, NSW Fair Trading are provided with regular reports detailing lists of cases in our Home Building and General Divisions in which a respondent has appeared in three or more applications to the Tribunal within a twelve month period.

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

Assisting people with additional needs

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

Aboriginal communities

In 2009-2010 we continued to develop a tailored approach to address the needs of Aboriginal communities. The *Communications Strategy for Aboriginal Communities 2009-2011* was launched in May 2009, followed in late 2009 by a DVD and companion brochure *Getting a fair go at the CTTT*.



A scene from the DVD for Aboriginal Communities *Getting a fair go at the CTTT*

The DVD *Getting a fair go at the CTTT* and brochure were produced to increase awareness of the Tribunal within the Aboriginal community and to encourage participation in the Tribunal's hearing processes.

The DVD features Aboriginal actors in a dramatisation of typical Tribunal cases involving tenancy and motor vehicle disputes. It uses storytelling to illustrate the Tribunal's processes from lodging an application to attending a hearing.

These initiatives have proved successful in delivering information and promoting greater awareness of the Tribunal's services to the Aboriginal community. The communications strategy, DVD and brochure can be downloaded from www.cttt.nsw.gov.au.

We met with key Aboriginal organisations through the Tribunal's Aboriginal Consultative Forum. During 2009-2010 Aboriginal forum members provided advice on a number of issues such as service delivery to Aboriginal communities and assisted in the development of culturally appropriate information products for Aboriginal people.

The Tribunal's outreach programs for Aboriginal communities were presented by Tribunal members and staff, and explained the type of disputes the Tribunal deals with, how to apply and what happens at a hearing. In June 2010 an outreach event was delivered in Wagga Wagga to help local Aboriginal people understand the Tribunal's processes, and to provide an opportunity for them to ask questions.

Culturally and linguistically diverse (CALD) communities

We continued to work with culturally and linguistically diverse (CALD) communities. We delivered information to CALD communities through our information sessions and participation in NSW Fair Trading events and presentations.

Professional interpreters were arranged free of charge for people who required language assistance during Tribunal hearings. During 2009-2010, 2,824 requests for interpreter services were received, with the most common languages being Mandarin, Arabic, Cantonese, Korean, Vietnamese, Spanish and Greek. The value the Tribunal places on this service is evidenced by our expenditure of \$340,000 on interpreter services during the year.

The CD-ROM *We're talking your language* and our website www.cttt.nsw.gov.au provide information about the Tribunal's services in a range of community languages. The CD-ROM is available to play or download from the website, and copies are available from Tribunal Registries.

We also actively use the Community Language Allowance Scheme (CLAS) to recognise Tribunal staff who speak a community language, and to further improve our customer service to CALD communities. There are 29 Tribunal staff who have a level of competency in 18 different languages other than English and who work in locations where their language skills can be used to assist clients.

A CALD communications strategy is currently being developed which will provide the framework for future activities to increase awareness about the Tribunal and its services within CALD communities.

Services for people with disabilities

We aim to ensure that people with a disability receive the necessary assistance to provide them with equal access to our dispute resolution services.

During the year we conducted an extensive review of the accessibility of all Tribunal hearing venues. The review was aimed at ensuring each venue provides unrestricted access for persons who are mobility impaired, and making certain that effective emergency evacuation

procedures for people with disabilities are in place. Where hearing venues were found to be unsuitable, we are currently locating more appropriate venues.

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

Some of the services provided during the year included:

- ▶ providing professional Auslan translators to interpret during proceedings at no cost to the parties
- ▶ facilitating telephone contact via the National Relay Service (NRS) for people who were deaf, or had a hearing impairment or speech impairment
- ▶ ensuring flexible hearing options were available such as transferring proceedings to an accessible hearing room or arranging a telephone hearing
- ▶ making all Tribunal hearing venues wheelchair accessible, and ensuring that non-Tribunal hearing venues are wheelchair accessible where required
- ▶ providing portable hearing loop systems in Tribunal hearing rooms.

Further information about our range of accessible services is available at www.cttt.nsw.gov.au.

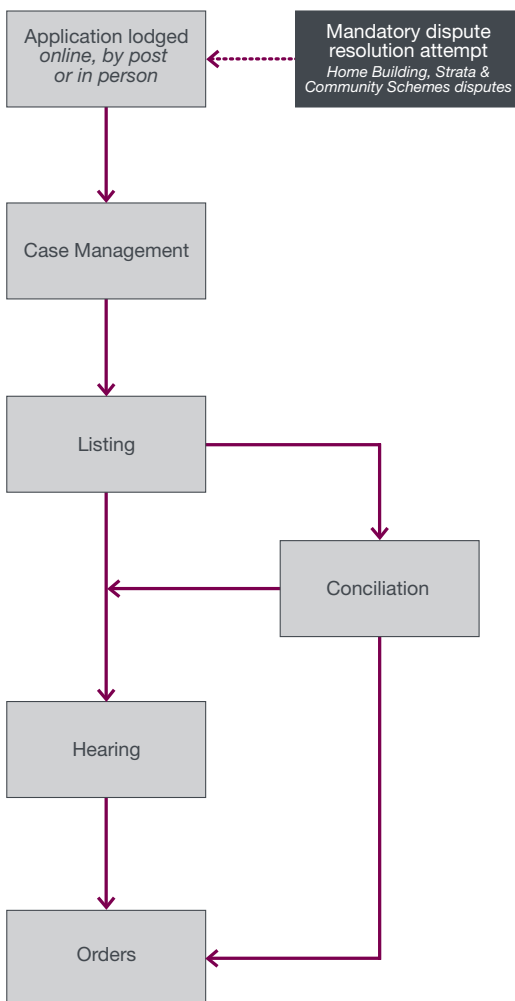
Our Processes

Since the Tribunal's inception in 2002 we have undertaken a vital role in delivering high quality dispute resolution services to the NSW community.

During 2009-2010 the Tribunal received 59,403 applications and held 73,822 hearings at more than 70 locations.

We used a variety of dispute resolution strategies to manage our high volume workload, and we refined our processes to optimise the use of technology at varying stages of the Tribunal hearing process.

Below is a flowchart illustrating the Tribunal process. Refer to **Appendix 3** for more information on our processes.



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

Appropriate dispute resolution

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

All Tribunal members and some staff have recognised qualifications or extensive experience in dispute resolution.

Conciliation

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

Conciliation is a confidential process which enables parties to discuss the issues in dispute in an informal manner and explore options to resolve the issues outside the hearing room.

During the year, our publication *Ten Top Tips for Conciliation* was integrated into the initial Notice of Hearing issued to parties, to provide comprehensive information about the conciliation process and how both parties can maximise participation in their first appearance before the Tribunal.



Deputy Registrar (Conciliation) Anne Lynch assists parties reach agreement during their conciliation discussions

Conclaves

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

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

We provide a range of information resources that assist people in the resolution of home building disputes. These resources are available at www.cttt.nsw.gov.au and include a Chairperson's Direction on acceptance of home building claims; Scott Schedules that assist parties to itemise the defects which are the subject of a home building dispute; and a *Conclaves* fact sheet that explains how conclaves assist parties in the resolution of their dispute.

Mediation

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

Hearings

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

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



Member John Halliday conducting a hearing

We have recently reviewed and updated all of our Notices of Hearing to more clearly inform parties of the type of hearing event they will be attending, and what is required to be done prior to their hearing in order to maximise participation and the likelihood of a successful settlement.

Group lists

A 'group list' is where a number of cases are listed together before a Tribunal member. The majority of applications are listed for first hearing in a group list.

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

Directions hearings

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

Formal hearings

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

Determination on the papers

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

In other divisions, when both parties consent, matters can be determined on the basis of the written material provided.

Applications for rehearing under section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001* are also determined on the basis of written submissions.

Telephone hearings

During 2009-2010 the Tribunal increased the use of telephone hearings, improving access for parties who would otherwise have to incur costs related to excessive travel to a hearing venue.



Senior Member Christine Paull conducting a telephone hearing

Decisions and orders

A Tribunal member will generally determine a matter on the day of hearing and give brief reasons for the decision.

With the increasing use of computers and the Tribunal's *InCourt* system, parties are usually able to take a copy of the Tribunal's written order away with them at the conclusion of the hearing.

Regional Tribunal members are now able to access the *InCourt* system using wireless technology via laptops in the hearing room. Orders are typed directly into the system, printed out at the Tribunal Registry and posted out immediately. As a result, parties in regional areas receive their orders days earlier than previously and often before the files are returned to the Registry from the hearing venue. This represents a significant improvement in the timely delivery of decision outcomes to our regional customers.

Tribunal members are increasingly providing brief written reasons with their orders, giving parties more information on how their case was determined, thus increasing transparency and accountability in decision making. The increasing provision of brief reasons has also coincided with a reduction in the number of formal requests for written reasons under section 49 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Reserved decisions

In complex matters the Tribunal member may reserve his or her decision and issue a written determination, including reasons, to the parties at a later date.

These determinations are published on the Australasian Legal Information Institute's website www.austlii.edu.au and can be viewed by the public, further increasing transparency and accountability in Tribunal decision making.

The Chairperson has issued a Direction which sets out the policy applying to the removal of personal identifiers from written reasons and reserved decisions. The purpose of this policy is to prevent any unnecessary intrusions of personal privacy and to minimise the risk of identity theft.



Decisions coordinator Ella Mozgawa receiving a reserved decision from Tribunal member Ted Moore

Rehearings and appeals

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

In accordance with the provisions of section 68 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, the Chairperson, or her delegate, may consider granting an application for rehearing if it can be established that the applicant may have suffered a substantial injustice on one or more of the following grounds:

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

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

During the year, a *Rehearing and appeals* fact sheet was produced outlining the rehearing and appeal processes in greater detail.

Enforcement

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

- ▶ Where the Tribunal makes an order that requires a party to complete work within a particular time and the work is not completed, a party can lodge an application seeking to renew proceedings in the Tribunal.
- ▶ If a Tribunal order directs payment of money, a party can request that a certified money order be issued. This order is enforceable in the Local Court.
- ▶ Where an order is made that residential premises are to be returned to a landlord and the tenant does not vacate, a warrant for possession can be obtained from the Tribunal Registry. Warrants for possession are executed by the NSW Sheriff.

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

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

Our Governance

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

Independent body

The Tribunal is an independent body that resolves disputes and issues enforceable orders.

Like all Australian courts and tribunals, Tribunal decisions are final and binding subject to a limited right of rehearing or appeal. Our decision making process is independent of any political, administrative or other influence.

Tribunal members are independent statutory officers appointed by the Governor of NSW. The Registry staff are employed under the *Public Sector Management Act 2002*.

Legislative framework

Our governance framework substantially stems from the *Consumer, Trader and Tenancy Tribunal Act 2001* and the supporting Regulation. Other legislation provides for the operation of each division. Together, this legislation establishes the Tribunal, provides legislative authority for its operations and outlines its jurisdiction and objectives.

The Tribunal is also guided by whole-of-government legislation covering the employment of staff; procurement of goods and services; use of State resources and finances; and the way in which services are delivered, such as complying with occupational health and safety, anti-discrimination, privacy and other legislative and policy requirements.

Tribunal members

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

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

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

Under section 49 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, parties to proceedings can request written reasons within 14 days of receiving the Notice of Order. Written reasons for decisions and reserved decisions are made publicly available at www.austlii.edu.au.

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



Tribunal Senior Members, from left: Geoffrey Meadows, Christine Paull, John Bordon, Graeme Durie, Margaret Balding and Richard Buckley. Absent: Senior Members Reg Connolly and Jeffery Smith.

Professional Practice and Review Committee

The Professional Practice and Review Committee was established in October 2008 by the *Consumer, Trader and Tenancy Tribunal Amendment Act 2008*, replacing the former Peer Review Panel.

The Committee has a broader role than the former Panel, and brings an external and independent perspective to

professional development and performance building for Tribunal members.

The Committee is made up of two independent persons appointed by the Minister for Fair Trading, Gary Byron and Jan McClelland; the Chairperson, Kay Ransome; DSTA Director-General, Peter Duncan; Deputy Chairperson (Determinations), Nick Vrabac; and Deputy Chairperson (Registry and Administration), Garry Wilson. The two independent members were appointed on 30 April 2009, and were selected for their expertise in consumer protection, ethics, dispute resolution, education or publication administration. Mr Byron was appointed as the inaugural chair of the Committee.

In early 2010 Mr Byron resigned the position of chair, and the Minister appointed Jan McClelland in his place on 20 April 2010. Professor Larissa Behrendt was also appointed on 20 April 2010 as the other independent member. Professor Behrendt is a Professor of Law, barrister, and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology Sydney.

The Committee is required to meet at least three times per year. In 2009-2010 the Committee met four times. The Act requires that the Committee review and provide advice on matters referred to it by the Minister, the Director General, and the Chairperson. Matters referred may be related to one or more of the following:

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

During the reporting period the Minister referred two new matters to the Committee. One matter concerned a complaint about the conduct of a hearing by a Tribunal member, and the other referral sought the Committee's advice on options for improving the knowledge and skills of members conducting hearings in the Home Building Division.



Deputy Registrar Rosheela Kombar at the Tribunal's Sydney Registry

The Committee finalised four referrals during the reporting period, three of which were referred in the last reporting period.

Registry and administrative staff

Tribunal Registry and administrative staff are obliged to comply with the NSW Public Service Code of Conduct and enter into a performance development agreement with their respective managers.

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

Planning

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

Communication

A range of communication mechanisms keeps Tribunal members and staff informed about changes and activities, including a regular Chairperson's newsletter, a Registry and Administration newsletter and intranet sites for members and staff.

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

Managing risk

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

During 2009-2010 we updated our Strategic Risk Management Plan. The Plan recognises that the Tribunal faces a rapidly changing environment and must be responsive to client and stakeholder needs.

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

The Plan identifies five strategic risks:

1. **Change agenda** - implementation of changes to legislation and new initiatives stemming from the NSW Government, NSW Fair Trading and the Tribunal's continuous improvement projects.
2. **Registry and administrative services** - maintaining timely and effective delivery of service, by Tribunal members and staff, for our stakeholders and the people who use the Tribunal's services.
3. **Resources** - maintaining effective leadership, management and governance of capital, financial, staff and technical resources.
4. **Community image** - maintaining productive relationships and ensuring that stakeholders and parties have a sound appreciation of the role and services of the Tribunal.
5. **Continuity of services** - maintaining continuity of systems and services for members and staff to do their work, and for parties and stakeholders to effectively participate in the resolution of disputes.

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



Deputy Chairperson (Registry and Administration), Garry Wilson reviewing the Tribunal's Quarterly Management Report

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

Performance monitoring and reporting

Performance monitoring and reporting systems are in place to help us meet the Tribunal's objective of providing an efficient, effective and expeditious dispute resolution service. The governance arrangements mentioned in this report provide the framework for performance monitoring and reporting mechanisms.

Our reporting systems provide the Chairperson, Deputy Chairpersons and senior staff with reliable and timely information to help manage our significant and diverse caseload; to monitor operational performance against the service standards; and to meet our annual reporting and statutory requirements.

Data from our case management system and other systems is used to prepare monthly and quarterly statistical reports. These reports examine application trends in the nine divisions and monitor workflows in the Tribunal's Registries against performance standards. A range of performance standards were reviewed during the year to take into consideration our differential approach to the management of our caseload.

Other performance monitoring and reporting mechanisms are in place to ensure we use our resources and assets in an efficient and effective way.

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

- ▶ Quarterly statistical reports are made available to the Minister for Fair Trading and are regularly discussed with the Tribunal's consultative forum members and other stakeholders
- ▶ Relevant statistics are posted on the Tribunal's website
- ▶ Our Annual Report publicly accounts for the Tribunal's performance to the broader community.

Case and records management systems

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

Other supporting systems are well established to assist the management of our operations, in particular the requirement to list applications and allocate Tribunal members across 70 hearing venues.

Hard copy files are kept of all applications and associated documents for a period of two years, except in the Home Building and Strata and Community Schemes Divisions where the records are retained for seven years.

Complaints management

We are committed to responding promptly to complaints about our services. Our Complaints Management Policy, first implemented in 2007-2008, provides guidance to Tribunal staff and management when handling complaints or dealing with client dissatisfaction. The policy is supported and promoted in the *Making a complaint* fact sheet and other materials available at www.cttt.nsw.gov.au.

Our complaints management system allows us to identify opportunities for service improvement and is an important aspect of our continuous improvement process. During the year, 947 written complaints were received (including registered ministerial letters). More than half of all complaints

concerned dissatisfaction with decisions which were not made in the complainant's favour, and asked the Minister or Chairperson to review or alter the decision.

As Tribunal decisions are final and binding, neither the Minister nor the Chairperson have the power to change Tribunal decisions. The granting of a formal rehearing or appeal to the District or Supreme Court is the only way that a decision can be challenged. Again, this ensures that Tribunal decisions are free from political, administrative or other influence.

Overall, written complaints represented just over 1% of the total number of hearings held by the Tribunal during the year.



Executive Services Officer, Neil Wassell preparing a response to a written complaint

Business

Improvement

The Tribunal continues to utilise technology to assist parties to resolve disputes fairly and quickly. Our commitment to continuous improvement, member professional development and our strong emphasis on staff development provides a solid foundation that allows us to better achieve our objectives, especially in service delivery across NSW.

Technology improvements

We continue to explore ways of better harnessing technology to improve our service delivery.

Refined auto-listing

During the year the Tribunal's electronic case management system auto-listing process was updated to provide the Registry with more refined control over the automatic listing of matters lodged online. The changes allow our Registries to better meet the needs of our regional customers.

Password authentication

In collaboration with the NSW Government's shared services technology provider, *ServiceFirst*, changes were implemented to integrate user authentication systems. This reduced the number of individual passwords Tribunal members and staff use to access various Tribunal systems.

Double-sided printing

Changes were made to the Tribunal's case management system to enable double-sided printing of orders and Notices of Hearing. This green initiative has allowed the Tribunal to significantly reduce its paper usage.

Future proofing

In the coming financial year, we will be concentrating on projects that use technology to 'future proof' the Tribunal's business processes that will make it easier for people to use our services and will enhance the working environment for Tribunal members and staff.

A videoconferencing capability will be implemented to increase access to our services for regional consumers and traders. We are also planning to implement *e-Doc*, a project

which will progressively enable the electronic uploading of documents to the case management system in support of Tribunal applications.

Plans are also underway for significant changes to be made to our online lodgement, case management and *InCourt* systems pending the commencement of the *Residential Tenancies Act 2010*.

Hearing allocations diary

The hearing allocations diary has continued to be extremely effective in maximising the efficient utilisation of member hearing resources throughout the State.

During the year we invested in hearing allocation software to effectively manage the allocation of Tribunal Members. The new software allows the Tribunal to be more sophisticated in the way member resources are scheduled, resulting in significant efficiencies in the planning and allocation of resources.

Further work has been done to improve our reporting and planning capacity, with the Tribunal now able to formalise hearing arrangements up to two months in advance. This is a significant improvement on previous arrangements, and has resulted in stability and equity in the allocation of hearing work to Tribunal members. It has also ensured the efficient use of member resources in regional NSW.

Continuous improvement

We have an integrated approach for achieving continuous improvement. Senior management and the Tribunal's Continuous Improvement Reference Group drive improvements by focussing on stakeholder feedback, measuring performance, and gaining an understanding of the issues faced by people who use the Tribunal's services.

The foundations for continuous improvement are based on a culture of innovation; problem solving by involving staff and stakeholders; ensuring solutions are cost effective; and making it easier to use the Tribunal's services and systems.

Continuous Improvement Reference Group

The Tribunal's Continuous Improvement Reference Group (CIRG) reports on and analyses information and feedback about the Tribunal's activities and recommends strategies that contribute to ongoing improvement and effectiveness.

Membership of CIRG includes Tribunal members, senior management and staff from the Registry and Continuous Improvement Unit.

During 2009-2010 CIRG meetings were held each quarter, providing a forum for discussion about issues that impact on all operational areas and client service practices. CIRG also receives reports on our response to complaints and other feedback received by the Tribunal.

As a result of CIRG discussions, recommendations for enhancements were implemented across the Tribunal's operational procedures, client services, business development initiatives, and staff training and development activities.

Tribunal member professional development

The Tribunal assists members in their professional development by providing opportunities to identify specific training and development needs, through performance monitoring and member mentoring.

During 2009-2010 we continued our commitment to a culture of learning and improvement across the organisation through a range of programs.

Tribunal members conference

The annual Tribunal members conference was held in August 2009. The major agenda items included insolvency, appropriate dispute resolution and working with interpreters to achieve effective dispute resolution for parties.

Presentations and discussions at the conference delivered practical information to Tribunal members. Conference papers were uploaded to the Tribunal members' intranet.

The conference also provided an opportunity for members to share their experiences regarding the conduct of various types of cases.

Senior Member meetings

Senior Members provide a mentoring role to other members through the provision of training and development, and also support the Chairperson.

Senior Members meet on a quarterly basis to discuss relevant legislation and case law. The outcome of these discussions is disseminated through the member network groups.

Member network groups

With a large number of part-time and regionally-based Tribunal members, member network groups provided a useful forum for discussion about case studies and issues relevant to the dispute resolution process.

The member network groups met via teleconference on a bi-monthly basis and were facilitated by Senior Members.

Chairperson's e-newsletter

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



Tribunal members conference

Staff learning and development

During 2009-2010 flexible training methods were used to enhance and maximise the performance of staff. This was achieved through an integrated approach including corporate training, a performance development program, regular e-newsletters, and forums to promote discussion and learning.

A Learning and Development Reference Group assisted the Deputy Chairperson (Registry and Administration) to establish a performance-based culture with a strong focus on organisational development.

Registry briefing days

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

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

During 2009-2010, this program was extended to team leaders on a bi-monthly basis. These meetings brought together our key frontline operational staff with a view to



Communication & Education Coordinator Enaam Massih presenting at a Registry briefing day

improving service delivery, developing skills and establishing succession planning in all Registries.

This program has been highly effective in achieving consistency in procedures, the sharing of ideas and common solutions to problems, and facilitating a productive flow of information between Registry offices.

Corporate training programs

A number of staff took advantage of the Department of Services, Technology and Administration (DSTA) corporate training programs. These involved structured training delivered face-to-face and online. Training was provided in a range of job related areas, for example, courses on presentation skills, project management, computer and writing skills, workshops on mediation, and occupational health and safety.

Registry and administration newsletters

Registry and administrative staff received regular newsletters which included information about legislative and operational changes and new initiatives.

Procedures manual

An overhaul of the existing Registry procedures manual was commenced during the year. The procedures manual is a key training tool for staff, and provides an outline of the role and operations of the Tribunal.

New and updated procedures have been developed during the year to assist staff in undertaking their roles, and to encourage professional development across the organisation.

Performance Development Program (PDP)

All Registry and administrative staff participated in the Performance Development Program which has been an invaluable opportunity to facilitate ongoing and constructive dialogue between staff and management about individual work performance and future training needs.

Awards

In June 2010, the Minister for Fair Trading, Virginia Judge, presented staff from the Business Development Unit and Registry with a Service Award in the Team Innovation category for the implementation of the member scheduling system.

The Tribunal's Communication and Education Team (Continuous Improvement Unit) also received a Service Award for the Aboriginal educational DVD initiative.

Green initiatives, recycling and waste management

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

During 2009-2010 the Tribunal minimised its waste by the following means:

- ▶ printing double-sided Notices of Hearing and orders from the Tribunal's case management system
- ▶ implementing double-sided printing of all documents for all Tribunal staff
- ▶ reducing the number of printed publications and encouraging clients to access information on the enhanced Tribunal website
- ▶ scanning materials for Tribunal members to access online rather than by facsimile
- ▶ promoting the use of recycled paper wherever it is cost and performance competitive.

The Tribunal continued to dispose of necessary waste in a safe and environmentally sound manner by:

- ▶ extending recycling programs to collect and recycle paper and waste from the Tribunal's eight Registries
- ▶ appropriate disposal of toner cartridges from photocopiers and printers.



The Minister for Fair Trading Virginia Judge presenting Fair Trading Excellence Awards for the Tribunal's SNAP member scheduling system and Aboriginal DVD initiative. From left: Enaam Massih, Olivia Chan, Catherine Willis, Minister Virginia Judge, Garry Wilson, Antony Brennan and Evan Pidgeon

Tenancy Division

Key Facts 2009-10

Applications

Number of applications received 30,490

- 11% decrease from 2008-2009

Number of online lodgements (39%) 11,844

Application types:

• Abandoned premises / goods	114
• Access	159
• Breach	2,018
• Breach - water usage	694
• Compensation	3,281
• Excess rent Includes excessive rent & excessive rent increase	464
• Mortgagee repossession*	111
• Other	208
• Recognition as tenant	99
• Rehearing	939
• Renewal	51
• Rental bond	5,183
• Termination - other	3,306
• Termination - rent arrears	13,758
• Termination - use of premises	105

Applicants:

Landlord	23,731
Tenant	6,703
Occupant	56

Hearings

Number of hearings 35,287

Number of adjournments 7,767

Finalised matters

Number of matters finalised 32,413

Final orders:

• Made at hearing	18,252
• By consent	7,873
• Withdrawals	6,288

Key performance indicators

84% Listed for hearing within 28 days

79% Finalised prior to or at first hearing

73% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 385

Supreme Court / District Court appeals 30

Overview

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

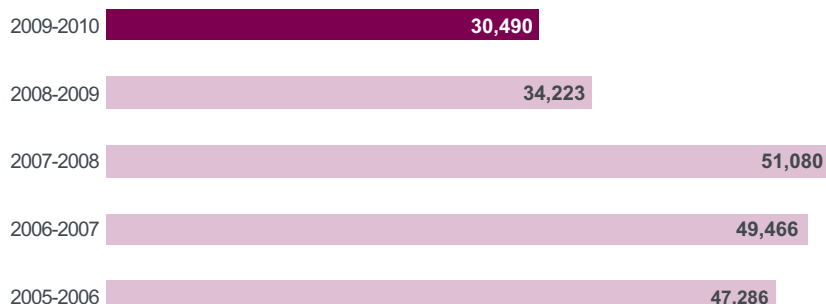
The Tribunal has jurisdiction under the *Residential Tenancies Act 1987* to hear and determine applications from landlords, tenants and occupants. The common types of issues that arise in this division include not fulfilling promises under residential tenancy agreements, excessive rent increases, termination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

Since 19 June 2009, when a tenant is given notice to vacate premises by a mortgagee, they can apply to the Tribunal to recover any rent paid in advance, or other fees and charges which were paid to occupy the premises during the notice period.

Changes to the *Consumer, Trader Tenancy Tribunal Act 2001* from 1 October 2008 meant that only private landlords and tenants can lodge applications in the Tenancy Division. As a result, Tenancy Division data from 2008-2009 onwards is not directly comparable with previous years. However the combined total of Tenancy and Social Housing Division applications continues to represent the bulk of the Tribunal's workload. Information about the Social Housing Division is included on pages 28-29 of this report.

On 10 June 2010 the NSW Parliament passed the *Residential Tenancies Act 2010* which is expected to come into effect in late 2010, after the necessary supporting regulations have been made. However until this happens the existing laws continue to apply.

Application trends



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

* Mortgagee repossession is a new application category for 2009-2010.

Case studies

No grounds notice not as it seems...

The Tribunal may refuse to make a termination order for a tenancy where termination of the tenancy by a landlord is motivated by steps taken by the tenants to enforce their tenancy rights.

Tenants had been living in a rental property for two years when they complained to the landlord that the swimming pool was leaking. Rather than repair the pool, the landlord agreed to a \$20 per week rent reduction. At the same time, the tenants also reported a leaking shower recess in the bathroom. The shower leak was initially 'patched up' by a tradesperson but not properly repaired.

One year later the tenants wrote to the landlord again requesting repairs to the swimming pool and shower recess. They also stated that they would take further steps to protect their tenancy rights if the repairs were not carried out. The landlord did not respond to the repair request, but instead issued the tenants with a 60-day 'no grounds' notice of termination. At the end of the notice period, the landlord applied to the Tribunal for orders terminating the tenancy.

During the Tribunal hearing, the landlord stated that he had issued the notice of termination as he intended to carry out extensive renovations to the property to prepare it for sale. Under section 65(2) of the *Residential Tenancies Act 1987* the Tribunal may refuse to make a termination order if it is satisfied that the landlord was motivated to issue the termination notice as a result of steps taken by the tenants to enforce their tenancy rights.

After hearing the evidence of the landlord and the tenants, the Tribunal was satisfied that the main reason for issuing of the termination notice was because the landlord was reluctant to carry out repairs to the property and he was concerned that the tenants would take steps to enforce their rights under the Act. The landlord's application to terminate the tenancy agreement was dismissed.

Head tenant must prove claim for bond...

The onus of proof for any claim against a rental bond is always placed on the landlord. When the tenancy terminates, the landlord must be able to substantiate any claim they may have against the bond. In a sub-tenancy agreement, that onus falls upon the head tenant.

Two students agreed to rent a room for 'up to 6 months' in a shared household and paid a rental bond equivalent to 4 weeks rent to the head tenant. In this agreement, the head tenant effectively became the 'landlord' in a sub-tenancy agreement with the students.

Less than a month later, the students moved out of the house and asked for a refund of their bond. The head tenant refused to refund the bond alleging that the students had breached the tenancy agreement. The students lodged an application with the Tribunal for the full refund of the rental bond.

When both parties appeared before the Tribunal, they were encouraged to attempt conciliation. Although a conciliator was available to help them reach an agreement, this was not possible and the matter was referred for hearing.

During the hearing the head tenant was asked to substantiate her claim against the rental bond. She argued that the students had moved out early and therefore they were in breach of the agreement. The students disputed the head tenant's claim, stating that she had ordered them to move out 'immediately' and they had complied with her wishes. The head tenant also made a claim for cleaning costs but she did not provide any evidence such as photographs or a condition report to support the claim.

The Tribunal found that the 'up to 6 months' term of the agreement was not specific, and that the students had moved out at the direction of the head tenant. Therefore it could not be argued that the students had breached the agreement. As the head tenant was unable to provide evidence to support her claim for cleaning costs, orders were made for the full rental bond to be refunded to the students.

Preparing for hearing has its rewards...

Before attending a Tribunal hearing, parties should gather their evidence, do some research, practice presenting their case and learn what happens during a hearing. All of this information can be found on the Tribunal's website.

At the end of a tenancy agreement, the landlord lodged an application to the Tribunal claiming \$7,000 compensation for damage to the property. The landlord provided an itemised list detailing the issues, including damage to the timber blinds, front gate, carpet and tiling.

During the Tribunal hearing, the landlord presented documents in support of his claim including the ingoing and outgoing condition report, the tenancy agreement, statutory declarations, dated photographs, quotes and invoices. The tenant disagreed with the landlord's claim provided submissions to refute the landlord's claims.

The Tribunal reviewed the evidence provided by the landlord and the tenant on each item claimed. After considering all of the evidence provided, the Tribunal was satisfied that the tenant was not responsible for all the damage and made orders for the tenant to pay the landlord some of the money claimed.

Social Housing Division

Key Facts 2009-10

Applications

Number of applications received 13,135

- 30% increase from 2008-2009

Number of online lodgements (89%) 11,646

Application types:

• Abandoned premises / goods	45
• Access	657
• Breach	2,339
• Breach - water usage	582
• Compensation	629
• Excess rent Includes excessive rent & excessive rent increase	91
• Other	66
• Recognition as tenant	6
• Rehearing	192
• Renewal	13
• Rental bond	54
• Termination - other	689
• Termination - rent arrears	7,238
• Termination - use of premises	163
• Termination - water usage	371

Applicants:

Housing NSW	9,729
Community Housing	1,884
Aboriginal Housing	945
Tenant	571
Occupant	6

Hearings

Number of hearings 16,499

Number of adjournments 3,033

Finalised matters

Matters finalised 14,502

Final orders:

• Made at hearing	9,320
• By consent	3,011
• Withdrawals	2,171

Key performance indicators

81% Listed for hearing within 28 days

78% Finalised prior to or at first hearing

72% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 96

Supreme Court / District Court appeals 10

Overview

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

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

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

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

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

Application trends



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

Case studies

Failure to pay rent can cost...

Not paying rent on time is a breach of the residential tenancy agreement. However, before making orders terminating a tenancy based on rent arrears, the Tribunal must be satisfied that the breach has been properly established.

Rental arrears had been an ongoing issue for a social housing tenant. When the tenant had not made a rental payment for 4 months, the social housing provider landlord issued a notice of termination to the tenant. At the end of the notice period, the landlord applied to the Tribunal for termination orders.

At the Tribunal the parties were encouraged to settle the dispute through conciliation, but they were unsuccessful and the matter was referred for hearing. During the hearing the landlord gave evidence that the tenant had been in constant rental arrears for the past 3 years and many efforts had been made to salvage the tenancy. They presented the Tribunal with the residential tenancy agreement, notice of termination, rent ledger, rent subsidy advice and correspondence to the tenant about the ongoing rent arrears.

The tenant said he thought his rent payments were automatically deducted from his Centrelink payments, but offered no explanation why he declined to meet with his tenancy officer or make arrangements to pay the arrears.

The Tribunal was satisfied that the tenant had breached the residential tenancy agreement. The Tribunal did not accept the tenant's evidence that the arrears were the fault of Centrelink and that he was not aware of the problem. The Tribunal was satisfied that the breach, in the circumstances of the case, was such as to justify termination of the agreement. Orders were made for termination of the tenancy and possession of the premises, and for the tenant to pay the outstanding rent arrears and a daily occupation fee until he moved out.

Kitchen makeover request...

A landlord has an obligation under the *Residential Tenancies Act 1987* to maintain the rental premises in a reasonable state of repair. However this obligation does not extend to carrying out renovations for aesthetic reasons.

A social housing tenant lodged an application with the Tribunal seeking orders for the landlord to carry out various repairs to her kitchen due to water damage caused by a leaking sink. At the Tribunal the parties reached an agreement in conciliation for various repairs to be carried out, and consent orders were made. The orders included the replacement of the kitchen cupboards and bench top, and the installation of a new sink and associated piping. A couple of months later the tenant lodged another application to the Tribunal claiming that the landlord had not carried out the repairs, and she was now seeking compensation.

At the Tribunal hearing, the landlord stated that the kitchen cupboards were replaced shortly after the tenant's second

application was lodged. The landlord admitted that the sink and pipes had not been replaced as per the consent orders, but gave evidence that the work was due to be done shortly. The tenant replied that the leaking sink and pipes were causing ongoing damage to the lower kitchen cupboards making them unusable. The tenant also argued that the remainder of the cupboards were made of 'bare chipboard' making them difficult to clean.

Based on the photographs presented, the Tribunal accepted that the lower cupboards were badly water damaged and not maintained in a reasonable state of repair. However, the Tribunal did not accept that the remainder of the kitchen cupboards, although unattractive, were unusable. It was not satisfied that the remainder of the kitchen cupboards needed replacing, and found that the tenant was in effect seeking a renovation of the kitchen rather than repairs.

The Tribunal awarded compensation to the tenant for loss of the use of the lower cupboards, but found that no compensation was payable to the tenant in respect of the kitchen cupboards generally.

Access orders...

Under the Act, a landlord or any other authorised person may enter the residential premises for the purpose of carrying out an inspection. If entry is refused, the Tribunal may make orders authorising access.

A social housing provider landlord lodged an application with the Tribunal for orders to access the premises for the purpose of carrying out an inspection. Only the landlord appeared in person at the Tribunal hearing, but the tenant had lodged a signed 12 page written submission. The landlord gave evidence that an appointment had been made with the tenant giving seven days notice, but that the tenant had denied access and not made alternative arrangements.

The Tribunal was satisfied that the landlord was concerned for the tenant's welfare and safety, and for this reason wished to inspect the premises. The Tribunal also accepted the tenant's written evidence that she did not object to the inspection, but that the previous appointment had been inconvenient to her. Orders were made permitting access at a specific date and time for the landlord to inspect the property, with a right for both parties to have the matter relisted for hearing should there be any difficulties in complying with the order.

General Division

Key Facts 2009-2010

Applications

Number of applications received 6,676

- 4% increase from 2008-2009

Number of online lodgements (28%) 1,858

Application types:

• Goods	3,329
• Services	2,882
• Holiday parks	108
• Renewal	62
• Pawnbrokers	14
• Conveyancing	4
• Rehearing	277

Applicants:

Consumer 6,500

Other party 176

Hearings

Number of hearings 8,153

Number of adjournments 3,819

Finalised matters

Matters finalised 6,596

Final orders:

• Made at hearing	3,381
• By consent	1,387
• Withdrawals	1,828

Key performance indicators

50% Listed for hearing within 28 days

67% Finalised prior to or at first hearing

46% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 107

Supreme Court / District Court appeals 9

Overview

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

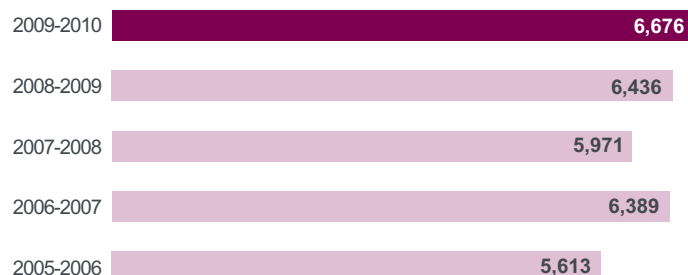
A consumer's claim must be against a supplier carrying on a business and not a private person. The common types of orders the Tribunal can make in this division are:

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

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

- ▶ Long-term casual occupants of a holiday park (where a person's holiday van is left in a caravan park and is used on weekends or regularly for holidays).
- ▶ Pawnbrokers and second-hand dealers who dispute a person's claim to goods on which money has been lent and where the goods are suspected of being stolen and police require the return of the goods to their rightful owner. Pawnbrokers and second-hand dealers may apply to the Tribunal to dispute a person's claim to the goods.
- ▶ Costs payable in respect of conveyancing work. The Tribunal can hear and determine conveyancing applications from both consumers and conveyancers.

Application trends



Case studies

A city break without the frills...

The Tribunal can hear claims from consumers who have received goods or services that do not meet the advertised description, including issues in relation to travel and tourism.

A couple brought an application to the Tribunal seeking \$300 compensation for a \$400 overnight stay in a Sydney hotel. They alleged that they were unable to use a number of the hotel's advertised amenities during their stay.

During the Tribunal hearing, the couple claimed that the hotel had breached the implied terms of the contract by not providing easy access to the hotel's car park or swimming pool, and that a number of facilities in their hotel room were either missing or faulty. The hotel operator did not deny the problems, but argued that there were mitigating circumstances which were beyond their control.

The Tribunal accepted the couple's evidence that it was an implied term of the agreement between the parties that the couple should have had access to the amenities advertised on the hotel's website. The Tribunal member was satisfied that these facilities should have been available in a hotel charging \$400 per night, and that the hotel had breached the terms of the agreement. Orders were made for a partial refund to the couple.

Shady carpet and conduct...

Section 49 of the *Fair Trading Act 1987* provides that a trader cannot mislead a consumer as to the nature, the manufacturing process, the characteristics, the suitability for purpose or the quality of any goods.

A woman wanted to purchase new carpet for her home. While she did not know what brand or style of carpet she wanted, she did have specific requirements. The woman explained to the carpet showroom salesperson that she wanted a carpet that would not 'shade' or leave 'impressions' when furniture was placed on it or when vacuumed.

The woman was provided with a free measure and quote, and the salesperson helped her select a carpet. At that time, she again asked about shading and the salesperson assured her that the carpet was of 'high quality' and would not shade.

Soon after the carpet installation the woman discovered the carpet was shading and her furniture made impression marks. She immediately contacted the carpet showroom and a representative attended her property. He confirmed that the carpet was shading but explained this was because she had selected a 'cut pile' carpet which was prone to shading. The representative also said this information was provided on her invoice. He also denied that the salesperson had misled her about the characteristics of the carpet. The woman then lodged an application with the Tribunal for a full refund.

During the Tribunal hearing, the woman provided evidence from a carpet consulting service that showed that the type of carpet installed was a plush cut pile which was subject to shading. The report recommended twist pile or loop pile carpets to avoid shading. The woman's daughter also gave evidence that she was present at the home during the free measure and quote and overheard her mother tell the salesperson several times that she did not want a carpet that shaded or left impressions.

The Tribunal member considered the evidence and was satisfied that the woman had been sold a carpet that did not match the characteristics of the goods as described by the salesperson. The Tribunal found that the trader had breached section 49 of the *Fair Trading Act 1987* by misleading a customer as to the suitability of the carpet. Orders were made for a full refund and for the removal of the carpet by the trader.

Thanks for the memories...

Traders will offer warranties for goods to correct certain problems that may occur after the consumer has bought the product. Some warranties are given unconditionally, while others may be subject to limits or conditions. Regardless of whether goods are sold with or without a warranty, statutory warranties under the *Fair Trading Act 1987* provide that the goods must be of 'merchantable quality'.

A consumer purchased a home computer network server with a two year warranty. The server worked as expected for 22 months when it suddenly failed and all data appeared to be lost. The consumer contacted the trader who replaced the server with a new unit in accordance with the warranty conditions, but they advised that the warranty did not cover the retrieval of lost data. The consumer then paid another company to retrieve the data from the failed server, and lodged an application with the Tribunal against the trader, for compensation for the cost of the data retrieval.

At the Tribunal hearing the consumer argued that he was not made aware of the warranty limitations, and that he believed the server had failed because it was not of 'merchantable quality'. The respondent trader gave evidence that electronic components can and do fail from time to time due to various causes such as power surges.

The Tribunal accepted that the goods were replaced strictly in accordance with the warranty terms, and then considered the implied statutory warranties. As no technical evidence was provided explaining the failure of the server, or evidence of a design fault, the Tribunal was not convinced that the server was defective at the time of sale. The consumer's application was dismissed.

Home Building Division

Key Facts 2009-2010

Applications

Number of applications received 3,451

- 3% decrease from 2008-2009

Number of online lodgements (16%) 560

Application types:

• Claims under / equal to \$30,000	2,468
• Claims over \$30,000	608
• Rectification order	94
• Renewal	68
• Appeal against Director General's decision	15
• Rehearing	198

Applicants:

Consumer	2,469
Trader	887
Other party	90
Insurer	5

Hearings

Number of hearings 8,037

Number of adjournments 6,237

Finalised matters

Matters finalised 3,422

Final orders:

• Made at hearing	1,594
• By consent	854
• Withdrawals	974

Key performance indicators

33% Listed for hearing within 28 days

51% Finalised prior to or at first hearing

27% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 56

Supreme Court / District Court appeals 29

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

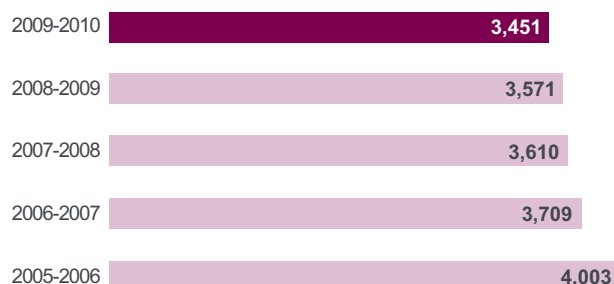
Under the *Home Building Act 1989* the Tribunal has jurisdiction to determine disputes between consumers, traders and insurers concerning residential building work up to the value of \$500,000. Typical scenarios include a builder who asks the Tribunal to require a home owner to pay for building work;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

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

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

Chairperson's Directions set out the procedures to be followed in home building disputes when the amount claimed is over \$30,000 (this limit increased from \$25,000 on 1 July 2009). These directions assist a range of alternative dispute resolution mechanisms and limit undue delay in proceedings.

Application trends



Case studies

Kitchen, bathroom and beyond...

A building dispute before the Tribunal may include a claim by the home owner for damages for incomplete work and then a cross claim by the builder to recover costs on a quantum meruit basis for works performed.

A home owner engaged an unlicensed builder to partially demolish and rebuild an existing bathroom and kitchen in her city apartment for \$22,000. The building contract was to be paid in two stages. Half-way through construction the builder demanded payment for stage two, but the home owner and builder disagreed as to whether stage one was completed or not. Shortly afterwards the home owner received a text message from the builder saying that he was stopping construction and returning the keys. On this basis she changed the locks to her apartment.

As the matter concerned an unlicensed builder, the parties were not required to attempt alternative dispute resolution with NSW Fair Trading, and the home owner lodged an application directly to the Tribunal seeking \$8,700 for the incomplete works. The builder also lodged a cross-application to the Tribunal seeking compensation for the building work already done on a *quantum meruit* basis.

At the Tribunal, the parties were unable to conciliate and the matter proceeded to hearing. The home owner gave evidence that the builder had verbally promised to complete construction within two weeks, but that issues started to arise right from the beginning of construction. This included the builder failing to comply with the apartment building's rules regarding noise and being responsible for two false fire alarms which resulted in fines issued to the home owner by the NSW Fire Brigade. The builder told the Tribunal that he did not ever agree to completing the work within two weeks. He also gave evidence that he was fully qualified, although unlicensed, that his work was satisfactory and any minor defects were immediately rectified by his tradesperson.

After hearing the evidence of both parties, the Tribunal found that the contract between the parties was partially written and partially oral, and that the contract did not comply with the *Home Building Act 1989*. The Tribunal also had issues with the builder's licence status, the form of the contract, the failure to provide a cooling-off period, and failure to provide home warranty insurance. The Tribunal was not persuaded that the builder agreed to a two week completion time, but noted that where no completion time was stated in the contract, the Act implied a term that the work would be done with 'due diligence' and completed within a reasonable time.

The Tribunal also found that the work was not executed diligently and within a reasonable time. As a consequence, the Tribunal declined to exercise the discretion to allow a *quantum meruit* claim and dismissed the builder's application.

The Tribunal held that the finding above, in combination with the text message from the builder about returning the keys, evidenced an intention by the builder not to be bound by the express

or implied terms of the contract. The Tribunal found that the builder had repudiated the contract and that the home owner had accepted that repudiation. In those circumstances the Tribunal held that the home owner was entitled to recover damages for completion costs.

Variable variations...

Section 18B(a) of the *Home Building Act 1989* requires a builder to perform works in accordance with the plans and specifications set out in the building contract.

Home owners entered into a contract with a builder to construct a project home. Before signing the contract, the parties agreed to a number of variations, including \$2,630 for non-standard balustrades for the verandas. At the end of construction, overall the owners were happy with their new home, except for the balustrades which they did not like and which were different to what they had chosen.

After the parties had attempted to resolve their dispute through NSW Fair Trading's Home Building Service, the owners lodged an application to the Tribunal seeking a refund of the variation amount.

During the Tribunal hearing, the home owners claimed that the balustrade did not look as good as they had hoped, and the design meant that cleaning would be more difficult. They conceded it would be unreasonable to ask for the balustrades to be replaced, so they were only asking for a reimbursement of the money paid for the variation. The builder agreed that the balustrades were different to those agreed. He explained that the supplier had changed during construction and he had thought the balustrades ordered were the same as provided by the old supplier. He did not realise they were different until the practical completion report was prepared. The builder also argued that, as there was no loss of amenity, the homeowner should not be entitled to a refund.

The Tribunal found that the builder was in breach of section 18B(a) of the *Home Building Act 1989* by failing to build the balustrades in accordance with the plans and specifications set out in the contract. The loss suffered by the home owners was considered, and the Tribunal determined that, as the balustrades could be used, that there was no loss of amenity. In addition, there was no evidence that the installed balustrades damaged or decreased the value of the property. The Tribunal, however, awarded a sum of money to the home owners to compensate them for their disappointment.

Residential Parks Division

Key Facts 2009-2010

Applications

Number of applications received 2,439

- 81% increase from 2008-2009

Number of online lodgements (6%) 150

Application types:

• Excessive rent / excessive rent increase	1,741
• Breach / compensation	353
• Termination	139
• Other	103
• Rental bond	2
• Renewal	6
• Recognition as a tenant	2
• Rehearing	93

Applicants:

Resident	2,195
Park owner	241
Occupant	3

Hearings

Number of hearings 2,782

Number of adjournments 1,013

Finalised matters

Matters finalised 2,194

Final orders:

• Made at hearing	1,085
• By consent	836
• Withdrawals	273

Key performance indicators

20% Listed for hearing within 28 days

69% Finalised prior to or at first hearing

24% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 9

Supreme Court / District Court appeals 0

Overview

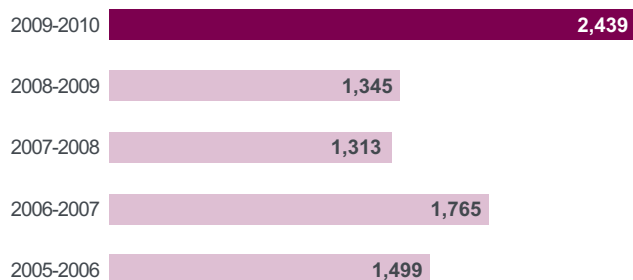
A 'residential park' may also be known as a caravan park, manufactured home estate, mobile home village or relocatable home park. Residents of a park may own their caravan or manufactured home and rent the site from the park owner. Residents may also rent accommodation that is owned by the park owner.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

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

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

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

Application trends



Case studies

To see or not to see...

Under section 56 of the *Residential Parks Act 1998* a resident may apply to the Tribunal for an order declaring that rent payable is excessive, having regard to the reduction or withdrawal by the park owner of any goods, services or facilities provided with the premises.

A resident owned a moveable dwelling in a residential park. Over time, trees near her site grew, obscuring her water views.

The resident lodged an application with the Tribunal seeking orders that the rent was excessive because there was a reduction or withdrawal of goods, services and facilities, being the loss of her water views.

During the hearing, the Tribunal Member referred to previous applications heard by the Tribunal where there had been a consistent position held that a resident's view was not a component of their site agreement. Therefore the obstruction of the resident's view did not represent a reduction or withdrawal of goods, services or facilities provided with the site.

The resident raised a further issue claiming that the park's failure to prune the trees surrounding her site for the past two years amounted to a withdrawal of services. In response, the park manager advised that the trees are trimmed as required, which was usually once per year. The trees near the resident's house were due to be trimmed this year. The Tribunal accepted this was a reasonable approach and that the park owner had not failed to implement a satisfactory tree maintenance program.

The Tribunal was satisfied that there were insufficient grounds to make an order that the rent was excessive due to a reduction or withdrawal of goods, services or facilities provided with the premises, and the resident's application was dismissed.

Water or sewerage services...

The *Residential Parks Act 1998* allows a park owner to pass on water consumption and water availability charges levied by a water authority to the park residents, provided the residential premises are individually metered.

A group of park residents applied to the Tribunal for an order that the park owner was in breach of their residential site agreements by charging them a fee for the sewer service. Some residents were seeking a refund of sewerage fees already paid, and others were asking for orders that they did not have to pay this fee.

The multiple applications were listed before a conciliator and a Tribunal member specialising in residential parks matters. Conciliation was not successful, and the Tribunal proceeded to hear the matter on the day.

In this matter the Tribunal needed to determine whether sewer service costs charged by a local water authority could be defined as a 'water availability charge' under the Act. In earlier cases before the Tribunal, the view had been formed that the term 'water availability' did not include the provision of a 'sewer service'. The *Macquarie Dictionary* definition was that 'water availability' is whatever is needed to make water available or ready for use. By contrast, 'sewerage' is defined as the removal of waste water and refuse. The Tribunal concluded that the sewerage system is designed to take water away, rather than make water available to a particular place for use.

While the Tribunal agreed with the park owner that it seemed reasonable that residents should pay for the sewerage services in a similar manner to other domestic customers of the water authority, it could not construe a charge for 'water availability' to mean anything other than a charge for making water available to the premises.

The Tribunal determined that the park owner was not permitted under the Act to pass on to the residents charges for 'sewer services', and orders were made for the refund of fees paid. The decision and the issue concerning sewer charges was also referred to NSW Fair Trading for consideration in future legislative review.

Strata and Community Schemes Division

Key Facts 2009-2010

Applications	
Number of applications received	1,469
• 10% increase from 2008-2009	
Number of online lodgements	na
Adjudication	1,058
• Strata scheme	1,017
• Community scheme	41
Tribunal hearings	411
• Strata scheme	375
• Community scheme	36
Application types:	
Adjudication	
• Appoint strata manager	92
• By-laws	126
• Contributions and levies (Strata Scheme)	19
• General orders and other	479
• Insurance (Strata Scheme)	3
• Interim orders	207
• Meetings, decisions and records	62
• Property	70
Tribunal hearing	
• Amend or revoke Tribunal order	6
• Appeal	182
• Appoint managing agent (Community Scheme)	10
• Caretaker contract	1
• Contributions and levies (Community Scheme)	1
• Initial period	9
• Insurance (Community Scheme)	1
• Other	9
• Penalty	155
• Restricted property	2
• Revoke or vary management statement	1
• Unit Entitlement	34
Applicants:	
Lot owner	975
Owners corporation	467
Occupier of a lot	15
Other party	12
Hearings	
Number of hearings	706
Number of adjournments	491
Finalised matters	
Matters finalised	1,285
Final orders:	
• Made at hearing or adjudication	1,098
• By consent	43
• Withdrawals	144
Key performance indicators	
86% Finalised prior to or at first hearing	
26% Finalised within 35 days	
Rehearings and appeals	
Number of rehearings granted	na
Supreme Court / District Court appeals	8

Overview

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

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

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

Most disputes in this division are determined by an Adjudicator. All parties in the scheme, or those parties that may be affected by the order sought, are invited to make written submissions. The Adjudicator's decision is then made on the papers.

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

Application trends

2009-2010	1,469
2008-2009	1,338
2007-2008	1,374
2006-2007	1,226
2005-2006	1,181

Case studies

Across the nightingale floor...

The *Strata Schemes Management Act 1996* allows owners corporations to establish by-laws which provide for the smooth running of the scheme. Applications concerning a breach of by-laws from excessive noise caused by floating timber floors is a common dispute brought for adjudication.

A strata scheme lot owner lodged an application with the Tribunal seeking Adjudicator's orders that excessive noise as a result of her neighbour's recently installed timber floor interfered with the peaceful enjoyment of her lot. The applicant submitted that this was a breach of by-law 14 of the Strata Plan which required all owners to ensure that their floor space was covered or otherwise treated to prevent the transmission of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.

The lot owner gave evidence that she had previously asked her neighbour to either lift the current timber flooring and install an appropriate acoustic soundproof underlay, or alternatively cover the current timber flooring with carpet. The neighbours refused, stating that the request was unreasonable and too costly, and that the lot owner had failed to acknowledge their efforts to resolve the issue.

While the Strata Adjudicator acknowledged that the lot owner's evidence of noise was a subjective account, he also noted that the neighbours had failed to provide any evidence or details regarding the noise level or of their attempted efforts to reduce the noise. The Adjudicator explained that by-laws were rules designed for the smooth running of a strata plan, to ensure uniformity for all lot owners, and to apply a set of rules which should be followed and enforced.

On the basis of the written submissions, the Adjudicator accepted that the noise level had been interfering with the lot owner's peaceful enjoyment of her lot. He also found that the floating timber floor was causing a breach of by-law 14 of the strata scheme. Orders were made for the neighbours to comply with the by-law by either removing the timber flooring or covering the flooring with a treatment to the entire area so as to comply with the by-law.

It's a matter of access...

An owners corporation may enter an individual strata lot for the purpose of carrying out essential work, but only with the lot owner's consent. If consent is not given, the owners corporation may apply for Adjudicator's orders to allow them access.

An owners corporation applied for interim orders allowing access to a strata lot for the purposes of investigating a water leak. The application was urgently referred to an Adjudicator on the same day. The owners corporation provided evidence of correspondence between themselves and the plumber contracted to do the work. In examining the evidence submitted, the Adjudicator was satisfied that there was a significant leak into the unit below that was caused by a problem in the respondent's unit, and that further damage could result if prompt action was not taken.

On reading correspondence written by the respondent to the owners corporation, it was clear to the Adjudicator that he had refused entry to the plumber on a number of occasions over a period of weeks.

An interim application is not granted lightly as it is considered on an ex parte basis 'on the papers'. An Adjudicator must be satisfied that the urgent circumstances of the case justify the making of the order without notice being given to the respondent.

In this matter, the Adjudicator was satisfied that real damage and inconvenience would result from continued leaking water and that it was appropriate that the owners corporation be allowed to investigate and repair the source of the leak as soon as possible. Interim orders were made that the respondent must give the plumber access to his unit at a mutually convenient time no later than 7 days after the date of the order.

Motor Vehicles Division

Key Facts 2009-2010

Applications

Number of applications received 1,350

- 7% increase from 2008-2009

Number of online lodgements (29%) 391

Application types:

• Claims under / equal to \$30,000	1,182
• Claims over \$30,000	68
• Rehearing	89
• Renewal	11

Applicants:

Consumer	1,320
Other party	30

Hearings

Number of hearings 1,774

Number of adjournments 978

Finalised matters

Matters finalised 1,292

Final orders:

• Made at hearing	680
• By consent	298
• Withdrawals	314

Key performance indicators

9% Listed for hearing within 28 days

57% Finalised prior to or at first hearing

22% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 28

Supreme Court / District Court appeals 1

Overview

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

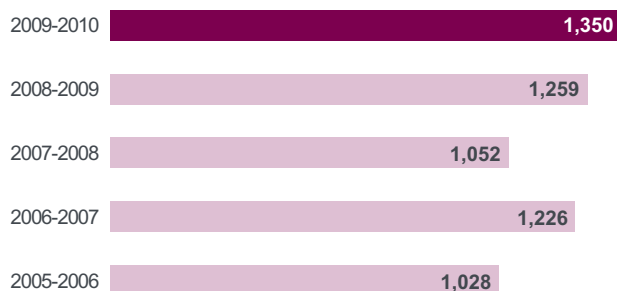
The Tribunal has jurisdiction to hear and determine motor vehicle disputes under the *Consumer Claims Act 1998*, *Fair Trading Act 1987*, *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*.

Applications can be made about vehicles used for private or business purposes. A 'motor vehicle' can be a new or used car, motorcycle, tractor or other powered vehicle on wheels. Typical issues that may arise in this division include unsatisfactory repairs and maintenance, defective or faulty used and new cars, overcharging for services, and warranties.

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

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

Application trends



Case studies

The wrong engine...

The Tribunal may list a matter for a telephone hearing for the first listing. This listing initiative ensures that parties who live in regional areas or interstate have equal access to the Tribunal's services, and have their matter dealt with in a cost-effective manner.

A woman living in South Australia purchased a 10 year old used car from a NSW car dealer for \$5,500 over the internet. The odometer reading advertised was 134,000km.

The car was shipped interstate to her and she had driven it for about one year when she had the car serviced. During the service the mechanic found that the engine installed was from a different model car and had actually travelled 270,000kms. The woman lodged an application with the Tribunal seeking a full refund and compensation from the car dealer as the vehicle specifications were different to those advertised.

During the hearing, the woman gave her evidence by telephone and the car dealer appeared in person. The Tribunal found it was clear on the evidence that there was a breach of the contract by the car dealer as the vehicle did not comply with the advertisement.

The Tribunal considered that the appropriate amount of compensation would be the difference in value between what was advertised and what was received.

Shake, rattle and roadworthiness...

The Tribunal can determine disputes involving warranties on a used car and problems with the quality of repairs.

A man purchased an unregistered used car for \$5,165 from a motor dealer, with the dealer agreeing to some additional repairs and maintenance being carried out before the purchase was finalised. When the man returned to pick up the vehicle, he was assured all of the repairs and maintenance work had been completed. A 'blue slip' was given to the man allowing the car to be registered.

On the drive home it became apparent that some of the faults had not been fixed, as the car ran roughly with a lot of vibration. The man stopped by a local repairer who confirmed that there were a number of serious defects including a broken engine mount and significant wheel bearing noise. The car was returned to the dealer on the following day for further repairs. When he returned to collect the car, the dealer again assured the man that the defects had been corrected at no charge. To be sure, the man arranged for another mechanic to take a look at the car who thought, in his opinion, that the vehicle was unroadworthy. A further RTA inspection revealed that the engine mount was still broken and a CV joint had collapsed, among other defects. A defect notice was issued and the car could not be registered.

The man lodged an application with the Tribunal seeking an order for the refund of the purchase price and compensation for the

inspection costs. During the Tribunal hearing the dealer stated that he was only a salesman, had no mechanical knowledge and relied on a small mechanical shop to carry out the repairs. The dealer offered to carry out the repairs at his own expense but at his choice of workshop. However, the man told the Tribunal that he no longer trusted the dealer and did not have any confidence that the vehicle could be repaired to a roadworthy standard.

The Tribunal found, on the evidence, that the vehicle had serious defects and that major repairs were required. Although the dealer's offer to repair the vehicle was acknowledged, the Tribunal found that the dealer was not capable of guaranteeing a prompt and competent repair that would be sufficient to have the vehicle pass an RTA inspection. Orders were made for a full refund of the purchase price and that the vehicle be returned to the dealer.

Damage by dirty diesel...

Consumer claims for damage to a vehicle caused by contaminated fuel may be determined by the Tribunal up to the value of \$30,000.

The applicant before the Tribunal claimed that his car had experienced mechanical problems and then broken down after filling his 4WD vehicle with biodiesel fuel on two occasions from the same petrol station. The car owner took the vehicle to be repaired and, following a diesel fuel injection service inspection, it was reported that the fuel system of the vehicle had been damaged by contaminated fuel.

A sample of the fuel was taken for examination by an expert analyst who confirmed that the water and sediment levels in the sample was higher than the specified limits. When the applicant approached the operator of the petrol station about the contaminated fuel, the operator denied any responsibility.

During the Tribunal hearing the petrol station operator provided no documentary evidence. The Tribunal member accepted the evidence produced by the applicant and found that the contaminated fuel was the cause of the damage to the fuel system and that it was more probable than not that it was supplied by the operator.

The operator was found liable for the damage, and was ordered to pay the applicant the repair costs.

Commercial Division

Key Facts 2009-2010

Applications

Number of applications received 313

• 8% decrease from 2008-2009

Number of online lodgements na*

Application types:

• Credit Act	3
• Credit - Home finance	4
• Consumer Credit Code	228
• Finance brokering	1
• Property, Stock and Business Agents	53
• Rehearing	9
• Renewal	1
• Repossession	6
• Termination - Return of goods	6
• Waive notice	2

Applicants:

Debtor	235
Interested / affected party	33
Mortgagee	17
Mortgagor	13
Credit provider	8
Lessee	7
Director General	0

Hearings

Number of hearings 486

Number of adjournments 362

Finalised matters

Matters finalised 304

Final orders:

• Made at hearing or adjudication	117
• By consent	31
• Withdrawals	156

Key performance indicators

36% Listed for hearing within 28 days

60% Finalised prior to or at first hearing

33% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 2

Supreme Court / District Court appeals 3

* Online lodgement is not available for this Division

Overview

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

The *Consumer Credit (New South Wales) Act 1995* applied the Consumer Credit Code. The Code defines the type of agreements that are categorised as credit contracts and regulates all credit providers as well as stores, solicitors, accountants and individuals who provide credit and charge interest.

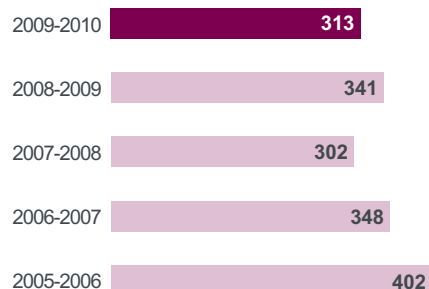
The Tribunal can only deal with credit contracts that are for personal or household uses, including leases, home loans and insurance related to credit contracts (for example, insurance on a motor vehicle purchased on credit).

During the year, the Tribunal heard and determined applications from debtors, credit providers, consumers, mortgagors and lessees. Common types of issues that arose in this division included:

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

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

Application trends



Case studies

When the numbers don't add up...

Once entered, both parties are bound by terms and conditions of a contract. There are limited circumstances where a consumer may end a contract without penalty.

One evening, a mother received a telesales call from a company selling an educational software package. As both her children were having difficulty with mathematics at school, the mother agreed to a home demonstration. A salesperson attended her home the following evening and demonstrated the software package, spoke about the benefits of the education program and explained that the total price of \$6,000 could be paid by monthly instalments of \$178. The mother agreed, signed some loan paperwork which she did not read carefully, and the software was installed one week later.

Almost two years later, the mother contacted the credit company to find out what the balance of the loan was. She was advised that the total loan was for \$9,000, and not \$6,000 as she was led to believe. The mother sought independent legal advice and, with their help, wrote a letter to ASIC advising that she was induced to enter into a contract with the software company based on false representations. ASIC advised that the software company had since been deregistered and that she could exercise her right to rescind the contract. Upon ASIC's advice, the mother wrote a letter to the credit company seeking a refund of the instalments she had paid. The credit company's response was that if she ceased making payments under the loan agreement, enforcement action would be taken.

The mother then lodged an application with the Tribunal seeking orders to terminate the credit contract and for a full refund of the instalment payments made totalling \$6,541. She also sought orders under section 70 of the Credit Code that the contract was unjust in the circumstances at the time it was entered into. After considering the evidence of the woman and the credit company, the Tribunal made the following findings.

The credit company was a linked credit provider for the software company. The misrepresentations made by the salesperson amounted to a misrepresentation in relation to the tiered loan contract. ASIC had given appropriate notice to the software company, and collateral notice of the intention to terminate the contract was given to the credit company.

The Tribunal found that although the mother may be entitled to relief under section 125 of the NSW Credit Code, it was not appropriate to terminate the contract and compel a refund of the money paid in full. The mother had the benefit of the educational software for two years and orders were made that the mother was not required to make any further payments and was entitled to a partial refund of the amount paid.

Cause for commission...

Under the *Property, Stock and Business Agents Act 2002* real estate agents may enter into an exclusive agency agreement which entitles them to a commission on the sale price.

On the death of a home owner, the executor of the estate became the registered proprietor for the purposes of the sale of the house. The executor entered into an exclusive agency agreement with a local real estate agent for a four month period. However, neither party terminated the agreement at the end of the period and a continuing agreement ran from that time.

One month later, the deceased's daughter purchased the property directly from the executor. The agent then sought payment of his 2.2% sales commission as per the agency agreement. The executor objected to this and lodged an application with the Tribunal seeking an order that he did not have to pay the commission.

During the Tribunal hearing the executor argued that the agent was not entitled to a commission as they did not introduce the purchaser, claiming that the agent did not introduce the property to the purchaser, nor were they responsible in any way for the sale. The daughter also gave evidence stating that she approached the agent soon after her mother's death only to enquire about a fair price for the premises, but did not make any offer nor approach the agent again. The executor also stated that all negotiations to purchase the property were between the executor and the daughter and did not involve the agent.

The agent contended that the daughter had made it clear throughout the agency period that she intended to purchase the property. The daughter had sought and been provided with advice on how to proceed, there were discussions with her over price and how she could bid at auction and whether she could use her share of the inheritance as a deposit. The agent further stated that the agency agreement was never terminated and they were never requested to cease marketing the property.

The Tribunal examined the terms of the exclusive agency agreement and noted the clause referring to the agent's remuneration. The Tribunal then referred to Court of Appeal authority that for the agent to be entitled to a fee, a causal connection between the agent's efforts and the completion of the transaction had to be established.

The Tribunal accepted the evidence of the daughter that any conversation with the agent was only made for the purpose of determining a fair price for the property. The Tribunal stated that those conversations did not amount to negotiations over price or an effective cause of sale. Orders were made relieving the executor from paying the agent's commission.

Retirement Villages Division

Key Facts 2009-2010

Applications

Number of applications received 80

- 57% increase from 2008-2000

Number of online lodgements na*

Application types:

• Breach	28
• Budget dispute	8
• Other	33
• Rehearing	5
• Renewal	0
• Termination	6

Applicants:

Resident	56
Administering authority	24

Hearings

Number of hearings 98

Number of adjournments 67

Finalised matters

Matters finalised 60

Final orders:

• Made at hearing	22
• By consent	9
• Withdrawals	29

Key performance indicators

40% Listed for hearing within 28 days

67% Finalised prior to or at first hearing

39% Finalised within 35 days

Rehearings and appeals

Number of rehearings granted 0

Supreme Court / District Court appeals 0

* Not available for this Division

Overview

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

There are hundreds of villages in NSW that are home to tens of thousands of village residents. Churches, charitable organisations and community groups operate many retirement villages, but an increasing number are being operated by private companies. The Tribunal has jurisdiction under the *Retirement Villages Act 1999* to hear and determine disputes about retirement villages.

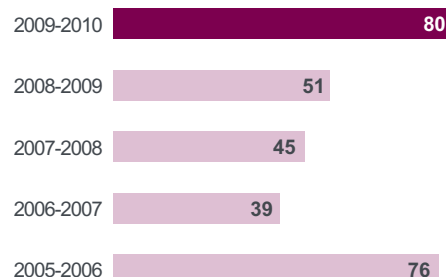
The *Retirement Villages Amendment Act 2008* and the *Retirement Villages Regulation 2009* commenced on 1 March 2010. Amendments to the *Retirement Villages Act 1999* introduced a number of new rights and obligations for retirement village operators and residents, including several new orders.

The Retirement Villages Division hears disputes between the retirement village owner or operator and one or more residents. Disputes include terms of the retirement village contract, the legality of a village rule, annual budgets and accounts, payment of money and compensation, termination and vacant possession, security and safety, and disputes about the sale or lease of a premises within the village.

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

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

Application trends



Case studies

Approval of statement of proposed expenditure...

Under the *Retirement Villages Act 1999* village operators must bear certain costs. The operator must also give each resident a statement of proposed expenditure detailing how they will spend the money obtained from residents. If residents of a retirement village refuse consent to the expenditure itemised in the statement of proposed expenditure, the operator or resident/s may apply to the Tribunal for an order in respect of proposed expenditure.

The residents of a retirement village were provided with a statement of proposed expenditure (SOPE) outlining how their charges were going to be spent the following year. Four aspects of the SOPE were rejected by the residents committee including management fees, information technology costs, and payroll tax and staff bonuses. The balance of the SOPE had been approved.

The village operator applied to the Tribunal for an order that the expenditure itemised in the statement of proposed expenditure for 2009-2010 be approved.

The operator runs a number of villages. The regulations permit an operator to consolidate and apportion expenses amongst the villages it owns but each village must receive a separate SOPE for expenses attributable to the services supplied within the individual village. Under the residence contract an expense must be one falling within the costs identified as part of the "total operating expenses" if it is to be recovered by way of recurrent charges to be paid by the residents. This requirement does not necessarily mean that it should be approved as a budget item when residents do not consent to the proposed expenditure.

The Tribunal member found that whilst there is no impediment to charges being allocated between villages, in this matter the operator was not able to clarify how their figures were arrived at in relation to payroll tax and staff bonuses, nor could the operator demonstrate that a discrete IT service was to be provided in the village. In relation to the management fee, the Tribunal member was satisfied that the benefits of the management functions provided by the head office to the village residents were shown to be a reasonable cost in providing services in the village.

Accordingly, orders were made detailing the expenditure items to be removed from the SOPE to be paid by the operator and the items approved for inclusion in the SOPE to be paid by residents.

Breaching the village rules...

Village rules relate to the use, enjoyment and management of the village. A breach of the village rules can cause disruption to the harmony of village. Under the *Retirement Villages Act 1999* the Tribunal may make orders restraining any action in breach of any village contract or village rule.

A village operator applied to the Tribunal seeking an order that a resident was in breach of a village rule by parking his motor home in the parking space opposite the resident's home.

The village rule stated that the parking of 'caravans and trailers' is permitted only 48 hours prior to and after a trip, for the purpose of packing and unpacking the vehicle. The operator claimed that the resident's motor home had been parked in the parking space for several weeks, much longer than the 48 hours permitted.

At the Tribunal hearing the village operator provided photographic evidence in support of its claim, showing that the motor home was substantially larger than a standard motor vehicle for which the parking space was provided.

The resident did not appear in person at the hearing, but instead provided a written submission. In his submission, the resident agreed that his motor home is permanently parked in his allocated parking space, but argued that a motor home is technically not a 'caravan' because it could not be towed, and therefore he was not in breach of the village rule.

The Tribunal considered the evidence of both the operator and the resident, and did not accept the respondent's submission that his motor home is not a 'caravan' as intended by village rules. Orders were made for the resident to not park a caravan or a motor home in the parking space which is in breach of the village rules.

Appendix 1

Legislation

The Tribunal's powers, functions and procedures are set out in the *Consumer, Trader and Tenancy Tribunal Act 2001* and the *Consumer, Trader and Tenancy Tribunal Regulation 2009*.

The following 19 Acts confer jurisdiction on the Tribunal as at 30 June 2010:

- ▶ *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, Trader and Tenancy Tribunal Regulation 2009

The *Consumer, Trader and Tenancy Tribunal Regulation 2009* came into effect on 1 September 2009 following a public consultation process.

The Regulation remade the existing Regulation with minor modifications of an administrative nature. These included an increase in the threshold for legal representation in the Home Building Division from \$25,000 to \$30,000, and a new provision to enable the transfer of documents between the Tribunal and courts with regard to matters on appeal.

In addition, fees and charges were consolidated into a schedule in the 2009 Regulation. This change is consistent with the approach taken in relation to other regulations.

Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009

The *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009* commenced on 16 September 2009.

The Act removed the following occupational licence requirements from the *Home Building Act 2009* and *Home Building Regulation 2004*:

- ▶ Contractor licences for the supply of kit homes
- ▶ Building consultancy licences (for example, for pre-purchase inspections)
- ▶ Contractor licences for non-structural flooring work (for example, floor sanding and finishing or the installation of a floating floor over the original floor)
- ▶ Contractor licences for mechanical services (for example, installation or maintenance of lifts, escalators or inclinators).

While the licence requirements were removed for kit homes, suppliers must continue to meet the contract requirements of the *Home Building Act 1989* and disputes about kit homes continue to be dealt with in the Tribunal's Home Building Division. Disputes about the other matters may now be dealt with in the General Division.

Strata Schemes Management Act 1996

An amendment to Section 183 of the *Strata Schemes Management Act 1996* commenced on 8 January 2010.

The amendment related to orders made by the Tribunal to reallocate unit entitlements for a strata scheme, and the new section 183(9) requires the owners corporation for a strata scheme to ensure that a copy of this order is lodged with the Registrar-General, Department of Lands, no more than two years after the order is made. This will enable the Registrar-General to amend the schedule of unit entitlements in the Register folio. Previously there was no requirement for this type of order to be lodged with the Registrar-General.

Retirement Villages Amendment Act 2008 and Retirement Villages Regulation 2009

The *Retirement Villages Amendment Act 2008* and *Retirement Villages Regulation 2009* commenced on 1 March 2010. The amendments introduced a number of new rights and obligations for retirement village operators and residents, including several new orders established in the Tribunal's Retirement Villages Division.

The following orders were made available for operators:

- ▶ Reduce the amount a resident is entitled to receive because of the condition of the capital item which the operator sold to them
- ▶ Building consultancy licences (for example, for pre-purchase inspections)
- ▶ Contractor licences for non-structural flooring work (for example, floor sanding and finishing or the installation of a floating floor over the original floor)
- ▶ Contractor licences for mechanical services (for example, installation or maintenance of lifts, escalators or inclinators).

The following orders were made available for residents:

- ▶ The addition, removal, alteration or specified renovations
- ▶ Orders relating to the safety of the village if the resident believes in good faith that it is not safe
- ▶ Operator to reimburse the resident for costs in carrying out urgent capital maintenance or replacement
- ▶ Directing the operator to carry out specified maintenance of an item of capital within the time specified in the order or to replace a specified item of capital within the time specified in the order
- ▶ Requiring the operator to provide information about variation to recurrent charges.

The following orders were made available for prospective residents:

- ▶ Provision of an enquiry document or disclosure statement
- ▶ Refund of 'holding deposit' or 'ingoing contribution'.

The following orders were made available for former residents:

- ▶ Payment to a former occupant if the resident occupies the residence without entering a contract (including payment of interest)
- ▶ Requirement for payment to be made within a specified time under the settling in period arrangement (if that payment is not made within the time frames set out in the CTTT orders).

Home Building Amendment (Warranties and Insurance) Act 2010

The *Home Building Amendment (Warranties and Insurance) Act 2010* commenced on 28 June 2010, amending the *Home Building Act 1989*.

The amendment made it clear that statutory warranties under the Act extend to a 'non-contracting owner' (a person who owns land on which residential building work is done but who is not a party to a building contract, including any subsequent title holders). The amendment also ensured that insurance policies issued under the Act extended to a non-contracting owner.

The amendment applied to all building contracts made and insurance policies issued since 1 May 1997.

Credit (Commonwealth Powers) Bill 2010

On 17 March 2010 the NSW Parliament passed the *Credit (Commonwealth Powers) Bill 2010*.

When the Act commences in full on 1 July 2010, it will:

- ▶ Refer to the Commonwealth Parliament certain matters relating to consumer credit and other financial transactions which were previously handled by NSW; and
- ▶ Repeal the existing consumer credit legislation operating in NSW and make consequential and related amendments to other legislation.

The Commonwealth's *National Consumer Credit Protection Act 2009* (National Credit Act), which also commences on 1 July 2010, will replace most existing Australian State and territory-based legislation relating to products such as home

loans, personal loans, credit cards, consumer leases, overdrafts and some other financial services.

The following transitional provisions will apply, and the CTTT will continue to deal with:

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

Residential Tenancies Act 2010

On 10 June 2010 the NSW Parliament passed the *Residential Tenancies Act 2010*. The Act is expected to come into effect in late 2010, after the necessary supporting regulations have been made.

The key changes in the Act concern:

- ▶ 'no grounds' termination notices
- ▶ rent arrears evictions
- ▶ alterations
- ▶ rent payments
- ▶ security of tenure
- ▶ tenancy databases
- ▶ sub-letting
- ▶ water efficiency
- ▶ co-tenant disputes
- ▶ goods left behind
- ▶ pre-tenancy
- ▶ breaking a lease early
- ▶ sale of rented premises
- ▶ security and safety

The Tribunal will be empowered to make a number of specific orders in response to many of these changes.

Appendix 2

Tribunal Members

As at 30 June 2010, the Tribunal's membership, in addition to the Chairperson and the two Deputy Chairpersons, comprised 8 Senior Members, 10 full-time members and 62 part-time members.

Chairperson

Ransome, Kay

Deputy Chairperson (Determinations)

Vrabac, Nick

Deputy Chairperson (Registry & Administration)

Wilson, Garry

Senior Members

Balding, Margaret

Bordon, John

Buckley, Richard

Connolly, Reginald

Durie, Graeme

Meadows, Geoffrey

Paull, Christine

Smith, Jeffery

Full-time members

Borsody, Agnes

Eftimiou, Maritsa

Halliday, John

Hennings, Simon

Howe, Bruce

McIlhatton, Susan

O'Keefe, Gregory

Rosser, Kim

Smith, Peter

Titterton, Robert

Part-time members

Adderley, Georgia

Anforth, Allan

Anthony, Kevin

Bailey, Robyn

Barnetson, Diane

Bassett, Graham

Beckett, Angela

Bell, Diana

Blair, Robert

Brady, Brian

Briggs, Phillip

Brophy, Moira

Bryant, Garry

Bullen, Mark

Butler, Rex

Campbell, Cathy

Cappe, Peter

Carney, Catherine

Carpentieri, Antony

Chenoweth, Rieteke

Conley, Jennifer

Corley, Susan

Donovan-Holm, Catherine

Farey, Janet

Flynn, David

Gilson, Mark

Harris, Ronald

Harvey, Danae

Holwell, Kim

Hunter, Penny

Ilett, Mik

Keher, Christopher

Kinsey, Graham

Lennon, David

Levingston, John

Lynch, Joanne

Marzilli, Claudio

McMillan, John

Moore, Edward

Moss, Deborah

Nolan, Dennis

O'Connor, Michael

Pickard, Bryan

Rickards, Kim

Ringrose, John

Roser, Kim

Ross, Katherine

Ross, Kim

Ryan, Leo

Ryan, Sharryn

Sheedy, Tracy

Sheehan, Desmond

Shipp, Bernard

Smith, Stephen

Taylor, William

Thompson, John

Turley, David

Walsh, William

Walton, Julie

Williams, Kerry

Williams, Louise

Wilson, Graham

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

Reid, Judy (Full-time member)

Cipolla, John (Part-time member)

Cohen, Totti (Part-time member)

Nicholls, Louise (Part-time member)

Sainsbury, Murray (Part-time member)

Wilson, Robert (Part-time member)

Appendix 3

The Tribunal process

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

Applications

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

Case management

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

Listing

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

Conciliation

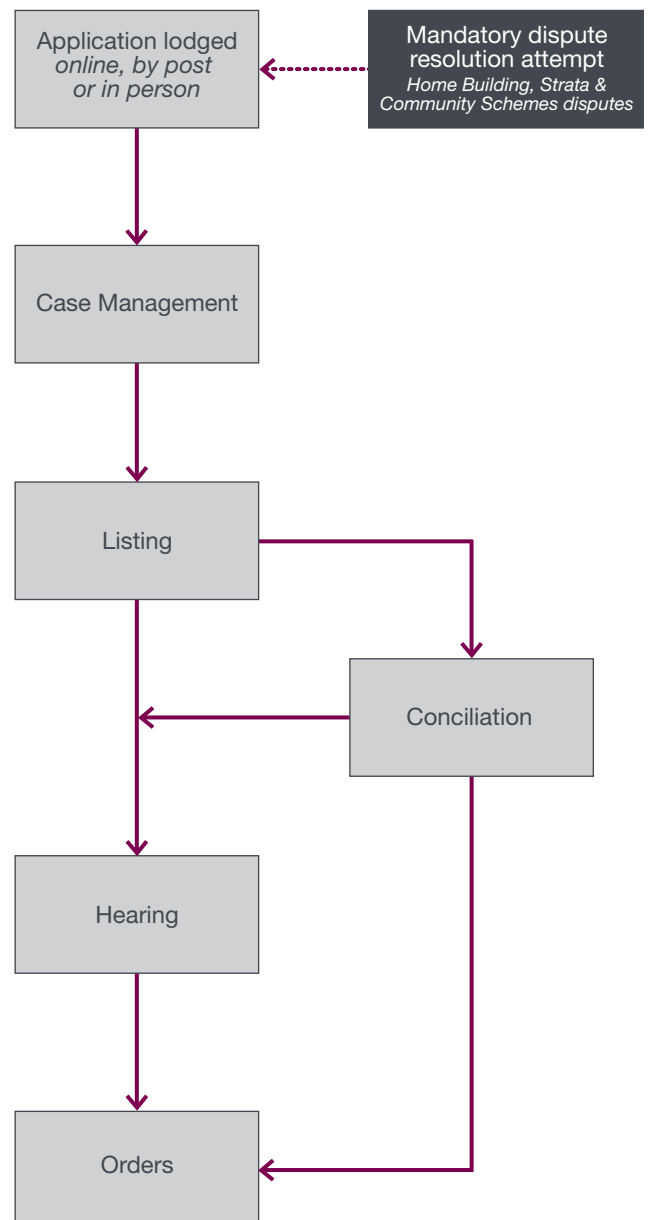
- ▶ If conciliation is successful the member will make an order on the day without the need for a hearing.
- ▶ Tribunal members will check that consent agreements are made without coercion.
- ▶ Where conciliation and other forms of dispute resolution are unsuccessful the matter will proceed to hearing.

Hearing

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

Orders

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



Appendix 4

Access to information

During 2009-2010 the *Freedom of Information Act 1989* (the FOI Act) remained in force. The FOI Act imposed certain obligations upon government agencies to make information available to the public, and to enable a member of the public to ensure that records held by the government concerning his or her personal affairs were not incomplete, incorrect, out of date or misleading.

Under section 10 of the FOI Act, the Act did not apply to the Tribunal in relation to its judicial functions. Any documents relating to the Tribunal's judicial functions were also exempt under clause 11, Schedule 1 of the Act. However, we adhered to the objects of the Act and ensured that our processes were open, accountable and responsible.

All parties to a matter had access to their file in accordance with Part 8 of the *Consumer, Trader and Tenancy Tribunal Regulation 2009*. Generally, an entire file can be viewed with the exception of the Tribunal member's hearing notes. There is no fee payable for viewing a file; however, fees apply for photocopies of any file documents.

Under clause 41(3) of the Regulation, the Registrar may also grant access to a person who is not a party to proceedings to a record of proceedings where the Registrar considers there is sufficient reason to do so.

Under section 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the CTTT Act), the Chairperson may provide reports to the Minister or the Deputy Commissioner Fair Trading Operations concerning any matter the Chairperson considers to be of importance in relation to the administration of the CTTT Act, or in relation to the jurisdiction of the Tribunal or any matter falling within its jurisdiction, or to be in the public interest.

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

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

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

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

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

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

To access information about the Tribunal you may:

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

It should be noted that the Tribunal continues to provide parties to a matter with access to their own file.

Requests by parties for access to their file should be made in writing to the Registrar, Consumer, Trader and Tenancy Tribunal, GPO Box 4005, Sydney NSW 2001.

Appendix 5

Consultative forums

The organisations represented on the Tribunal's consultative forums as at 30 June 2010 are set out below.

Aboriginal Consultative Forum

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

Commercial Division

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

Home Building Division

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

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

Motor Vehicles Division

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

Residential Parks Division

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

Retirement Villages Division

Aged Care Association Australia (NSW)
 Aged Care Rights Service
 Aged & Community Services Association of NSW & ACT
 Australian Unity
 Bougainvillea Retirement
 Combined Pensioners & Superannuants Association of NSW Inc
 Council on the Ageing (NSW) Inc
 NSW 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 Fair Trading
Owners Corporation Network
Property Owners Association of NSW
Tenants Union of NSW

Tenancy and Social Housing Divisions

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

Appendix 6

Fees and charges 2009-2010

The Tribunal's fees and charges are reviewed each year. This schedule indicates the Tribunal's application fees and charges from 1 July 2009 to 30 June 2010. The Tribunal's current fees and charges are available on www.cttt.nsw.gov.au.

Application Fees

Tenancy, Social Housing, Residential Parks and Retirement Villages Divisions	\$34.00
Strata and Community Schemes Division	\$70.00
General, Home Building and Motor Vehicles Divisions <ul style="list-style-type: none"> • Claims or disputes not exceeding \$10,000 (or no specific amount claimed) \$34.00 • Claims or disputes between \$10,000 and \$25,000 \$70.00 • Claims or disputes more than \$25,000 \$183.00 NB. – The maximum claim in the General Division is \$30,000 – The maximum claim in the Motor Vehicles Division is \$30,000 except when dispute relates to the supply of a new private motor vehicle	
Commercial Division <ul style="list-style-type: none"> • Claims or disputes not more than \$10,000 (or no specific amount claimed) \$34.00 • Claims or disputes between \$10,000 and \$25,000 \$70.00 • Claims or disputes more than \$25,000 \$183.00 • Applications under s86 and 86A of the Credit Act 1984 \$610.00 • Applications under the Consumer Credit (NSW) Code (except as provided below) \$77.00 • Applications under s101 of the Consumer Credit (NSW) Code if the application is made by a credit provider \$610.00 	
Pensioners and Students (all Applications)	\$5.00
Rehearings and Renewal Proceedings	Same as original application fee

Charges

Copy of documents	\$2.00 per page (with a minimum charge of \$26.00)
Issue of summons	\$37.00
Sound Recording <ul style="list-style-type: none"> Standard (10 days) \$24.00 per CD Premium (5 days) \$66.00 per CD 	
Transcripts	\$300.00 per hour of hearing time NB. Full estimated cost of a transcript is payable prior to processing of request. Transcripts can cost \$2,000 per day.

Appendix 7

Financial summary 2009-2010

The audited financial reports required under the Annual Reports (Departments) Act 1985 are included in the NSW Department of Services, Technology and Administration Annual Report 2009-2010.

Salary and related payments	\$'000
Salaries	7,151
Statutory appointees	4,747
Annual leave	981
Overtime	7
Meal allowance	-
Long service leave	548
Superannuation	1,362
Workers compensation	140
Payroll tax	854
Fringe benefit tax	39
	<hr/>
	15,829
Operational expenses	
Office accommodation	3,785
Postage and couriers	339
Telephones	240
Minor computer purchases and consumables	409
Fees	700
Security services	610
Training and development fees	10
Motor vehicles expenses	122
Travel expenses	1
Minor equipment, consumables and stores	286
Minor miscellaneous expenses	187
	<hr/>
	6,689
Depreciation	608
Total operational expenses	<hr/>
	23,126
Administrative on costs	3,238
Total recurrent expenditure	<hr/>
	26,364
Capital expenditure	280
TOTAL EXPENDITURE	<hr/>
	26,644
Revenue	
Lodgement fees	(1,978)
Contribution from Consolidated Funds	(4,625)
Contribution from Rental Bond Board	(10,921)
Contribution from Home Building Service	(1,374)
Contribution from Motor Vehicle Repair Industry Authority	-
Contribution from Statutory Interest Account	(7,138)
	<hr/>
	(26,036)
Net Cost of Services	608
Less Non Cash Transactions	
Depreciation	(608)
CASH DEFICIT	<hr/>
	(-)

Appendix 8

Glossary

Adjournment: The postponing or deferring of the hearing to another day.

Adjudicator: A Tribunal member appointed to determine strata and community schemes disputes 'on the papers' based on written submissions.

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

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

Balance of probabilities: The standard of proof applied by a Tribunal member that something is more likely to have happened based on the available evidence.

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

Certified money order (CMO): A certified copy of an order made by the CTTT for the payment of money that is registered with the Local Court for enforcement action.

Chairperson: The Chairperson is the head of the CTTT.

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

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

Consent order: An agreement reached between the parties, which is then made into an order by a Tribunal member.

Decision: The final orders made by a Tribunal member after a hearing.

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

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

Ex parte: A hearing held in the absence of a party.

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

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

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

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

Legislation: Laws made by Parliament (Acts and Regulations).

Matter: The case or the legal proceedings before the Tribunal. When an application is made to the Tribunal for orders to be made, that becomes the 'matter'.

On the papers: Where a decision is made by a Tribunal member or Adjudicator without a hearing, based on the written evidence presented.

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

Part-heard: Proceedings where a Tribunal member has taken some evidence but the hearing is yet to be completed.

Parties: The people involved in the CTTT proceedings. Applicants and respondents are generally called 'parties'. If a third person is joined to the proceedings by the CTTT they also become a 'party'.

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

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

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

Registry: The offices of the CTTT where information can be obtained and documents lodged.

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

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

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

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

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

Specific performance: An order which compels a party to do something.

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

Written reasons for decision: A written statement explaining how the Tribunal member came to their decision.

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Contact the CTTT

Tel: 1300 135 399

Fax: 1300 135 247

Email: ctttenquire@cttt.nsw.gov.au

Website: www.cttt.nsw.gov.au

Registry counters and telephone enquiries: from 8.30am to 5:00pm

If you have a hearing impairment or speech impairment, contact us through the National Relay Service (NRS)

- Speak and Listen users phone 1300 555 727 then ask for 1300 135 399
- Internet relay users connect to the NRS then ask for 1300 135 399.

CTTT Registry locations

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 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

