



CTTT

Consumer, Trader &
Tenancy Tribunal

Consumer, Trader and Tenancy Tribunal

Annual Report

2006 - 2007

Minister's Foreword



I am pleased to introduce the 2006-2007 report of the Consumer, Trader and Tenancy Tribunal, my first as the Minister for Fair Trading.

The Tribunal offers a valuable service to the people of New South Wales by providing an accessible, efficient and affordable avenue for the resolution of disputes about the supply of goods and services and issues relating to residential property.

The Tribunal's broad jurisdiction covers retail transactions, motor vehicle purchase and repair, credit matters, agents' fees, residential tenancies, home building, strata and community schemes, residential parks and retirement villages.

Wherever possible, the Tribunal aims to bring parties to a mutually agreed settlement. In most matters qualified conciliators bring both parties together before a hearing to help them reach an agreement.

Tribunal hearings are informal. Unlike courts, the Tribunal is not required to follow legal formalities and members aim to create an environment where parties are able to put their case forward in their own way. The member then makes a decision based on the material presented and in line with the relevant legislation.

The Tribunal continually seeks to improve its services to the public.

A review of the operations of the Tribunal commissioned by my predecessor was finalised during the year. The review's recommendations covered issues such as community education and information and member performance.

Significant work has commenced on measures to improve people's understanding of the Tribunal's dispute resolution processes and to prepare parties for the various stages of dealing with their dispute.

These measures meet the objectives of the NSW State Plan to deliver better services and access to local communities.

The Government is committed to the continued provision of effective dispute resolution services which are so important to the people of New South Wales.

Linda Burney
Minister for Fair Trading

Letter to the Minister

The Hon Linda Burney MP
Minister for Fair Trading, Minister for Youth, Minister for Volunteering
Level 30 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

I am pleased to present the Annual Report for the Consumer, Trader and Tenancy Tribunal for the year 2006-2007.

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*.

Reporting requirements under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Commerce Annual Report 2006-2007.

Kay Ransome
Chairperson
Consumer, Trader & Tenancy Tribunal

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Chairperson's Report



Against the background of continuing demand for the Tribunal's dispute resolution services, the last year has seen a strong focus on improving the way we provide these services to the people of New South Wales and in particular, to the users of the Tribunal.

On 25 February 2007 the Tribunal celebrated its fifth birthday. The early days focused on bringing together its two predecessor tribunals (the Residential Tribunal and the Fair Trading Tribunal) establishing the policies and practices of a new, single tribunal and securing its consolidation and acceptance. With this phase complete we are now building on our strengths and developing new ways to continually improve our operations and service delivery.

During the year the Minister for Fair Trading commissioned an independent review into the operations of the Tribunal. This review followed on from the earlier statutory review of the Consumer, Trader and Tenancy Tribunal Act which found that the policy objectives of the Act remained valid. The operational review was finalised in December 2006. A copy of the review's report is available on the Tribunal's website.

The purpose of the operational review was to ensure that the legislation was being implemented appropriately and to identify any operational or procedural issues impacting on the Tribunal's current and future capacity to meet its statutory objectives. The review's recommendations focused on the four main areas of community education and information, hearing capacity, performance management, and information technology and reporting.

Implementation of many of the review's findings is already underway and these are outlined further in this Report. Other recommendations may need legislative change.

At the same time a review of the Tribunal's Registry and Administration arm was undertaken. The resulting realignment of resources enabled the Tribunal to focus on the many complementary functions needed by a tribunal, such as best practice in registry management and quality control, the capacity to respond actively to changes in our policy and legislative environment, improving users' understanding of the Tribunal and an integrated approach to continuous improvement.

These changes will also enable us to more easily respond to the direction of the operational review.

During the year the Tribunal continued its use of cutting-edge technology. The facility to lodge applications online was expanded to include the General, Home Building and Motor Vehicles divisions. There was a pleasingly quick uptake from these divisions and this has now resulted in some 40% of all applications being lodged online, an increase of 10% over last year.

Currently over 57% of all Tribunal orders are issued online to parties immediately after the hearing, through our *InCourt* facility in Tribunal venues. The use of laptop computers by members to issue orders on the spot in regional locations and to record hearings is underway and a video conferencing capacity is to be trialled in the coming year.

While the Tribunal aims to be as informal as possible in its proceedings, any dispute resolution or tribunal process can be daunting for first time users. The more that users of the Tribunal understand its processes and outcomes, as well as their rights and responsibilities, the better parties can participate in resolving their dispute.

During the year the Tribunal “stepped into the shoes” of our clients through a series of focus groups held with users. The findings from the focus groups will guide us in engaging with, informing and assisting our clients through the Tribunal process.

These continuous improvement initiatives have been complemented by the Tribunal member appointment/reappointment process undertaken in December 2006. This provided the opportunity to get the right people in the right place to improve the accessibility of the Tribunal's services. As a result there are proportionally more part-time members which gives greater flexibility in the allocation of member resources across the state. We now have members in Bourke, Broken Hill, Dubbo, Orange and Tamworth, better serving the people of west and far west New South Wales. Other members are located around the state.

A new jurisdiction was conferred on the Tribunal as a result of the introduction of the *Conveyancers Licensing Act 2003* and the *Conveyancers Licensing Regulation 2006* which commenced on 15 December 2006. The legislation enables the Tribunal to hear disputes about costs payable for conveyancing work undertaken by licensed conveyancers. Applications are dealt with within the Tribunal's General division.

Last year I reported on the sharp increase in the number of applications received in the Residential Parks division towards the end of the 2005-2006 reporting year. This trend continued into this reporting period with multiple applications received in July 2006.

It is pleasing to report that the Tribunal successfully met this demand with most of the disputes, involving over 1350 applications, being resolved within 12 weeks. Hearings were generally held at special venues close to the residential park. To further help residents and owners understand the legislation and Tribunal procedures, I held three residential parks information sessions on the central and north coasts where the largest proportion of residential parks are located.

Our information program included sessions on public housing attended by the Minister, Aboriginal housing conducted by the Deputy Chairperson (Determinations) at Kempsey and tenancy issues for agents and landlords conducted by the Deputy Chairperson (Registry and Administration) in Sydney. These sessions were well attended and participants found the information useful.

The 5% increase in applications received during the year was largely driven by increases in the general and tenancy divisions which make up 87% of all applications.

As a member of the Council of Australasian Tribunals (COAT) the Tribunal participates in and contributes to the broader stage of tribunal management and practice across Australia and New Zealand. The COAT Practice Manual for Tribunals issued during the year has proved an invaluable resource to this and other tribunals. In fostering interaction and collaboration with other tribunals, I have been pleased to be the convenor of COAT's NSW Chapter for the last two years and in June 2007 was elected as chair of the National Council.

This year, as in previous years, I would like to acknowledge and thank Tribunal members and staff for their continued efforts. Members and staff perform their roles with professionalism and dedication.

Kay Ransome
Chairperson

Year at a Glance

◎ 64,168 applications lodged

- 5% increase from last year
- 37% lodged online

◎ 79,826 hearings

- 24 days average between lodgement and first hearing
- 95 venues used across New South Wales

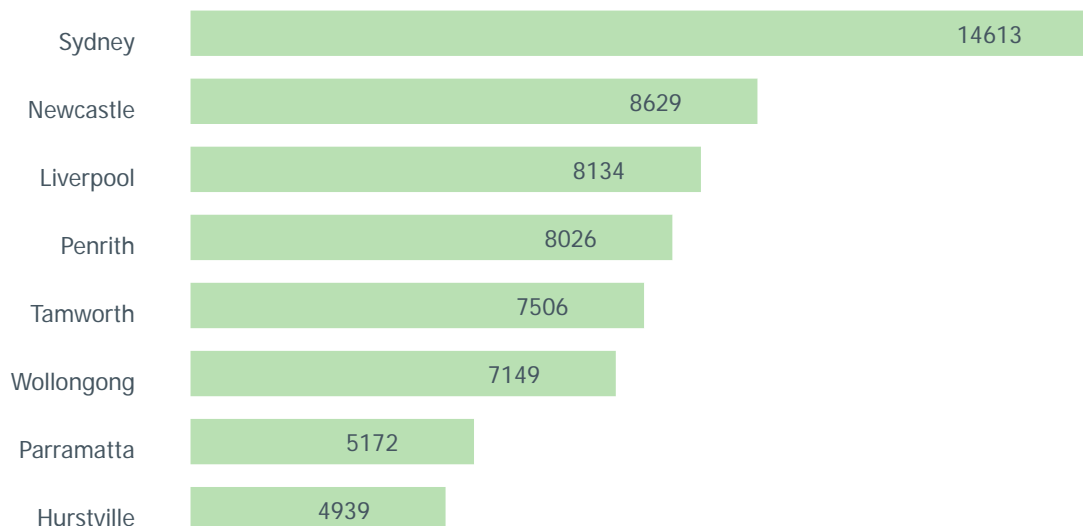
◎ 71,295 applications finalised

- 68% finalised within 35 days from lodgement
- 78% finalised prior to or at the first hearing

◎ 170,131 website visits

- 40% increase from last year
- most hits for application forms

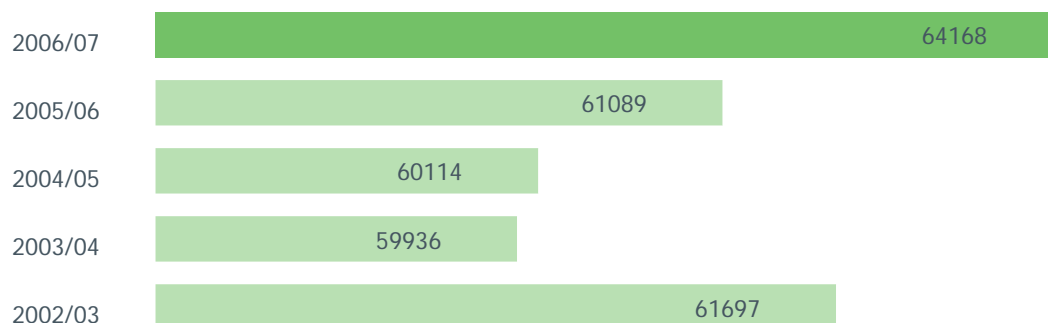
Applications per Registry



Applications Received

DIVISION	Number received	% of total
Tenancy	49466	77.1%
General	6389	10.0%
Home Building	3709	5.8%
Residential Parks	1765	2.7%
Strata & Community Schemes	1226	1.9%
Motor Vehicles	1226	1.9%
Commercial	348	0.5%
Retirement Villages	39	0.1%
Total	64168	100%

Applications – 5 year comparison



About the Tribunal

The Tribunal is an independent decision making body.

Its primary function is to resolve disputes about the supply of goods and services and issues relating to residential property.

Its powers, functions and procedures are set out in the

Consumer, Trader and Tenancy Tribunal Act 2001

and the

Consumer, Trader and Tenancy Tribunal Regulation 2002.

Objectives

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

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

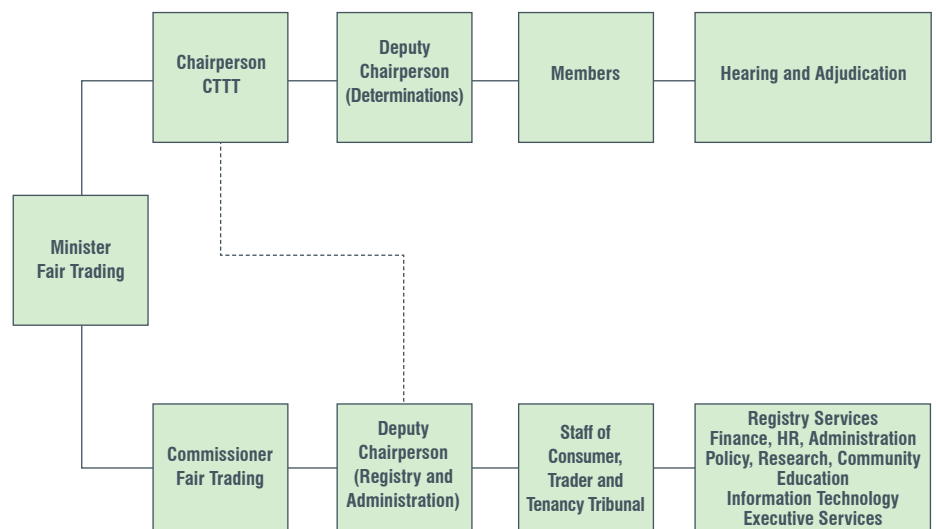
Jurisdiction

Nineteen acts, set out in appendix 1, give the Tribunal jurisdiction to resolve disputes.

It has eight divisions:

- Tenancy
- General
- Home Building
- Residential Parks
- Strata and Community Schemes
- Motor Vehicles
- Commercial
- Retirement Villages

Structure



The Tribunal consists of a Chairperson, two Deputy Chairpersons, 6 senior members and 73 members. All Tribunal members, except for the Deputy Chairperson (Registry and Administration), are appointed by the Governor on either a full-time or part-time basis.

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

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

Senior members assist the Chairperson and the Deputy Chairperson (Determinations) in member training and education and hear more complex cases.

The Deputy Chairperson (Registry and Administration) is a non-sitting member of the Tribunal and is responsible for the Tribunal's financial, administrative and registry functions. The Deputy Chairperson (Registry and Administration) is responsible to the Commissioner for Fair Trading. This position and Tribunal staff are employees of the Office of Fair Trading which in turn is part of the Department of Commerce. Staff are employed under the provisions of the *Public Sector Employment and Management Act 2002*.

As at 30 June 2007, there were 129 Office of Fair Trading staff at the Tribunal.



Senior Members

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



Kay Ransome, Chairperson since September 2002. Kay has worked in tribunals since 1990 and was previously the Principal Registrar of the Commonwealth Administrative Appeals Tribunal. "After five years of operation, there has been continued and increasing demand for our services by people who seek an informal, low cost and timely resolution of their dispute. Our success rate in bringing parties to an agreed settlement has demonstrated the value of informal, dispute resolution bodies such as the Tribunal."



Elizabeth Tydd, Deputy Chairperson (Registry and Administration) since February 2002. Liz was previously the Registrar of the Residential Tribunal. "This has been an exciting year for me and my team. We have already translated many of the operational review's recommendations into policies and programs which will directly benefit our users. In particular, we are making significant improvements to how we explain and communicate the Tribunal's processes. Our aim is to make the Tribunal experience easier and enable parties to fully participate in the resolution of their dispute."



Nick Vrabac, Deputy Chairperson (Determinations) since February 2002. Nick has had extensive experience as a legal practitioner in both the private and public sectors. "Every decision made by a Tribunal member impacts on people and this makes the quality, fairness and consistency of Tribunal decisions so important. My priority has been to work closely with the membership to ensure that we have the right members in the right place, applying their particular expertise to the dispute on hand."

Tribunal Proceedings

Dispute Resolution

The Tribunal has an obligation under the Act to assist parties to reach an agreement wherever possible to achieve an early settlement of the dispute.

Conciliation is regularly used in conjunction with group listings, mainly for general, tenancy, home building and motor vehicle matters which make up the bulk of Tribunal applications. It is also used extensively in matters involving multiple applications about the same dispute, for example in residential parks and retirement village matters.

The Home Building, Strata and Community Schemes and Motor Vehicles divisions have different forms of dispute resolution built into their processes and home building and strata and community scheme disputes have mandated dispute resolution before an application can be lodged with the Tribunal.

In complex home building matters, mediation and case conferences are used and in matters over \$25,000 expert conclaves of the parties' expert witnesses are conducted by a specialist Tribunal member.

Hearings

Where the Tribunal is unable to bring the parties to a mutually agreed settlement, a member will hear and evaluate the parties' evidence, consider the submissions and make a determination in accordance with the legislation covering the jurisdiction being heard.

The majority of applications, where the amount in dispute is less than \$25,000, are listed for first hearing in a group list where a number of matters are listed together before a Tribunal member.

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

Directions hearings are used in complex matters when there is the need to establish jurisdiction, identify issues in dispute, set a time frame for the hearing or make directions for the exchange of evidence.

Directions hearings are used extensively in large home building and complex strata applications.

Matters can be determined on the papers with the consent of both parties. In the Strata and Community Schemes division all applications for adjudication are dealt with in this way. Applications for rehearing in all divisions are also determined on the papers.

Decisions and Orders

In most cases the Tribunal member makes a decision on the day of the hearing. Most decisions are accompanied by brief oral reasons.

When a matter involves complicated legal argument members may need to reserve their decision. Reserved decisions contain reasons explaining how the member came to the decision.

Tribunal decisions are binding and can only be appealed to the Supreme Court of NSW on a matter of law. An application for a rehearing may be granted by the Chairperson if it can be demonstrated that the applicant may have suffered a substantial injustice.

A Tribunal member's decision is embodied in a Tribunal order – an instruction from the Tribunal which is legally enforceable.

There are two types of orders – a money order which requires payment by one party to another or a work order which requires goods or services to be provided, both within a specified time.

Money orders are enforced through the local courts.

If a work order is made but not complied with within the time specified, the party in whose favour the order was made may seek to renew the proceedings so that the Tribunal can make another appropriate order, including a money order.

The Tribunal Process

Applications

- Applications can be lodged by post, through *CTTT online*, at one of the Tribunal's eight registries, a local Fair Trading Centre or Local Court.
- Home Building and Strata 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.

Listing

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

Conciliation

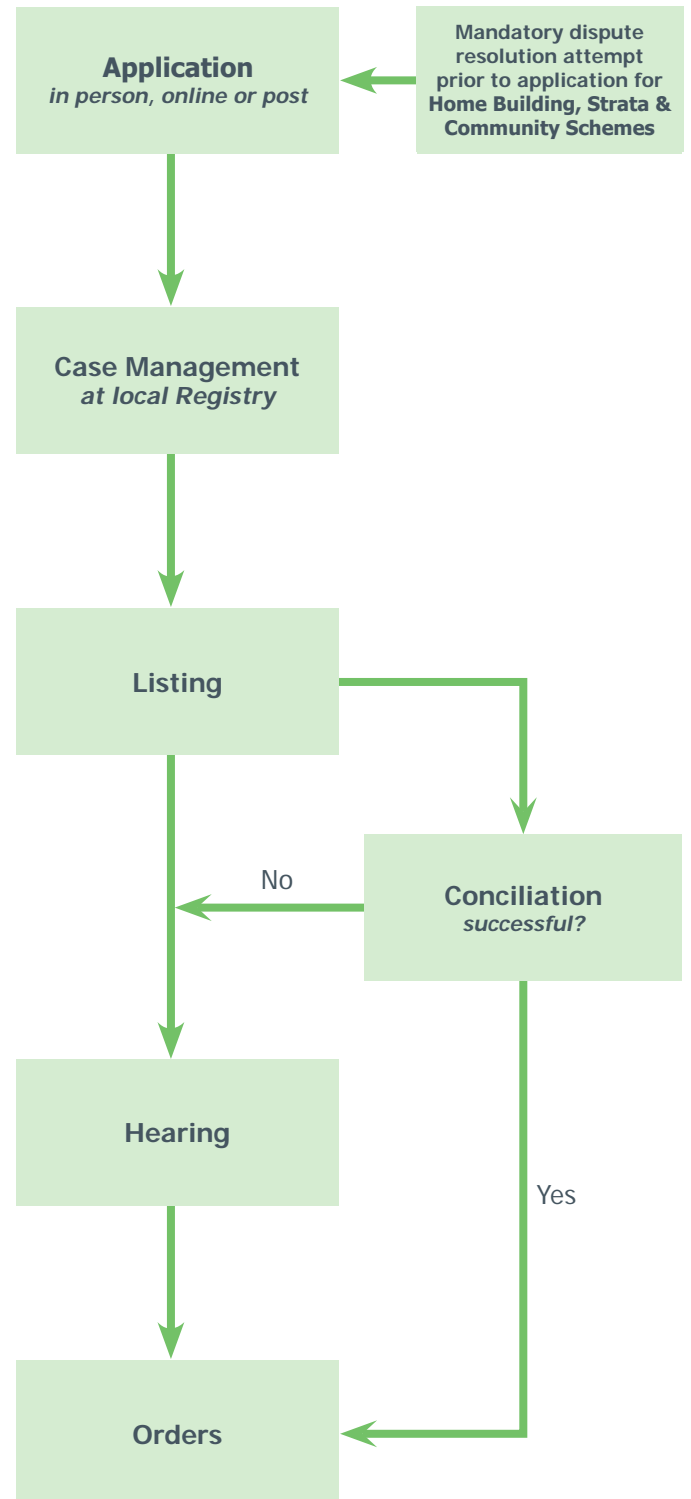
- If conciliation is successful the member will make an order on the day without the need for a hearing.
- Where conciliation and other forms of dispute resolution are unsuccessful the matter goes to a hearing.

Hearing

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

Orders

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



Members

As at 30 June 2007, the Tribunal's membership, in addition to the Chairperson and the two Deputy Chairpersons comprised 6 senior members, 13 full-time members and 60 part-time members.

Senior members

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

Full-time members

Borsody, Agnes	Howe, Bruce	Murphy, Cameron Lionel	Rosser, Kim
Eftimiou, Maritsa	McIllhatton, Susan	O'Keeffe, Gregory	Smith, Jeffery
Hennings, Simon	McMillan, John	Reid, Judith	Smith, Peter
			Thane, Kathy

Part-time members

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

Registry and Administration

The focus of this area is to manage the Tribunal's resources and budget, provide strategic direction and deliver a range of essential services which complement and support the Tribunal's dispute resolution and hearing functions.

In early 2007 this area underwent a structural realignment to ensure the Tribunal's capacity to meet current and future operational priorities.

Accordingly, the following key areas of performance and accountability were defined:

Registry Services: end-to-end responsibility for the case management of applications and management of the Tribunal's eight registries and conciliators

Resource Management: sound management of staffing and financial resources and compliance with OFT and Commerce governance requirements

Continuous Improvement: education and information services, policy and program development, quality assurance and performance reporting

Business Development: delivering technological solutions for improved performance reporting and service delivery

Executive Services: high level support to the Minister, Commissioner for Fair Trading and the Tribunal's executive.

The structural changes were consistent with the directions of the operational review undertaken during the year.

A number of program initiatives were also undertaken during the year further supporting the review's direction:

- Independent research into the information needs of Tribunal users through a series of metropolitan and regional focus groups across all the divisions. The research highlighted the needs of various client groups, the information needed to help clients through the Tribunal process and the requirements of the different divisions. This research will inform the development of a suite of information resources for Tribunal clients.

- Development of a formal communication strategy which covers the Tribunal's consultative framework, information provision and community awareness programs.
- Development of a partnership between the Tribunal and Aboriginal tenancy services. This partnership involves regular consultation and information about the Tribunal's processes tailored to the needs of Aboriginal people. This partnership model will be extended across a range of Aboriginal community organisations including housing providers.
- Review of the Tribunal's conciliation function and the development of a policy and procedural framework which will make best use of the Tribunal's conciliation resources, inform users what to expect in the conciliation process and further develop this process as a key dispute resolution tool for the Tribunal.
- Improvements to the Tribunal's complaints handling framework to ensure quality and consistency in accordance with the *Australian Standard Customer Satisfaction – Guidelines for complaints handling in organisations (ISO 1002:2004, MOD)*. The Tribunal's procedure is shown in Appendix 3.
- Strengthened management structure and quality control systems across the eight registries to achieve consistency in registry practice and provide a better service to all clients in local communities.
- Development of a Business Plan which aligns with the values and strategies set out in the State Plan, the Department of Commerce Corporate Plan and the Office of Fair Trading's Strategic Plan. The plan will assist in directing the Tribunal's business and culture to deliver an efficient and effective service in a professional and customer focussed environment.
- Development of an upgraded, web-based Case Management System with an expanded online lodgement and management reporting capability. The new system will be implemented early in the next reporting period.

Tribunal Objectives

The Tribunal aims to resolve disputes within the following objectives:

Timeliness

Accessibility

Consistency

Informality

Low Cost

Timeliness

Finalisation Period	0-28 days	29-35 days	36-49 days	50+ days
Tenancy	69%	6%	6%	19%
General	39%	12%	13%	36%
Home Building =<\$25K	27%	11%	11%	51%
Home Building >\$25K	6%	3%	3%	88%
Home Building other	67%	6%	4%	23%
Residential Parks	17%	6%	9%	68%
Strata & Community Schemes	19%	3%	8%	70%
Motor Vehicles	17%	9%	21%	53%
Commercial	30%	9%	11%	50%
Retirement Villages	8%	1%	4%	87%
All divisions	61%	7%	7%	25%

Finalised prior to or at first hearing

Tenancy	79%
General	76%
Home Building =<\$25K	64%
Home Building >\$25K	55%
Home Building other	85%
Residential Parks	80%
Strata & Community Schemes	90%
Motor Vehicles	67%
Commercial	68%
Retirement Villages	40%

Clearance Ratio

Tenancy	102%
General	102%
Home Building	108%
Residential Parks	97%
Strata & Community Schemes	96%
Motor Vehicles	104%
Commercial	109%
Retirement Villages	197%

Accessibility

Geographic Access

The Tribunal has hearing rooms located at each of its eight registries, however it sits at 95 locations to make sure that its services are delivered across the State's wide geographical base.

Over 40% of members are located in regional areas enabling the Tribunal to provide a prompt service in these locations. The high proportion of part-time members gives the Tribunal greater flexibility in allocating members to hearings according to demand.

The Tribunal's eight registries receive applications and provide a local focus for the case management of matters which are allocated to the registry nearest to where the goods and services were provided, or in the case of tenancy, the location of the rental property.

In addition, the Office of Fair Trading's 24 Fair Trading Centres provide information on the role of the Tribunal, options available for resolving disputes and steps in lodging an application. Applications can also be lodged with any of the State's 149 Local Courts.

To improve accessibility, particularly in regional areas, the Tribunal has developed a business case and project specifications for hearings to be held using video conferencing technology. A pilot project will be implemented next year.

Tribunal hearings can be conducted by telephone when parties are not located near the dispute or when one party is unable to attend. Evidence from witnesses may also be taken over the telephone.

Special Needs Access

The Tribunal offers a range of services to assist users with specific needs.

Culturally and Linguistically Diverse Communities

Professional interpreters are available free of charge to assist parties during hearings and provide language assistance via telephone when requested. A total of 2,191 interpreter services were used in this reporting period. The most common languages were Mandarin, Arabic, Vietnamese, Cantonese, Korean, Greek, Persian, Spanish and Russian.

Tribunal staff can provide assistance in 10 languages and Fair Trading staff cover 30 languages.

The CD-ROM called *CTTT – We're talking YOUR language* was released in August 2006 in Arabic, Cantonese, Greek, Korean, Mandarin, Spanish and Vietnamese. The CD provides an easy-to-understand guide to the Tribunal's services for people from culturally diverse communities and information on how to prepare for a Tribunal hearing. Copies of the CD are available from the Tribunal as well as Migrant Resource Centres, public libraries and Fair Trading Centres across NSW. It is also available on our web site, complementing general information given on the site in the same seven languages.

The brochure *What Happens at the Tribunal* was issued in Arabic, Chinese and Vietnamese during the year.

Hearing Impaired

Auslan interpreters are provided free of charge for the hearing impaired. 29 interpreters were used during the year. A TTY telephone and hearing loop service is also available. The CD ROM *CTTT-We're talking YOUR language* provides information in visual format.

Residential Parks

During the year the Tribunal responded to the special needs of residential park applicants, many of whom are older and lack easy access to transport to attend hearings. The Tribunal held hearings at venues as close to the residential park as possible, sometimes within the park itself.

Aboriginal and Torres Strait Island People

The Tribunal is committed to increasing awareness of and accessibility to dispute resolution services for Aboriginal people. The Tribunal has conducted numerous specific information sessions, produced a fact sheet and included an indigenous information section on the website. The Tribunal consults regularly with members of the Aboriginal community.

Accessible Proceedings

In Tribunal venues which are linked to the IT network, hearings are sound recorded and a member is able to issue the Tribunal order to parties immediately after the hearing using the Tribunal's *InCourt* facility. Some 57% of orders are issued through *InCourt*.

The use of *InCourt* offline is being trialled using lap top computers and this service will be rolled out over the next year. This will particularly advantage regional users where most hearings are held in non-Tribunal venues.

Where hearings are sound recorded, parties can obtain copies of the recording and transcripts of their hearing.

Any party may within 14 days of the hearing request a statement of reasons to be provided in relation to their matter.

All reserved decisions and decisions where parties have requested written reasons are published on the Australasian Legal Information Institute's website Austlii.

Access to Information and Services

The Tribunal uses a variety of methods to communicate its role to all people who may require its services and in particular to inform parties about Tribunal processes and requirements.

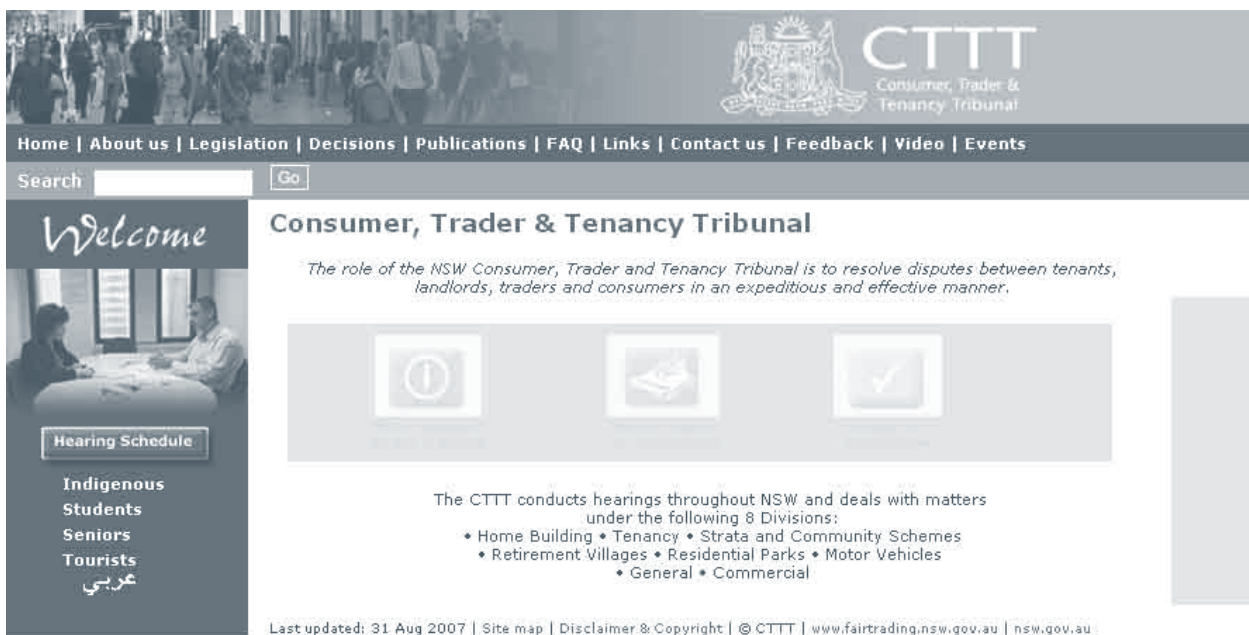
CTTT online

CTTT online is a suite of tribunal services available through the Tribunal's website at www.cttt.nsw.gov.au

It includes an information web site where customers can: find out how to access services the Tribunal offers; download forms and other publications; access previous decisions made by the Tribunal; read about how the hearing process works and how orders can be enforced; and look up hearing schedules. Specific information is available in community languages and also for indigenous Australians, students, seniors and tourists.

CTTT online also includes a service which allows customers to lodge and pay for applications online. In most cases applications are listed for hearing immediately and a Notice of Hearing is provided for the customer to download.

The year saw the expansion of this facility from Tenancy and Residential Parks divisions to include the General, Strata and Community Schemes and Motor Vehicle divisions.



The screenshot shows the homepage of the Consumer, Trader & Tenancy Tribunal (CTTT). At the top, there is a navigation menu with links: Home | About us | Legislation | Decisions | Publications | FAQ | Links | Contact us | Feedback | Video | Events. Below the menu is a search bar with a 'Go' button. The main content area features a 'Welcome' message and a 'Hearing Schedule' button. A list of services is provided in multiple languages: Indigenous, Students, Seniors, Tourists, and Arabic (عربي). The central text states: 'The role of the NSW Consumer, Trader and Tenancy Tribunal is to resolve disputes between tenants, landlords, traders and consumers in an expeditious and effective manner.' Below this, three icons represent different services: a clock for 'Hearing Schedules', a document for 'Forms and Publications', and a checkmark for 'Applications'. A list of divisions is provided: Home Building, Tenancy, Strata and Community Schemes, Retirement Villages, Residential Parks, Motor Vehicles, General, and Commercial. The footer contains the text: 'Last updated: 31 Aug 2007 | Site map | Disclaimer & Copyright | © CTTT | www.fairtrading.nsw.gov.au | nsw.gov.au'.

Publications

The following publications are also available on the website:

- *What happens at the Tribunal* – provides general information about the Tribunal, its procedures and processes
- *Fact Sheets* – provide specific information for home building applications under \$25,000 and residential parks
- *Need Advice with Legal Assistance?* – lists organisations which can assist on legal issues
- *Chairperson's Directions* – set out the practice and procedure to be followed by Tribunal members and parties
- *CTTT Bulletin* – provides information on Supreme Court appeal decisions and jurisdictional issues
- *Get it Sorted DVD* – gives an overview of the Tribunal and mock footage of the conciliation and hearing process
- The CD-ROM *We're talking YOUR language* – focuses on available services and hearing preparation – available as a CD or online in seven languages.

Information Sessions

The Tribunal's ongoing cycle of information sessions included presentations on public housing, tenancy for landlords and agents, residential parks – at Coffs Harbour, Gosford and Tweed Heads – and Aboriginal housing at Kempsey.

Tribunal members and staff have spoken on the role of the Tribunal at ten information sessions held by the Office of Fair Trading – in places such as Broken Hill, Orange, Wauchope and Dubbo – as well as at a range of professional and industry groups including the Institute of Strata Management, the Master Builders Association, the Macleay Aboriginal Housing Association, the Australian Society of Building Consultants and the Chinese Australian Services Society.

Consultative Forums

Consultative forums continue to play a key role in ensuring regular dialogue with community and industry peak bodies. Organisations represented on forums for each division are detailed in Appendix 4.

Consistency

Members operate within a governance framework to achieve the Tribunal's objectives of consistent and fair decisions.

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

The Tribunal's combined rehearing, appeal and complaints rate is less than 5% of all applications received.

During the year there were:

- 1973 applications for rehearing, representing 3% of all applications received. Of these, 487 were approved for rehearing by the Chairperson or delegate.
- 68 known applications to the Supreme Court. Of the 57 appeals determined by the Supreme Court, 40 were dismissed, 5 were discontinued, 6 were referred back to the Tribunal for rehearing and 6 decisions were substituted.
- 935 letters outlining concerns about the Tribunal's practices and procedures, mainly dissatisfaction with the outcome of proceedings. This represents 1.4% of the total amount of applications received. By comparison, there were 928 letters received last year. View the Tribunal's complaints handling process in Appendix 3.

The Tribunal has in place a wide range of formal and informal mechanisms to enhance and monitor its performance in achieving its objective of fair and consistent decision making.

Chairperson's Directions are issued under section 12 of the Act, prescribing the procedures to be followed by Tribunal members and parties. The Directions cover summonses issued by the Tribunal, acceptance of building claims, home building claims over \$25,000, requests for adjournment and a code of conduct for expert witnesses. All are available on the Tribunal's website.

The Practice and Procedure Committee, comprising both members and staff, provides advice to the Chairperson on the development and implementation of Chairperson's Directions, the development of practices and procedures for each division, achieving consistency of practice among members and new and enhanced methods of dispute resolution.

In accordance with schedule 3 of the Act there is a Code of Conduct for Tribunal members. The Code sets out the standards of behaviour expected of each member of the Tribunal. It also provides guidance to members in the performance of their statutory functions and in identifying and resolving situations which may present ethical conflicts.

The Peer Review Panel is established under schedule 3 of the Act to investigate education and training needs as well as complaints against members. One matter referred in 2005-2006 by the Chairperson was finalised by the Panel. No new matters were referred to the Panel in 2006-2007.

Tribunal members are required to participate in a Member Performance Assessment and Review process with the Chairperson which meets the obligation under the Act for members to enter into and comply with a performance agreement.

Members also undergo a continuous cycle of reviews of decisions, outstanding decisions and reserved decisions. A member's intranet site keeps members up to date on legal and procedural issues and on precedents and impacts of significant decisions made in other jurisdictions.

Senior members provide guidance and assistance to members in all areas of jurisdiction and are actively involved in formal training processes.

During the year new members were given a rigorous induction program including a two day conference, observing hearings and being mentored in the early hearings. Another two-day conference was also held for all members.

Additionally, the Tribunal has commenced an independent training needs analysis for Tribunal members to inform future learning and development initiatives.

Informality

Unlike courts, the Tribunal is not bound by formal requirements such as the rules of evidence. Tribunal hearings aim to be as informal as possible to enable both parties to best present their cases.

Even before a matter comes before the Tribunal, every effort is made to resolve the dispute in the more informal environment of conciliation and other forms of alternative dispute resolution. Home building expert conclaves are held on the site of the dispute.

Tribunal members aim to conduct hearings in a way that ensures the evidence of both parties is heard and that people who are putting forward their own cases are not fettered by unnecessary or unhelpful procedure and protocol.


Most matters are heard without legal representation although the Tribunal may grant the right to representation.

The Tribunal conducts its hearings in a variety of venues. The Tribunal's own venues are in well positioned local areas and every effort is made to balance the physical requirements of a hearing venue with the objective of informality.

In non-Tribunal venues hearings are held in court houses, public meeting rooms or private facilities near the parties.

Tribunal members often need to adapt the venue to meet specific circumstances as they arise.

In one instance, a hearing was due to be held in the meeting room of a local club on the far south coast, but when the Tribunal member and the parties for a number of matters arrived, the facilities were locked and no-one could be contacted to open the doors. As the Tribunal only sat in the town every three weeks, nobody wanted to adjourn the matters until then.



With the agreement of all the parties, the member conducted the hearings in the forecourt of the club, using a brick wall as the bench. All matters were finalised on the day and the parties were satisfied that their matters had been dealt with.

In a recent residential parks case concerning a challenge from a number of residents to a rent increase the Tribunal hired a local hall in Port Macquarie which could accommodate all of the parties. The Chairperson conducted the hearing and most of the evidence was taken before the case was adjourned.

The parties wanted the Chairperson to view a number of parks in the area as well as the park in which the applicants lived. After viewing the park, it had been the intention to resume the hearing in Port Macquarie. However, to save the parties travelling back to town, the remainder of the hearing was held on the veranda of the park manager's residence and the parties made their submissions over tea provided by the park manager.

Low Cost

The Tribunal offers a low cost service to its users, not only through low lodgement costs but also through the achievement of its other key objectives of timeliness, accessibility and informality.

Application fees in most divisions were \$31. Pensioners and students paid \$5 for all applications. These fees cover the bulk of applications lodged – all tenancy matters and home building, general and commercial disputes under \$10,000.

Applications can be lodged at over 180 venues or online and are case managed at the Tribunal registry closest to the place of the dispute.

Hearings are held at over 95 locations across the state and often in special venues to reduce the time and cost to parties in getting to the hearing. The majority of residential park and retirement village matters are heard in community venues within or very close to the park.

Telephone hearings are used to further assist parties who may not be located near the place of the dispute and the Tribunal regularly conducts hearings and takes evidence from witnesses by telephone.

Tribunal hearings do not require legal representation and most cases do not involve legal costs to the parties.

Interpreters and hearing impaired services are provided at no cost to the parties.

Some 78% of matters are finalised at the first hearing, significantly reducing attendance time and costs such as travel and time off work.

Tenancy Division

Jurisdiction

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

Key Facts 2006-07

Applications

Applications received 49,466

- 5% increase from 2005-06

Application Types:

• Termination	30,413
• Breach / Compensation	8,894
• Rental Bond	5,090
• Other	1,229
• Rehearing	1,225
• Special provision social housing	1,008
• Access to premises	737
• Rent Increase Excessive	290
• Excessive Rent	273
• Abandoned Premises / Goods	207
• Renewal	55
• Recognition as a Tenant	45

Lodged by landlords 42,274

Lodged by tenants 7,146

Lodged by occupants 46

Number of e-lodgements 22,106

Hearings

Number of hearings 58,245

Number of adjournments 9,822

Finalised Matters

Matters finalised 56,029

Final Orders:

• Made at hearing	33,519
• By consent	14,421
• Withdrawals	8,089

Key Performance Indicators

90% Listed for hearing within 28 days

79% Finalised prior to or at first hearing

75% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 358

Supreme Court appeals determined 12

Overview

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

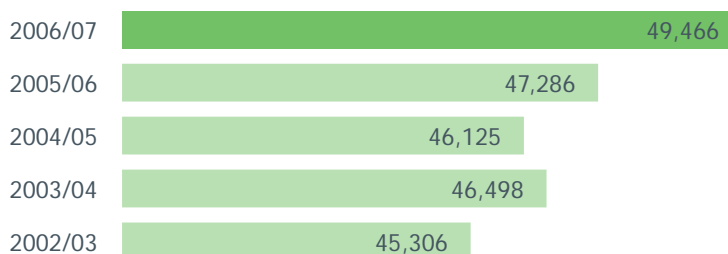
Agreements can be between private landlords and private tenants; public housing tenants and the Department of Housing; and social, community and Aboriginal housing providers and their tenants. The *Residential Tenancies Act 1987* does not apply to hotels and motels, hostels, boarders and lodgers, protected tenancies, and commercial or retail tenancies.

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

With nearly 630,000 rental bonds held in trust by the Rental Bond Board and approximately 125,000 Department of Housing tenancies, the number of applications to the Tenancy division represents around 6.5% of all New South Wales residential tenancies.

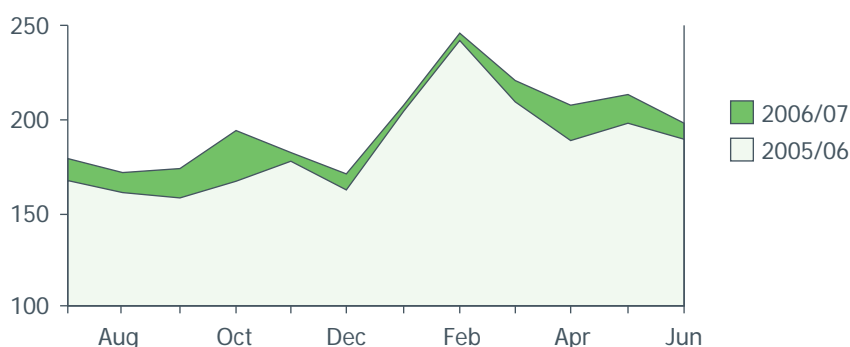
Trends

Applications in the Tenancy Division increased by almost 5%. This was mainly attributable to applications made by the Department of Housing regarding access, water usage or rent arrears.



Analysis of finalised matters over the last two years shows that the number of orders made at hearing declined by 5% when compared with the previous year and the number of matters withdrawn increased by 5%. However, the number of orders made by consent in the year to 30 June 2007 was almost one third higher than in the previous year.

Seasonal trends were consistent with previous years. The period from late January to June as well as October saw application volumes of between 200 and 250 per day.



Case studies

A question of balance...

In terminating a tenancy the Tribunal is making a very significant decision that can lead to someone being homeless. Members must consider the circumstances of the tenant and the landlord before making an order for termination.

A mother and son had occupied a home unit for over 40 years. Following the death of the mother, problems with the tenancy began as the son accumulated newspapers and magazines in every room of the unit. The landlord had on one occasion collected and disposed of some 14 tonnes of waste at his own expense.

The Tribunal member heard that an inspection of the unit had found that every room was filled with newspapers, plastic bags and food containers and that, as no maintenance work could be done because the tenant refused to give the landlord access to the premises, the hot water and toilet systems were not working properly. A bad odour coming from the unit could be detected in the common hallway of the unit block.

The Tribunal member heard specialist medical evidence that the tenant suffered from chronic fatigue syndrome and had poor organisational skills. The member noted that the problems were not caused by the tenant's wilful or reckless behaviour and that an eviction would have a "devastating effect" on him. The tenant had strong ties to the area having lived there since his childhood and would have limited capacity to raise a bond and find other premises.

In his decision the member stated that the tenant's circumstances needed to be balanced against the rights of the landlord, the health and amenity of the other tenants in the block, the potential fire hazard in the building and the health and safety of the tenant himself.

In these circumstances, the member made an order to terminate the tenancy, allowing the tenant a longer than usual period to vacate the premises and recommending that other avenues of community assistance be sought for the tenant.

Working co-operatively...

Using joint hearings and informal dispute resolution tools such as conciliation can bring about a mutually agreed resolution by the parties.

When 70 tenants in an apartment building in inner Sydney were each sent a rent increase notice, 39 of them made applications to the Tribunal seeking orders that the rent increases of between \$45 and \$75 per week were excessive. As the issues relevant to each of the 39 applications were the same, the Tribunal listed all of the matters at the same time before the same Tribunal member.

The tenants had organised for a few of their number to represent them all at the Tribunal. They later sought advice from the Tenants Advice and Advocacy Service and the Tribunal granted the tenants leave to be legally represented. Their representative then acted on their behalf in all negotiations with the landlord's agent.

Before hearing the application the Tribunal member referred the matter to one of the Tribunal's conciliators to see whether the dispute could be resolved without a formal hearing.

The challenge for the conciliator was that the applicants took different positions as to what they wanted achieved. Some long-term tenants wanted to stay but without a rent increase, some definitely wanted to leave and others were adopting a "wait and see" position. As a result of the conciliation, the owner's representative agreed not to back-date any rent increase to the date of the notice and this effectively gave tenants an additional two months at the old rent. Tenants who wanted to leave were given 60 days to vacate at the existing rental. For those who wanted to stay the rent increase was staggered into two increases over 12 months. This gave some tenants who did not want to leave immediately the option to review their position in 6 months' time.

Minimising the risk...

The tenancy legislation provides safeguards for both landlords and tenants in the majority of cases. However it cannot cover extreme cases of dishonesty or fraud by either landlords or tenants. There is a lot of information available from the Tribunal and the Office of Fair Trading to assist landlords and tenants in their dealings with each other and the Tribunal.

A landlord applied to the Tribunal for the termination of a tenancy and compensation of \$1,500 for unpaid rent. The tenant, a single mother, attended the hearing with her three children and said that she wanted to continue the tenancy and would pay the arrears. A Tribunal order was made for payment of the arrears and for the landlord to re-list the matter if the money was not paid. The Tribunal would then consider terminating the tenancy.

When the arrears were not paid, the landlord applied to have the matter re-listed. By this time, the tenant was over \$3,000 behind. The Tribunal member granted the termination order sought by the landlord and it was agreed by the parties that the arrears would be paid by instalments.

Within the week, the tenant did a "midnight flit", having made no payments and leaving the property dirty and damaged. As the landlord had not raised the issue of property damage, a new application had to be lodged. When this matter came before the Tribunal it was adjourned because the landlord did not specify the damage or the cost of repairs.

Shortly afterwards, the tenant petitioned for bankruptcy in three names. In fact, the tenant had a long history of debt and a poor rental history which was not known to the landlord and had not been raised at the hearings.

The landlord managed the property herself and no reference checks had been carried out. No bond had been lodged with the Rental Bond Board and the landlord had allowed rental arrears to be offset against the bond which had been paid directly to the landlord. The landlord ultimately withdrew the matter as she considered the process of pursuing the debt futile in the circumstances.

General Division

Jurisdiction

- *Consumer Claims Act 1988*
- *Holiday Parks (Long-term Casual Occupation) Act 2002*
- *Pawnbrokers and Second-hand Dealers Act 1996*
- *Conveyancers Licensing Act 2003*

Key Facts 2006-07

Applications

Applications received 6,389
 • 14% increase from 2005-06

Application Types:

• Goods 3,212
 • Services 2,659
 • Rehearing 295
 • Holiday Parks 120
 • Renewal 76
 • Pawnbrokers 25
 • Conveyancing 2

Lodged by consumers 6,155
 Lodged by other parties 234

Hearings

Number of hearings 7,563
 Number of adjournments 3,386

Finalised Matters

Matters finalised 6,570
 Final Orders:
 • Made at hearing 2,930
 • By consent 1,981
 • Withdrawals 1,659

Key Performance Indicators

57% Listed for hearing within 28 days
 76% Finalised prior to or at first hearing
 51% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 63
 Supreme Court appeals determined 4

Overview

The majority of disputes dealt with in this division are consumer claims against a business concerning the supply of goods or services up to the value of \$25,000. Disputes span a wide range of issues and can be about any goods or services like a pair of shoes, expensive furnishings, using a dating service or engaging a home tutor.

A consumer's claim must be against a supplier carrying on a business and not a private person, and the supply of goods and services must have occurred not more than 3 years ago. 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.

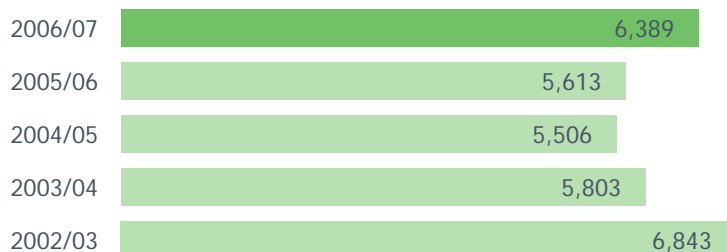
This division also covers disputes concerning long-term casual occupants of a holiday park. Typically, this means when a person's holiday van is left in a caravan park and is used on weekends or regularly for holidays.

Pawnbrokers and second-hand dealers lend money in exchange for goods as security. If those goods are suspected of being stolen, the police may intervene and require the goods to be returned to their rightful owner. Pawnbrokers and second-hand dealers may apply to the Tribunal to dispute a person's claim to the goods, and they are heard in this division.

Conveyancing work is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in any real or personal property. Disputes about costs payable in respect of conveyancing work may be determined by the Tribunal.

Trends

After a peak of 7,381 applications in the year to June 2001, the volume of applications declined over the following years. Although the number of applications this year was 14% higher than the preceding year, this was lower than the number received each year between 1999 and 2003.



The increase this year related mainly to an increase in applications regarding goods and services. While there were only 120 Holiday Park applications, this is a significant increase on the 55 applications in 2005/06. Pawnbroker applications continued to decline with only 25 applications this year, down from 34 in 2005/06 and 61 in 2004/05.

Case studies

Limited liability...

Sometimes the decisions the Tribunal can make are governed by laws that are not generally well known, including international laws.

A mother and daughter were travelling from China to Sydney and on arrival only one of their two cases was available for collection. They filled in a lost luggage form and three days later they were told that the case had been found but was damaged. When the case arrived they found the locks had been cut off and a jewellery bag was missing.

The mother and daughter lodged an application with the Tribunal for compensation. At the hearing both parties were represented and Mandarin interpreters were provided to the applicants.

It was not disputed that the case was damaged or that personal items and jewellery had been removed. Evidence was provided that the case weighed 4 kg lighter than when checked in.

Both parties used the provisions of the Warsaw Convention to support their cases. The member was satisfied that the provisions of the Warsaw Convention, as modified by the Hague Protocol, and the Montreal No 4 Convention was the relevant law in New South Wales concerning a carrier's liability. Under these provisions a carrier's liability for loss or damage is limited to \$A64 per kg. However this limitation does not apply if the damage is deliberately caused in circumstances where an agent or employee is acting within the scope of their employment.

The member was satisfied that the damage was deliberately inflicted by an employee in order to gain access to the case's contents, but that this act was not within the scope of the employee's employment. As such, the carrier was not liable for the illegal acts of its employees. The applicants were awarded \$64 for each of the 4 kg of missing luggage.

Conduct unbecoming...

Section 13(2) of the Consumer Claims Act 1998 says that the Tribunal must consider the extent to which the provisions of a contract and their legal implications have been accurately explained to and understood by a consumer.

A young overseas student was dismissed from a college offering training to overseas students, on the grounds that she had failed to comply with the college's Professional Conduct System (PCS). She was ten weeks into a 12 week first term of a hospitality management course and had paid \$15,000 in tuition and residential fees. The college refunded just over \$2,000 in accordance with their refund policy.

The student claimed that having been dismissed part way through the first term the tuition was of no value to her and she sought a refund of the full tuition fees.

Under the PCS, each student commences with 100 points and points are deducted for transgressions. Each student must maintain 70 or more points. This information was in the college's handbook and website.

Points had been deducted because of various breaches of college rules by the student, including late arrival at classes, poor grooming and failure to submit set work on time. The student had already been given one "second chance", after falling below the required points, on the basis that she did not incur any further point losses. When she did not comply she was dismissed. One consequence of this was that she had to enrol in another course in order to stay in Australia on a student visa.

The college submitted that its standards were essential to its integrity. The Tribunal member acknowledged that the student had done little to change her behaviour but found that dismissal was an extreme and harsh step for the college to take.

The member was not satisfied that the PCS was sufficiently explained to the student prior to or on enrolment and that given the harsh consequences of failing to maintain the required point score, it was incumbent on the college to highlight the PCS and ensure that every student had no doubts about its existence or consequences.

There were no guidelines to explain the number of points which could be deducted and this appeared to be applied arbitrarily by a few staff members.

The member recognised that the student had been accommodated and fed for 10 weeks and ordered the college to pay the student a pro rata refund of the tuition fees, less the accommodation costs. The student ended up with \$4,500.

Internet, Interstate issues...

With internet buying becoming more common and often crossing state boundaries new challenges arise in defining the Tribunal's jurisdiction.

A man made a \$420 purchase through the website of a business registered in Queensland. When the goods arrived, he felt that the goods were not as described on the website and lodged an application with the Tribunal for a refund.

At the hearing the business challenged the Tribunal's jurisdiction to hear the matter on the grounds that the business was registered in Queensland, the goods were not purchased in New South Wales and the contract was made in Queensland. The applicant held that he received the goods in New South Wales and therefore the Tribunal had the jurisdiction to hear the matter.

The member was able to rely on an earlier New South Wales Supreme Court ruling on a similar Tribunal matter which was appealed to the Supreme Court on the grounds of jurisdiction. The Court ruled that the relevant consideration was whether goods or services were supplied to a consumer in New South Wales and not where the contract was made.

The member determined that even though the contract was formed in Queensland, the goods were supplied in New South Wales and therefore the Tribunal did have jurisdiction to hear the matter.

Home Building Division

Jurisdiction

• Home Building Act 1989

Key Facts 2006-07

Applications

Applications received 3,709

• 7% decrease from 2005-06

Application types:

• Claims under \$25,000	2,837
• Claims over \$25,000	526
• Rehearing	213
• Renewal	87
• Rectification Order	43
• Appeal against DG decision	3

Lodged by consumers 2,494

Lodged by traders 1,118

Lodged by another party 87

Lodged by insurers 10

Hearings

Number of hearings 7,845

Number of adjournments 5,917

Finalised Matters

Matters finalised 4,064

Final Orders:

• Made at hearing	1,752
• By consent	1,364
• Withdrawals	948

Key Performance Indicators

48% Listed for hearing within 28 days

65% Finalised prior to or at first hearing

36% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 40

Supreme Court appeals determined 19

Overview

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

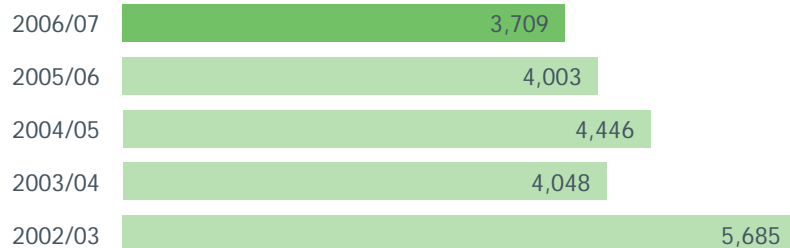
The Home Building division deals with disputes between consumers, traders and insurers concerning residential building work up to the value of \$500,000. For example, a builder may lodge an application for the home owners to pay for building work performed. Or a home owner may lodge an application when their builder does not carry out the building work as agreed in their contact or when the work done is defective.

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

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

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

Trends



Applications to the Home Building Division have continued the downward trend of the last few years after peaking in 2002/03. This year saw a decrease of 7% when compared with 2005/06 after the 10% decline in the previous year.

Case studies

Hearing the evidence first hand...

In accordance with the Home Building Act 1989 the Tribunal is chiefly responsible for resolving home building disputes. A respondent in proceedings in another jurisdiction can have their matter transferred to the Tribunal for determination. In these circumstances the Tribunal must determine the most appropriate way to conduct proceedings to avoid detriment to either party.

A contractor initiated proceedings in the Local Court for the payment of \$20,000 owing for electrical work carried out over nine months at a residential property. At the request of the homeowners the matter was transferred to the Tribunal. By that stage the matter had been before the Local Court for some months.

After the contractor's claim was transferred to the Tribunal, the homeowners lodged a claim in the Tribunal stating that the contractor's work was defective. They wanted their claim and that of the contractor dealt with together. No claim for defective work had been lodged in the Local Court.

The contractor felt that his claim was transferred to the Tribunal on the basis that it would continue in the Tribunal more or less where things were left off in the Court. He wanted the Tribunal proceedings to be based on the transcript of evidence already given in the Court, the directions given by the Magistrate and the issues as pleaded in the Court.

The Tribunal member had to decide on this procedural issue.

The member determined that it was not appropriate for the hearing to proceed solely on the transcript and that the hearing should commence afresh. The member considered that relying on a transcript would severely limit the benefit of hearing and observing the evidence at first hand. However, she did consider that the contractor's case should be dealt with in the same way it was framed in the Local Court and that the homeowners should not be permitted to amend their defence. Their own claim could proceed separately and not delay the contractor's case.

No second bite...

The Tribunal must make decisions consistent with the law governing the jurisdiction of the matter being heard. Usually, changes to legislation are planned, but sometimes appeals in other courts can directly impact on the Tribunal's jurisdiction and the Tribunal has to respond quickly.

In August 2006 the New South Wales Court of Appeal delivered a judgement in *Honeywood v Munnings* [2006] NSWCA 215 which changed what was believed to be the law in relation to multiple claims for breaches of the statutory warranties provided by Part 2C of the *Home Building Act 1986*.

In essence, the ruling determined that a home owner who had obtained a judgement in respect of some building defects could not bring a second action based on different defects even if these were not known to the owner when the first judgement was made.

This had a significant impact on how the Tribunal could determine matters which fell into this category.

The Tribunal worked co-operatively with the Office of Fair Trading to ensure that Fair Trading Centres and the Tribunal were giving consistent, correct advice to people lodging a home building claim.

In addition, the Chairperson gave clear guidance to members on the implementation of the new ruling and the advice to be given to parties before the Tribunal.

Members informed homeowners of the Court of Appeal's decision and its implications. Parties were invited to seek legal advice, particularly in matters involving construction or significant renovation.

Subsequently, amended legislation was enacted which made it clear that a home owner – whether an original proprietor or a successor in title – can bring more than one action for a breach of the same statutory warranty. Subsequent proceedings for breach of the statutory warranty can be brought as long as the defect claimed in these proceedings was not known, or would not reasonably be expected to be known, to the homeowner at the time of the earlier proceedings.

Independent expert...

Section 48N of the Home Building Act 1989 enables the Tribunal to appoint an independent expert to a matter before it. The expert will provide a written report on the building which the Tribunal will rely on in its deliberations. The costs of the expert are met equally by the parties and each party receives a copy of the report. The Tribunal has appointed a number of experts to a panel, who possess a range of skills which are relevant to the home building division.

A young couple were building their home and part way through the construction phase a number of problems emerged regarding the quality of work, particularly with the framework and the roof structure. The parties attempted to resolve their problems with the assistance of the Office of Fair Trading, but without success.

The homeowners lodged an application with the Tribunal seeking orders that the builder rectify the apparent defective work.

At the first hearing the member noted that there was no expert evidence and that the parties were keen to resolve their differences and complete construction of the house. Given this, the Tribunal appointed an independent expert and directed that the work be inspected and a report be prepared documenting the problems with construction, and possible costs of rectification.

The Tribunal's appointed expert held a Bachelor of Building qualification and was a licensed builder. The expert met with the parties on site, inspected the works and prepared his report.

At the next scheduled hearing the member was able to refer to the report and with the agreement of the parties made orders which enabled the construction to be completed.

Residential Parks Division

Jurisdiction

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

Key Facts 2006-07

Applications

Applications received 1,765

- 18% increase from 2005-06

Application types:

• Excessive Rent / Increase	1,312
• Termination	157
• Breach / Compensation	157
• Renewals	55
• Other	52
• Rehearings	28
• Rental Bond	4

Lodged by residents 1,530

Lodged by park owners 231

Lodged by occupants 4

Number of e-lodgements 55

Hearings

Number of hearings 3,310

Number of adjournments 1,895

Finalised Matters

Matters finalised 1,720

Final Orders:

• Made at hearing	895
• By consent	541
• Withdrawals	284

Key Performance Indicators

26% Listed for hearing within 28 days

80% Finalised prior to or at first hearing

22% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 5

Supreme Court appeals determined 14

Overview

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

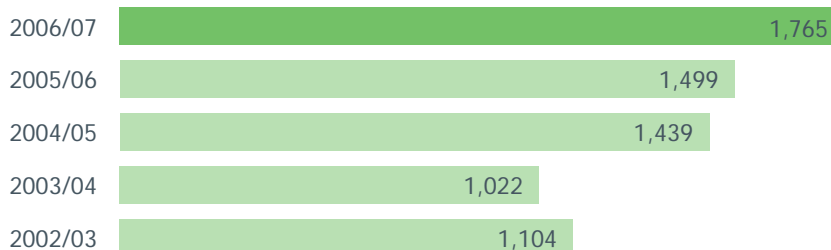
The resident and park owner are required by law to sign a 'residential site agreement', 'moveable dwelling agreement' or a 'residential tenancy agreement' depending on the situation.

The Residential Parks division applies to people who permanently live in a residential park. It does not apply if the residential park is not the principal place of residence, or if the site is rented for holiday purposes.

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

The Tribunal often receives a large number of concurrent applications from a group of residents from the one park concerning the same issue. These are referred to as 'multiple applications'.

Trends



There was an increase of 18% in the number of applications this year when compared with 2005/06.

Between May and November 2006, the Tribunal dealt with 30 multiple application matters involving 1350 applications. Most of these were about rent increases and withdrawal of services. The new case management strategies implemented late last year resulted in significantly reduced time taken to finalise these complex, multi-party matters.

The trend of increasing volume in the Residential Parks division is expected to continue. The success of the multi application case management initiatives coupled with dedicated publications and targeted information sessions has demonstrated the Tribunal's commitment to provide timely and accessible services to clients.

Case studies

Due Process...

While the Tribunal is not bound by the formal rules of evidence which are used in courts, it nevertheless follows procedures which ensure that the principles of procedural fairness are followed.

The residents of two residential parks owned by the same owner lodged applications on the grounds of excessive rent increases. As the notices of increase for both parks were identical the Tribunal listed and heard all the applications together.

The Tribunal member agreed to the applicants' request to be represented by the local Tenants Advice and Advocacy Service as there was a benefit in having so many applicants represented by one spokesperson.

The Tribunal had previously issued a timetable for the evidence to be exchanged between the parties and used at the hearing. On the day, no documents had been supplied by the owner to the applicants and the owner stated that he intended to rely on oral evidence only. The member noted that the purpose of a Tribunal timetable was to ensure that all evidence was provided in writing to the other party so that each party had sufficient knowledge of the case they would meet at the hearing. The member particularly noted that the park owner had previous experience at the Tribunal and should therefore have understood what was required of him.

The member ruled that the applicants could seek an adjournment if any unexpected evidence was raised and were entitled to object to any documentary evidence produced during the hearing.

The member heard that the residents had accepted one rent increase early in the year, but this was followed very quickly by another, resulting in a 9.5% increase in 12 months. The reason given in the notice of rent increase was that changes to the Code of Practice for Electricity Supply to Long-Term Residents of Caravan Parks (the Code) reduced the amount that a park owner could charge residents for the electricity service availability (SAC) charge. The park owner therefore proposed recovering the loss from the SAC by absorbing it into the rents.

The member was satisfied on the basis of the evidence provided that the park owner was trying to avoid the financial impact of changes to the Code by means of an excessive rent increase. The member ordered that the rent was not to exceed the amount being paid at the time the applications were lodged.

No loss, no gain...

Under s58(2A) of the Residential Parks Act 1998 the Tribunal can only determine a claim of excessive rent if there has been a reduction in or withdrawal of services.

Ten residents of a park received rent increases below the CPI for the period but claimed that as there had been a reduction in or withdrawal of certain services the rent was excessive. They cited the closure of the shop, problems with the drainage and sewerage, poor roads and termite damage as facilities being withdrawn or reduced.

The Tribunal member found that while the closure of a shop could constitute the withdrawal of a park facility, the residents were not able to establish any loss which warranted compensation. Evidence showed very little use of the shop and the cost of providing the service exceeded any benefits to residents.

The drainage and sewerage and termite problems put forward in evidence did not constitute a withdrawal of a service, but rather one of repair and maintenance. The residents were advised that they would need to lodge a specific application to cover this issue. The roads were found to be reasonably maintained given normal wear and tear.

The member found that the rent was not excessive as there had not been a reduction in or withdrawal of any goods, services or facilities.

Implied consent...

The Residential Parks Act 1998 provides for termination of tenancies. In considering applications for termination, the Tribunal needs to consider a range of factors which existed when the tenancy was created, even if they are not explicitly stated in the tenancy agreement.

A residential park owner lodged an application for the termination of a residential tenancy agreement on the grounds that the residents had breached the agreement by making additions and alterations to their dwelling – including a window replacement, an awning over the back door and a covered timber deck at the rear – without his consent.

The residents said they had obtained verbal approval from the park managers. The park owner argued that he was the only person who could give approval. The Tribunal member concluded that there was insufficient evidence presented about the park managers' authority within the park and, in the absence of the managers at the hearing, she would have to set aside the issue of whether express consent was given by the managers on behalf of the owner.

However the member was satisfied that the owner had given implied consent. She noted that the additions, which had been in place for some time, were clearly visible from a number of angles and must therefore have been visible to the owner. On this basis it could be argued that the park owner was effectively on notice that the alterations had been made.

The tenancy agreement signed in 2004 did not show the new structures on the site, however the residents provided photographs taken in 2003 showing the back deck in place. The Tribunal member was satisfied on the evidence provided that the works were completed well before the agreement was signed and that the description of the site in the agreement was wrong.

With regard to the inaccurate agreement, the member noted that there is a responsibility on both parties to ensure that the agreement being entered into is accurate. The park owner had the opportunity to inspect the dwelling and by entering into the agreement the park owner had implicitly given consent to the prior alterations.

The member found that, having given consent to the alterations, the park owner could not terminate the agreement on the basis that no consent had been given. The application was dismissed.

Strata & Community Schemes Division

Jurisdiction

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

Key Facts 2006-07

Applications

Applications received 1,226

- 4% increase from 2005-06

Adjudications 901

- Strata Scheme 882
- Community Scheme 19

Hearings 325

- Strata Scheme 311
- Community Scheme 14

Application Types:

Adjudication

• General Orders / Other 406

• By-laws 141

• Interim Orders 134

• Appoint Strata Manager 92

• Meetings, Decisions, Records of Owners Corporation 73

• Regarding Animals 39

• Contributions & Levies 11

• Insurance 5

Tribunal

• Appeals 129

• Penalty 116

• Unit Entitlements 40

• Amend or Revoke Order 21

• Initial Period 17

• Caretaker Contract 2

Lodged by lot owners 793

Lodged by owners corporation 408

Lodged by other parties 14

Lodged by occupier of a lot 11

Hearings

Number of hearings 639

Number of adjournments 492

Finalised Matters

Matters finalised 1,175

Final Orders:

• Made at hearing or adjudication 978

• By consent 127

• Withdrawals 70

Key Performance Indicators

90% Finalised prior to or at first hearing

22% Finalised within 35 days

Appeals

Supreme Court appeals determined 2

Overview

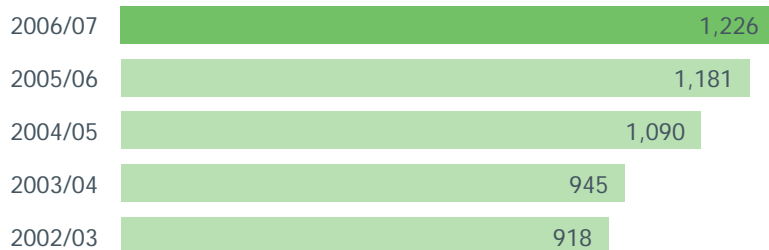
The word 'strata' literally means 'air space'. Strata title is a system of property ownership that usually relates to units where the owner owns the 'air space' bounded by the walls of the unit but all unit owners share the ownership of parts of the building which is called common property.

A community scheme also involves a system of property ownership made up of lots or units which in themselves 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 have a share in this lot called the common property. These schemes are set up to allow for multiple dwellings on one piece of land. They may range from rural subdivisions to gated communities with recreational facilities such as tennis courts or golf courses. There are approximately 500 community schemes in New South Wales.

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

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

Trends



The number of applications in this division increased only marginally over the number in the previous year with very little variation in the types of orders sought.

Adjudication applications represented 73% of the workload, consistent with the previous year.

The time taken to finalise matters in this jurisdiction is longer than that for other divisions of the Tribunal as a direct result of the four week submission period in adjudication matters.

Case studies

Failure to perform...

Under the Strata Schemes Management Act 1996, an Adjudicator can make an order appointing a compulsory strata manager if satisfied that the management structure of the strata scheme is not functioning properly or if the owners corporation has failed to perform one or more of its duties.

Two lot occupier/owners of a block of strata units made an application for the appointment of a compulsory strata manager.

The roles of chairperson, secretary and treasurer had been undertaken by two long-standing lot owners. Evidence was submitted to the Strata Adjudicator that the owners corporation had not complied with statutory requirements such as giving appropriate notice of meetings, keeping minutes of meetings, provision of financial records and that there were significant outstanding repair and maintenance issues.

At an Extraordinary General Meeting, a motion was passed to appoint a strata managing agent and delegate all functions to the agent, but no action was taken by the owners corporation. At the same meeting a motion to increase the levies was put forward without any budget or financial statements.

The Tribunal member noted that the appointment of a compulsory strata manager is a serious measure as it takes away some or all of the owners' rights to self-management for a period. The member found on the evidence presented by the applicants, other lot owners and members of the owners corporation that the management of the strata scheme was not functioning satisfactorily, that the owners corporation had failed to perform several of its duties and had a limited awareness of its statutory obligations.

The member also found that the owners corporation had ignored the resolution to appoint a strata manager and in the 18 months since the meeting had made no attempt to make such an appointment.

The member was satisfied that it was appropriate to appoint a compulsory strata manager to exercise all the powers of the chairperson, secretary and treasurer for a period, to get the records in order and arrange urgent maintenance works. Given the desirability of the strata scheme returning to a self-managed situation, the member recommended that the new manager consult with lot owners before making any significant decisions and assist lot owners to become aware of their legal obligations as an owners corporation.

Enforcing the by-laws...

S138 of the Strata Schemes Management Act 1996 gives the Strata Schemes Adjudicator jurisdiction to settle a dispute about the failure of a lot owner to comply with the by-laws of a strata scheme.

The owners corporation of a commercial strata plan lodged an application to require a lot owner to remove tables, chairs and display boards from the common property in front of a shop fronting the arcade.

They provided written evidence of the scheme's by-laws, correspondence with the lot owner seeking removal of the tables and chairs and evidence of the breach through photographs and witness statements.

The strata scheme's by-laws did allow for owners to apply for permission and pay a licence fee to the owners corporation to use part of the common property. While other lot owners had done this, the food outlet owner had not.

The adjudicator made orders requiring the offending lot owner to comply with the by laws and remove the table, chairs and any display material.

Duty to maintain...

The Supreme Court has reinforced the strict obligation on an owners corporation to ensure that common property is maintained.

A lot owner took action under the *Strata Schemes Management Act 1996* in the Supreme Court of New South Wales, rather than in the Tribunal. He claimed that the owners corporation had failed in its duty under s62 of the Act to maintain common property.

The owner claimed that there was significant rusting of the steel framework enclosing the balcony and that the waterproofing membrane of the balcony was faulty, causing water to enter the unit.

The owners corporation claimed the balcony and framework were part of the lot, and therefore the lot owner's responsibility. They also argued that they had taken all reasonable steps to comply with their duty under s62 and the lot owner was negligent in failing to notify them of the damage.

The owners corporation also claimed proceedings should have commenced in the Tribunal.

In his judgement the Judge said that the Act did not make the jurisdiction of an adjudicator exclusive and therefore the lot owner was not obliged to lodge an application with the Tribunal.

His Honour said that Section 62 imposed a strict duty on the owners corporation to maintain common property and that it was not enough just to use reasonable care or take reasonable steps. As soon as common property is no longer operating effectively, or has fallen into a state of disrepair, there has been a breach of Section 62 and contributory negligence was not a defence.

His Honour found that there had been a breach of the duty under Section 62 as both the balcony framework and waterproofing membrane, which were common property, were in a state of disrepair and had not been repaired promptly by the owners corporation.

The balcony framework had been repaired several years after the identification of the original problem and the waterproofing membrane had not been repaired two years after it was discovered and reported.

The owners corporation was ordered to repair the waterproofing membrane and pay \$150,000 in damages to the lot owner for loss of use of the unit and the reduction in its value due to the damage.

Motor Vehicles Division

Jurisdiction

- *Consumer Claims Act 1998*
- *Motor Dealers Act 1974*
- *Motor Vehicle Repairs Act 1980*

Key Facts 2006-07

Applications	
Applications received	1,226
• 19% increase from 2005-06	
Application Types:	
• Claims under \$25,000	1,033
• Claims over \$25,000	77
• Rehearing	93
• Renewals	23
Lodged by consumers	1,176
Lodged by other parties	50

Hearings	
Number of hearings	1,590
Number of adjournments	889

Finalised Matters	
Matters finalised	1,282
Final Orders:	
• Made at hearing	646
• By consent	351
• Withdrawals	285

Key Performance Indicators	
12% Listed for hearing within 28 days	20
67% Finalised prior to or at 1st hearing	3
26% Finalised within 35 days	

Rehearings and Appeals	
Number of rehearings granted	20
Supreme Court appeals determined	3

Overview

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

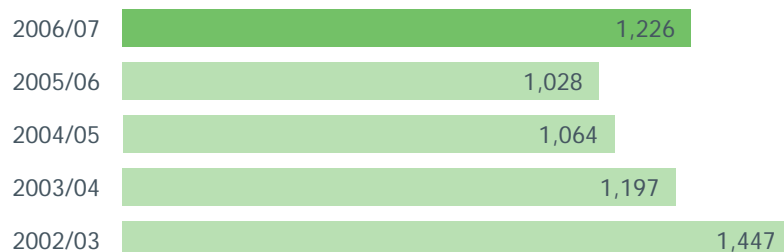
This division deals with disputes about vehicles that are used primarily for private use, and a 'motor vehicle' can mean a new or used car, motorcycle, tractor or other powered vehicle on wheels. The types of issues that may arise in this division include unsatisfactory repairs and maintenance, defective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

The maximum claim in the Motor Vehicles division is \$25,000, 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 either the Motor Vehicle Repair Industry Authority (MVRIA) for disputes about repairs or to the Office of Fair Trading if the dispute is about sales or warranties.

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

Trends



After the declining application volumes of previous years, the year to 30 June 2007 saw an increase in the number of applications in the Motor Vehicles division.

While the number of applications in 2006/07 was 19% above the number in the previous year, there was an even more significant change in the value of the claims being made. Applications this year relating to claims valued at less than \$25,000 increased by almost one third to 1,033 when compared with the previous year. Conversely, applications in relation to claims with a value exceeding \$25,000 declined by 46% when compared with the previous 12 monthly total.

Case studies

If the remedy fits...

When determining a claim under the Consumer Claims Act the Tribunal can order the rectification of a defect in the goods provided.

A man purchased a new 2006 model car for \$63,500. Shortly afterwards, the car broke down and it was found that the car had lost a significant amount of oil. When this continued for some time he made a complaint to the car manufacturer. He was offered a replacement engine but refused.

The owner then sought an order from the Tribunal for a refund of the purchase price.

Both parties tried twice to settle the matter through the Tribunal's conciliation process, but no agreement was reached. They agreed that the car was not of merchantable quality but could not agree on the remedy.

The car owner submitted that he had refused to accept a new engine because of a design flaw in the engine of that model of car. He produced downloads from the internet comprising comments from other owners of that model citing similar and other problems.

The car manufacturer's representative stated that the company was not aware of other problems with the engine and that a new engine would fix the problem. They reiterated the offer to replace the engine and offered to include a 4 year or 150,000 km warranty on the new engine.

The Tribunal member addressed the issue of the evidence provided by the car owner. The member noted that in Tribunal proceedings parties rely on a range of evidence such as their own evidence, reports of experts and documents about their particular transaction. In this case, the member found that the car owner had relied solely on downloaded pages from the websites of five other car owners, drawing inferences from this material to support his case.

While noting that the Tribunal is able to accept material from the web as evidence, the member stated that he was not given any expert material to substantiate the car owner's claims.

The member found that the installation of a new engine was likely to remedy the fault and that it was just and equitable to give the company the chance to do this.

The member ordered the replacement of the engine within 60 days, the provision of a 4 year warranty from the date of installation of the new engine and for the car owner to be reimbursed any fees imposed by the RTA for new registration.

Scratching the surface...

Appeals can be made to the Supreme Court of New South Wales against Tribunal decisions on the grounds that the Tribunal has committed an error with respect to a matter of law.

An applicant applied to the Tribunal to have her new car replaced after efforts to remedy defective paint work on a new car failed. Dark marks, which were rough to touch, had appeared all over the vehicle. Both the car owner and the car dealer had tried various ways of removing the marks, but without success.

The Tribunal determined that the new car had failed the test of "merchantable quality" required under s19 of the *Sale of Goods Act 1923* and ordered that a new car be provided to the applicant by the company.

The car company appealed to the Supreme Court. The grounds for the appeal included the contention that the Tribunal had erred in law in finding that "merchantable quality" under s19 (2) of the *Sale of Goods Act* required that all parts of a new car must be new and without flaw.

The company relied on a decision of the Victorian Supreme Court which allowed an appeal on the grounds that an arbitration tribunal had failed to appreciate the large financial implications flowing from the remedy it imposed. The company argued that the appropriate remedy was that it be permitted to carry out further remedial work rather than the owner being given a new car.

The Judge rejected this argument and cited s8(1)(g) of *The Consumer Claims Act 1998* which allows the Tribunal to require a respondent to replace goods related to a claim. She further rejected the claim that the car was largely fit for the purposes sold, noting that the standard for merchantable quality is what one might reasonably expect with regard to circumstances such as the price paid. If the defendant had wanted a car with retouched paint work, she might have purchased a second hand car for a lower price.

The Supreme Court found that there was no error of law in the Tribunal's decision. There had already been unsuccessful attempts to remedy the problems with the paint work and the Tribunal was not obliged to order further work to be carried out.

Her Honour noted that the applicant had reported the problem quickly, had maintained her dissatisfaction and made every attempt to mitigate the problem. She stated that given past attempts to solve the problem, there was no obligation to continue this process before awarding a new car.

Commercial Division

Jurisdiction

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

Key Facts 2006-07

Applications

Applications received 348

- 13% decrease from 2005-06

Application Types:

• Consumer Credit Code	221
• Property, Stock & Business Agents	67
• Rehearing	16
• Credit – Home Finance	13
• Credit Act	10
• Finance Brokering	8
• Termination – Return of Goods	7
• Repossession	3
• Penalty	2
• Renewal	1

Lodged by interested / affected

parties 43

Lodged by debtors 240

Lodged by credit providers 18

Lodged by mortgagors 12

Lodged by mortgagees 28

Lodged by lessees 7

Hearings

Number of hearings 514

Number of adjournments 383

Finalised Matters

Matters finalised 378

Final Orders:

• Made at hearing	129
• By consent	112
• Withdrawals	137

Key Performance Indicators

60% Listed for hearing within 28 days

68% Finalised prior to or at 1st hearing

39% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 1

Supreme Court appeals determined 2

Overview

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

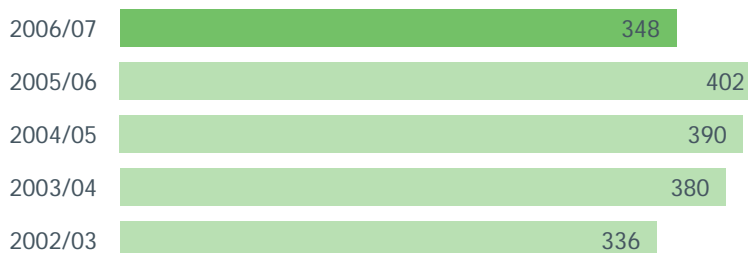
The *Consumer Credit (New South Wales) Act 1995* applies the *Consumer Credit Code*. The Code was developed to standardise credit practice across Australia and is uniform in all states, with minor differences in Western Australia. The Code defines the type of agreements that are categorised as credit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

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

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

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

Trends



There were 348 applications in the Commercial division during the year to 30 June 2007, a 13% decrease on the previous year.

Of particular note in this division were the changes to the types of application received. In the period under review, applications in relation to the Consumer Credit Code increased by 31% when compared with the previous year. This type of application now represents two thirds of Commercial division applications.

There was also a significant change in the number of applications in relation to property, stock and business agents. During the past year there were 67 applications, significantly less than the 166 received in the previous year. This type of application now represents 19% of matters in the Commercial division.

Case studies

When expectations aren't met...

When an agent gives an estimated sale price to a vendor, the onus is on the agent to prove that it was made on reasonable grounds.

The owner of an investment property, a vacant block of land, sought an order not to pay a real estate agent over \$2,000 in advertising costs after her property failed to sell.

The owner had previously offered the sale to a number of agents who had given estimates of the sale price below the price she was prepared to accept. She then approached another agent in the area and, based on his advice that the property would sell close to the amount she sought to obtain, she decided to market the property with that agent. The offers made on the property came in well below this estimate. The applicant said that the agent had misrepresented the likely selling price.

The Tribunal member was not satisfied that the agent had established "reasonable grounds" to make the representations about the sale price as required under s41 of the *Fair Trading Act*.

The agent said that he had derived the estimate based on the development of the property into five town houses. However evidence showed that this was not sustainable given the size of the land. There had been no analysis of comparable sales of development sites in the area, nor of the land as it was.

The member found that the property owner had entered into the marketing of her property based on an estimate which could not be realised and had been misled by the agent. Had it been otherwise she would not have marketed the property and incurred the advertising costs.

The member also accepted evidence that during the course of the marketing process there was a lot of discussion between the parties about the declining market and the owner was aware of the limited offers being received. Nevertheless she continued to give instructions for the continued marketing of the property. The member concluded that the owner's decision to continue marketing the property was not based on any misrepresentation by the agent.

As a result, the member found that the owner was not liable to pay the agent the advertising fees incurred during the life of the sole agency agreement but was liable for the \$500 incurred for the period after this when the property remained on the market at the owner's direction.

Never ending debt...

Where it can be proved that a credit contract is unjust under s70 of the Consumer Credit Code, consumers can apply to the Tribunal to reopen the contract and have it set aside and seek compensation.

A young couple saw an advertisement for a house which could be purchased under vendor finance with weekly payments of \$250.

The couple entered into a vendor terms contract. The purchase price was \$149,000. The contract was for 30 years and required weekly 'interest only' payments of \$250 for the first three years and then 'principal and interest' for the balance of the contract. The couple paid an \$8,000 deposit, \$7,000 of which was paid under the First Home Owners Grant. Under the terms of the contract the applicants would not obtain title to the property until all instalments were paid. They were, however, responsible for repairs and maintenance to the property.

At that time, the couple who had three children were both unemployed, had debts of over \$5,000, had a bad credit rating and their combined weekly income was around \$700, which was likely to be reduced if they were considered a de facto couple and if rental assistance ceased.

When the matter came to the Tribunal, the couple had paid nearly \$23,000 (including the deposit) but had fallen into arrears within a year. The instalments had increased, the man had lost his job and he had moved elsewhere to look for another job. Payment stopped altogether a few months later and the arrears exceeded \$11,000.

The applicants were seeking to reopen the credit contract on the basis that it was unjust. The Tribunal had to decide whether the contract was 'unconscionable, harsh or oppressive'.

The applicants said that they did not know that the loan repayments were interest only for three years or that they would then go up. They also said they did not know that if they did not make the repayments the contract would be terminated and the house would be the property of the vendor.

The respondent said that all arrangements had been explained to the applicants and the appropriate inquiries undertaken. The applicants' financial difficulties arose after purchasing the home and, in any event, the applicants could refinance or sell the house at any time.

The Tribunal found that the applicants had very little commercial experience and were not in a position to negotiate the terms of the loan. The Tribunal decided that the contract was unjust, particularly the clause which provided that if the contract was terminated the vendor would retain the deposit and all instalments and the purchaser would lose any claim for the cost of any improvements made to the property.

The Tribunal set aside the contract and ordered \$9,500 be returned to the applicants. This sum represented the payments they had made less a sum for rental of the property over the period.

Retirement Villages Division

Jurisdiction

• Retirement Villages Act 1999

Key Facts 2006-07

Applications

Applications received 39

• 49% decrease from 2005-06

Application Types:

• Breach	9
• Other	16
• Budget Dispute	4
• Termination	4
• Rehearing	3
• Residence Rules	2
• Renewal	1

Lodged by administering authority 12

Lodged by residents 27

Hearings

Number of hearings 120

Number of adjournments 113

Finalised Matters

Matters finalised 77

Final Orders:

• Made at hearing	48
• By consent	13
• Withdrawals	16

Key Performance Indicators

45% Listed for hearing within 28 days

40% Finalised prior to or at 1st hearing

9% Finalised within 35 days

Rehearings and Appeals

Number of rehearings granted 0

Supreme Court appeals determined 1

Overview

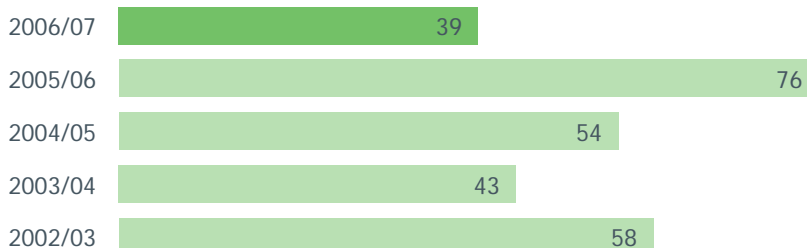
A 'retirement village' is a residential complex where the majority of residents are retired persons aged 55 years and older and have entered into a contract with the owner or operator of the village for the provision of certain services. Most retirement villages consist of self-contained premises for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

There are more than 700 known retirement villages currently in NSW, accommodating approximately 35,000 village residents. Churches, charitable organisations and community groups operate many retirement villages in NSW, but an increasing number are being operated by private companies.

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

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

Trends



Although the number of applications in the Retirement Villages division is a small percentage of the Tribunal's overall workload, the special needs of the parties in these matters are recognised.

The Tribunal appoints specialist retirement village conciliators to assist parties to reach consent agreements. To allow for the large number of residents who wish to participate in the resolution process, the majority of retirement village matters are listed for conciliation in venues either on-site or in close proximity to the village.

Case studies

Vacant—or not...

Section 152 of the Retirement Villages Act 1999 contains very specific conditions under which a resident's liability to pay general service charges can cease.

After moving from a retirement village into a nursing home, an elderly man claimed a refund of the general service charges which had been applied since he moved. The man owned the unit which, at the date of the hearing before the Tribunal, had not been sold.

The applicant relied on the final wording of section 152 which says a resident is liable "...unless the contract between the former occupant and the operator provides for an earlier cessation of that liability". It was claimed that such a provision existed in the residence contract which said that the resident was liable to continue paying recurrent general charges after permanently vacating the premises until six months after the resident "delivered up vacant possession of the residential premises". It was argued that permanently vacating the premises equated to giving vacant possession.

The Tribunal member cited a number of grounds for dismissing the application. The *Retirement Villages Act 1999* clearly distinguishes between vacant possession and having permanently vacated the premises and makes it clear that a person can permanently vacate the premises and not grant vacant possession.

The member also referred to a recent matter before the Tribunal which gave a definition of vacant possession as "vacant legal possession i.e. the loss of the lessee's right to exclusive possession...". The member noted that the former occupant had retained the right of exclusive possession until the unit was sold and had exercised this right in refusing a number of offers on the unit.

The member found that the applicant retained ownership and had not granted vacant possession. Therefore recurrent charges for general services covering management and administration as set out in the Act and Regulations should continue until the unit was sold.

A matter of definition...

Sometimes the Tribunal has to determine whether it has jurisdiction to determine a matter under the Retirement Villages Act 1999.

A resident of a block of units managed by a veterans association sought an order for \$1000 arising from water damage to his unit due to the association's failure to maintain the hot water system.

Only members of the association could live in the block and membership was only open to recipients of the Totally and Permanently Incapacitated Pension (TPI), paid under the *Veterans Entitlements Act (Commonwealth) 1986*.

For the Tribunal to have jurisdiction to hear the matter, the premises had to fall within the definition of a "retirement village" under Section 5 of the *Retirement Villages Act* and, more specifically, had to be occupied by "retired persons".

The applicant submitted that he and the other residents were "retired" because they were not in full time employment.

As the word "retired" is not defined in the Act, the Tribunal member looked to authoritative definitions in the Oxford and Macquarie dictionaries. Both define *retire* as having "withdrawn" from office or business life. The member also considered that several provisions in the Act, such as the requirement to pay recurrent charges, did not equate with the arrangements under which the unit block operated.

Further, the member went to the second reading speech of the Act as it passed through the Parliament and found that the primary objective of the Act was to protect and empower aged persons who have withdrawn from full time employment.

The member found that rather than having withdrawn from full time employment, the applicant (and the other residents) had been excluded from full time work because their war related injuries prevented them from working full time.

The member determined that the applicant did not fall within the definition of "retired" person as contemplated under the Act. The premises were therefore not a retirement village and the Tribunal could not make orders under the *Retirement Villages Act*.

Capital costs...

Section 92 of the Retirement Villages Act 1999 says that operators cannot fund any costs of depreciation or capital replacement from recurrent charges payable by a resident.

A resident of a retirement village claimed that he had been overcharged for recurrent charges on items which he considered to be depreciation and expenditure on replacement of fixed items of capital. These included repainting the outside of the villa and all expenditure associated with the bore pump and sprinkler systems used in the landscaping, electrical and plumbing repairs and the replacement of items such as doors, patios, driveways, fences, roof tiles, clothes lines and guttering.

The Tribunal member had to consider whether the items charged to the resident were capital costs or not. The member drew on definitions in the Act, previous Tribunal decisions, and dictionary definitions to draw the distinction between "capital replacement" and maintaining items in a state of reasonable repair. This distinction was then applied to each of the items raised by the resident.

The member found that repainting the villas simply maintained the villas – a fixed capital item – in a state of good repair and could be recouped by the operators through recurrent costs. The member found that the replacement of fixed items of capital such as sprinkler heads and sprays, plumbing and electrical appliances, doors, driveways etc. were capital replacement costs and should be borne by the operator.

However the cost of maintaining capital items in reasonable repair was not depreciation or replacement and expenditure such as repairs could be funded from recurrent charges.

The member ordered the village operators to refund to the resident those charges which constituted depreciation and capital replacement.

Appendix 1. Legislation

The following nineteen Acts confer jurisdiction on the Tribunal:

Community Land Management Act 1989

Consumer Claims Act 1998

Consumer Credit Administration Act 1995

Consumer Credit (New South Wales) Act 1995

Conveyancers Licensing Act 2003

Credit Act 1984

Credit (Home Finance Contracts) Act 1984

Fair Trading Act 1987

Holiday Parks (Long-term Casual Occupation) Act 2002

Home Building Act 1989

Motor Dealers Act 1974

Motor Vehicle Repairs Act 1980

Pawnbrokers and Second-hand Dealers Act 1996

Property, Stock and Business Agents Act 2002

Residential Parks Act 1998

Residential Tenancies Act 1987

Retirement Villages Act 1999

Strata Schemes Management Act 1996

Travel Agents Act 1986

New and Amended Legislation

Home Building Amendment (Home Warranties) Act 2006

Commenced on 27 November 2006. Made amendments to the *Home Building Act 1989* to:

- displace the *Honeywood v Munnings* principle by enabling a person to bring proceedings to recover with respect to several but distinct deficiencies in work or materials arising from breach of the same statutory warranty providing certain requirements are met
- clarify the effect of section 18D of the Act in relation to the entitlement of a successor in title to take the benefit of the statutory warranty of a predecessor in title.

Conveyancers Licensing Act 2003

By Proclamation (Gazette No 175 of 8 December 2006, p10388) the Governor appointed 15 December 2006 as the day on which the uncommenced provisions of the *Conveyancers Licensing Act 2003* commenced.

The *Conveyancers Licensing Regulation 2006* also commenced on 15 December 2006. The legislation allows any person to notify the Tribunal of a dispute about costs payable in respect of conveyancing work. The Tribunal may then take any action that it considers necessary to resolve the dispute. Should that process not result in a mutually agreeable settlement, a party may then apply to the Tribunal for the determination of the costs dispute.

Travel Agents Regulation 2006

Commenced on 1 September 2006, revising the 2001 Regulation and making minor amendments. These include:

- updated references to Office of Fair Trading (OFT) (replacing the Department of Fair Trading)
- updated licensed travel agents logo in accordance with current corporate identity
- new savings provision to allow OFT to provide all travel agents with the amended logo within 12 months of the start of the Regulation
- increased licensing fees to reflect a CPI increase
- updated Trust Deed in Schedule 1 to reflect Travel Compensation Fund deed amendments.

Residential Parks Regulation 2006

Commenced on 1 September 2006.

The Regulation:

- updated the standard tenancy agreements to take account of legislative changes about water availability charges and other matters
- provided that the 60 day "trial period" at the commencement of some park tenancies applies to cumulative occupation of the park itself rather than individual sites or dwellings
- increased the maximum charge for park access devices from \$15 to \$25
- by reference to the [August 2006](#) version of the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* in lieu of the March 2006 version – (1) required park owners to include the capacity of the supply to the site on electricity accounts and (2) enabled park owners to notify residents of a price increase for electricity by placing a notice on the park notice board
- specified the additional information about consumer rights that must be given to a resident when given notice of termination

- prohibited the use of certain clauses in park tenancy agreements in relation to: (1) passing on liability for wrong-doing by a park owner to the resident, (2) requiring the resident to nominate the park owner as selling agent for their home, (3) requiring the resident to use tradespersons or services specified by the park owner
- provided that there are no longer prescribed forms that relate to the disposal of goods left behind
- modified the prescribed Warrant of Possession so that it is consistent with the one applying under the *Residential Tenancies Regulation 2006*
- prescribed three new matters as penalty notice offences – (1) incomplete rent receipt details, (2) not having a park notice board and (3) excluding required statements from park advertising.

Residential Tenancies Regulation 2006

Commenced on 1 September 2006.

The Regulation:

- increased the maximum amount a tenant can seek for reimbursement of urgent repairs they have had carried out from \$500 to \$1000
- updated references to *The Renting Guide*
- amended the standard tenancy agreement to take account of the increase for urgent repairs
- repealed the *Residential Tenancies (Savings and Transitional) Regulation 1989* and incorporated the provisions of that Regulation that still had relevance
- omitted a number of previous exemptions which are obsolete
- omitted the outdated 'where to get help' page from the back of the standard lease
- modified the Warrant for Possession form and made it consistent with the form prescribed under the *Residential Parks Regulation 2006*
- simplified and added relevance to the title of the Regulation itself and a range of clauses.

Appendix 2. Access to Information

Pursuant to section 10 of the *Consumer, Trader and Tenancy Tribunal Act 2001*, the Tribunal is not an agency in relation to its judicial functions. In addition, any document relating to the judicial functions of the Tribunal is exempt under clause 11 of schedule 1 of the Act. However, the Tribunal adheres to the objects of the Act and ensures that its processes are open, accountable and responsible.

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

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

One application under the *Freedom of Information Act 1989* was received during the reporting period. The request was granted.

In accordance with section 14 of the *Freedom of Information Act 1989* the Tribunal's Summary of Affairs is located on the Tribunal's website.

The Chairperson may elect to provide the Minister, Commissioner for Fair Trading, Director General of the Department of Commerce or an authorised agent or representative of a party, with information as set out in s70, 72 and 85 of the *Consumer, Trader and Tenancy Tribunal Act 2001*. Requests from other third parties are dealt with under s73 of the Act and the Privacy and Personal Information Principles, which restrict disclosure of information.

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

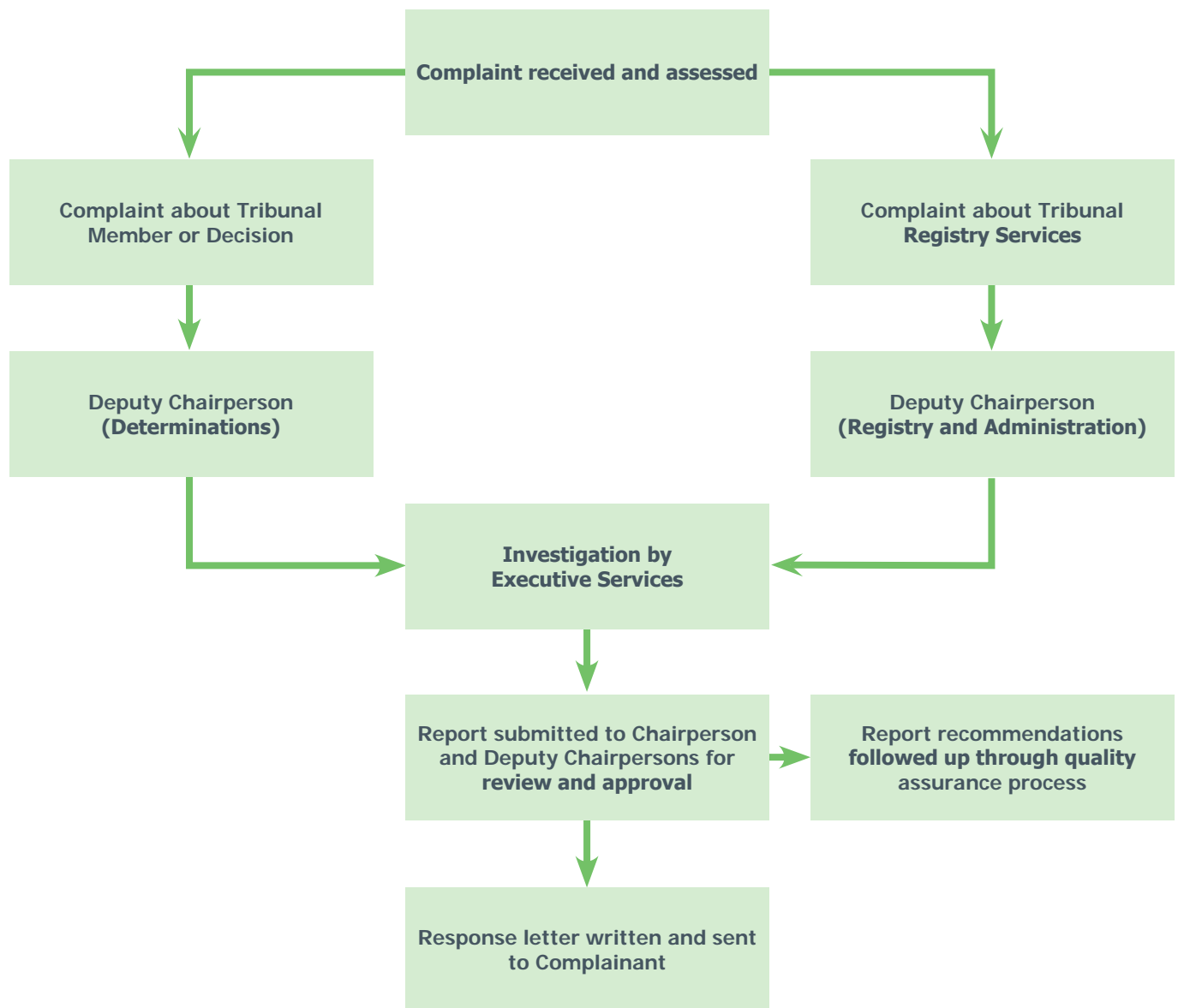
The Registrar may allow access to information without the parties' permission under the following circumstances:

- written reasons and reserved decisions are published on Austlii
- information about party names are published daily on the hearing lists and on the Tribunal's website

- the police are investigating an allegation about perjury in the Tribunal and access to any record is available
- the media's request for information about a matter had been approved by the Registrar.

Appendix 3. Complaints Handling Process

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



Appendix 4. Divisional Consultative Forums

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

Tenancy Division

Association to Resource Co-operative Housing
 Combined Pensioners and Superannuants Association of NSW
 Estate Agents Co-operative
 Financial Counsellors Association of NSW and ACT
 Gandangara Local Aboriginal Land Council
 Housing Appeals Committee
 Legal Aid Commission of NSW
 NSW Aboriginal Housing Office
 NSW Department of Housing
 NSW Federation of Housing Associations
 NSW Office of Fair Trading
 Office of Community Housing
 Older Persons Tenants Service
 Property Owners Association of NSW
 Public Tenants Council (Central Sydney)
 Real Estate Institute of NSW
 Redfern Legal Centre
 South West Tenants Advice
 Southern Sydney Tenants Advice & Advocacy Service
 Teacher Housing Authority of NSW
 Tenants Union of NSW

General Division

Australian Consumers Association
 Australian Retailers Association NSW
 Combined Pensioners and Superannuants Association of NSW
 Community Relations Commission
 Disability Council of NSW
 Financial Counsellors Association of NSW
 LawAccess NSW
 NSW Office of Fair Trading
 Pawnbrokers Association of NSW
 Sydney Alliance

Home Building Division

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

Residential Parks Division

Affiliated Residential Parks Residents Association
 Caravan and Camping Industry Association
 Combined Pensioners and Superannuants Association of NSW
 Northern Alliance of Park Residents Association of NSW
 NSW Office of Fair Trading
 Tenants Union of NSW
 Western Sydney and Hawkesbury Park Residents Association



Strata and Community Schemes Division

Combined Pensioners and Superannuants Association of NSW
Institute of Strata Title Management
Management Rights Association (NSW)
NSW Office of Fair Trading
Property Owners Association of NSW
Tenants Union of NSW

Motor Vehicles Division

Australian Manufacturing Workers Union
Institute of Automotive Mechanical Engineers
Motor Traders Association
Motor Vehicle Industry Authority
National Roads & Motorists Association (NRMA)
NSW Office of Fair Trading
Service Station Association

Commercial Division

Consumer Credit Legal Centre (NSW)
Financial Counsellors Association of NSW
Kemp Strang lawyers
Legal Aid Commission of NSW
NSW Office of Fair Trading
Redfern Legal Centre

Retirement Villages Division

Aged and Community Services Association of NSW & ACT
Combined Pensioners and Superannuants Association of NSW
Council on the Ageing (NSW)
Housing Industry Association
NSW Office of Fair Trading
Retirement Village Association of NSW and ACT
Retirement Village Residents Association
The Aged-care Rights Service
Wesley Mission

Appendix 5. Application Fees & Charges

Fees and charges are reviewed each year. The fees and charges below increased from 1 July 2007. Current fees are shown on the Tribunal's website.

Consumer, Trader and Tenancy Tribunal fee schedule 1 July 2006 – 30 June 2007

Tenancy, Residential Parks, Retirement Villages, and Strata and Community Schemes divisions

Tenancy, Residential Parks and Retirement Villages	\$31.00
Strata and Community Schemes	\$63.00

General, Home Building and Motor Vehicles divisions

claims or disputes not exceeding \$10,000 (or no specific amount claimed)	\$31.00
claims or disputes between \$10,000 and \$25,000	\$63.00
claims or disputes exceeding \$25,000	\$167.00

Note: The maximum claim in the general division is \$25,000.

Note: The maximum claim in the motor vehicles division is \$25,000 except when the dispute relates to the supply of a new private motor vehicle.

Commercial division

claims or disputes not exceeding \$10,000 (or no specific amount claimed)	\$31.00
claims or disputes between \$10,000 and \$25,000	\$63.00
claims or disputes exceeding \$25,000	\$167.00
for applications under section 86 or 86a of the <i>Credit Act 1984</i>	\$556.00
for applications under the <i>Consumer Credit (NSW) Code</i> except –	\$70.00
for applications under section 101 of the <i>Consumer Credit (NSW) Code</i> if the application is made by a credit provider.	\$556.00

Note: No fee is payable for an application under:

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

Pensioners and students

All application fees are \$5.00

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

Charges

Copy of documents	\$2.00 per page (with a minimum charge of \$23.00)
Issue of summons	\$35.00

Sound recording and transcripts

Sound recording – standard (10 days)	\$23.00 per CD
Sound recording – premium (5 days)	\$66.00 per CD
Transcripts	\$300.00 per hour of hearing time

Appendix 6. Financial Summary

The audited financial reports required under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Commerce Annual Report 2006-2007.

Salary and Related Payments

Salaries	6,231
Statutory Appointees	5,717
Employment Agencies/Security Services	670
Annual Leave	966
Overtime	36
Meal Allowance	-
Long Service Leave	275
Superannuation	1,222
Payroll Tax	772
Fringe Benefit Tax	111
	16,000

Operational Expenses

Office Accommodation	3,424
Postage and Couriers	304
Telephones	432
Minor Computer Purchases and Consumables	170
Fees	731
Training and Development Fees	89
Motor Vehicles Expenses	109
Travel Expenses	217
Minor Equipment, Consumables and Stores	577
Minor Miscellaneous Expenses	489
	6,542

Depreciation	1,042
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Total Operational Expenses	23,584
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Administrative On Costs	1,959
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Total Recurrent Expenditure	25,543
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Capital Expenditure	468
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TOTAL EXPENDITURE	26,011
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REVENUE

Lodgement Fees	(1,940)
Contribution from Consolidated Funds	(3,906)
Contribution from Rental Bond Board	(8,002)
Contribution from Home Building Service	(2,299)
Contribution from Statutory Interest Account	(8,822)
	(24,969)

Net Cost Of Services	1,042
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Less Non Cash Transactions	1,042
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Depreciation	1,042
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CASH DEFICIT	-
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Notes

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Sydney Registry

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

Liverpool Registry

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

Hurstville Registry

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

Tamworth Registry

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

Parramatta Registry

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

Penrith Registry

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

Wollongong Registry

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

Newcastle Registry

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

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