



Consumer, Trader and Tenancy Tribunal

# Annual Report

2005 - 2006

# Minister's Foreword



Diane Beamer  
**Minister for Fair Trading**

The Consumer, Trader and Tenancy Tribunal is the largest tribunal in New South Wales and provides a quick and accessible dispute resolution service in a wide range of disputes.

The Tribunal's jurisdiction covers matters ranging from small retail transactions to motor vehicle purchases; from residential parks agreements to multi-million dollar strata schemes; from residential tenancy matters to home building defects; as well as credit provision and retirement villages.

Over 61,000 applications were received this year, which were dealt with at 95 venues across New South Wales. Some 52,000 of these (77%) were finalised prior to or at the first hearing and approximately 46,000 (70%) were finalised within 35 days of receiving the application.

The New South Wales Government is committed to ensuring a fair marketplace for all parties. The Tribunal plays a key role in delivering on this commitment and I would like to acknowledge the contribution of Tribunal members and staff for their achievements in 2005-2006.

# Letter to the Minister

The Hon. Diane Beamer  
Minister for Fair Trading  
Minister for Western Sydney  
Minister Assisting the Minister for Commerce  
Level 33, 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 2005-2006.

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

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

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# Chairperson's Report



The strong demand for the Tribunal's services continued in 2005-2006 with 61,089 applications received, representing an increase of 1.6% from the last reporting year.

During the year, a statutory review of the *Consumer, Trader and Tenancy Tribunal Act 2001* was conducted and tabled in Parliament on 28 March 2006.

The review validated the legislative framework of the Tribunal and confirmed that its policy objectives are sound. Some legislative amendments were proposed to assist the Tribunal to operate more effectively and to better fulfil its legislative charter.

Residential tenancy continued to represent the largest division (77% of all applications) and became a key focus during the year. Amendments to the *Residential Tenancies Act 1987* took effect in November 2005 to incorporate special provisions relating to social housing tenancy agreements. The Tribunal's processes in relation to social and community housing is the subject of upcoming information sessions in 2006. During the year, the Tribunal hosted the 6th Australasian Residential Tenancies Conference 'New Landscapes - Rethinking Residential Tenancies'.

Accessibility of the Tribunal's services remained a priority, with the Tribunal conducting hearings at 95 venues throughout New South Wales. Some 40% of Tribunal members are located in regional areas enabling the Tribunal to provide a prompt service in those locations. New venues have opened in Blacktown, Lismore and Dubbo.

The Tribunal continued to be at the forefront of courts and tribunals in New South Wales in delivering its services electronically. The Tribunal's website provides information on Tribunal processes and how to prepare for a hearing. It also features a listing calendar, hearing lists, access to published decisions, application forms and relevant legislation. Additionally there is an online lodgment and tracking facility in the Tenancy and Residential Parks Divisions. The number of applications lodged online continues to increase. During the year there were over 121,000 visitors to the website, an increase of 53% compared with last year. InCourt enables members to record and issue orders immediately after the hearing

– even via laptop computers in some regional areas. Early next year, the online lodgment facility will be extended to the General, Home Building and Motor Vehicles Divisions.

The Tribunal has maintained a strong community focus throughout the year with several information sessions conducted across New South Wales. The Community Relations Commission recognised the Tribunal as an example of good practice in multicultural policy development in NSW, highlighting a Tribunal information session specially tailored for organisations and community workers providing services and support to people from culturally diverse backgrounds. The Tribunal also facilitated divisional and regional consultative forums on issues directly related to the operation of the eight divisions for which it has legislative responsibility.

Towards the end of 2005-2006, the Tribunal experienced a sharp increase in the number of applications received in the Residential Parks Division, mainly relating to rent increases and park closures. The Tribunal responded by adopting a new approach to meet the particular needs of residents and park owners. Wherever practicable, hearings were heard at special venues close to the residential park, additional member resources were allocated to expedite the conciliation and hearing process, and Tribunal members with appropriate expertise were allocated to hear the matters.

The increase in residential parks applications is expected to continue during 2006-2007 and the Tribunal has positioned itself to meet this continued demand.

A key feature of the Tribunal is its ability to determine its own procedure and to tailor its processes to the needs of the people who appear before it. The Tribunal is engaged in a process of continuous improvement, much of which is detailed in this report, so that it may better serve the people of New South Wales.

Of course, none of the achievements of the Tribunal could be made without the dedication and efforts of the members and staff. They continue to meet the challenges of working in such a busy jurisdiction.

Kay Ransome  
**Chairperson**

## Year at a Glance

### 61,089 Lodged

- 1.6% increase from last year
- 30% lodged online

### 74,647 Hearings

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

### 68,125 Finalised

- 70% finalised within 35 days from lodgement
- 77% finalised prior to or at the first hearing

### 121,291 Website visits

- 53% increase from last year
- Application forms most visited page

# About the Tribunal

The Tribunal is an independent decision making body.

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.

The Tribunal's primary function is to resolve disputes between consumers and traders and property owners and others.

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

- The Tribunal is accessible
- Its proceedings are efficient and effective
- Proceedings are determined in an informal, expeditious and inexpensive manner
- Decisions are fair and consistent

## **Jurisdiction**

Eighteen Acts, referred to in appendix 1, confer jurisdiction on the Tribunal which sits in the following eight divisions:

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



## Hearings

During the year, the Tribunal received 61,089 applications and held 74,647 hearings across 95 locations.

The Tribunal uses different types of hearings appropriate to the type of application to deal with its workload.

The majority of applications, where the amount in dispute is less than \$25,000, are listed for first hearing in a **group list hearing** where a number of matters are listed together before a Tribunal member. Where both parties appear they are encouraged to resolve their dispute through conciliation. If the parties reach a settlement the Tribunal will make consent orders confirming that agreement. If there is no agreement, or only one party appears, the matter will either be heard on the day, if time permits, or be listed for another day.

**Special fixtures**, or formal hearings, are used where attempts at settlement have failed 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 where 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. Parties are invited to submit all relevant information and submissions before a decision is made. In the Strata and Community Schemes Division, all applications for adjudication are dealt with on the papers. Applications for rehearing in all divisions are also determined on the papers.

## Dispute Resolution

The Tribunal has an obligation to assist parties to reach an agreement wherever possible. While the Act specifies several methods of dispute resolution including the use of mediators and assessors, the Tribunal uses a range of dispute resolution tools that can result in settlement and orders being made with the consent of the parties.

**Conciliation** is a process that is used at any time to assist in the resolution of disputes. Conciliation is regularly used in conjunction with group listings. It is also used extensively in matters involving multiple applications about the same dispute, for example in residential parks and retirement village matters.

Tribunal members and specially trained staff act as conciliators. Four full-time, non-member conciliators are located at Liverpool/Campbelltown, Newcastle/Gosford, Hurstville/Wollongong and Penrith/Parramatta. In some regional areas the member will act as both conciliator and hearing member with the consent of the parties.



**Mediation** is used in complex matters where it seems likely that the matter may settle. It is a less interventionist form of dispute resolution compared with conciliation and is normally reserved for complex matters involving large amounts of money, such as in home building, or where there are many applications about similar issues. Members of the Tribunal act as mediators.

**Case conferences** are facilitated by a Tribunal member and are another means by which the Tribunal attempts to narrow issues in dispute, achieve resolution or, if settlement is not achieved, ready a matter for hearing. They are most often used in complex home building matters.

**Expert conclaves** are used particularly in the Home Building Division in matters over \$25,000 where there are expert witnesses on both sides. They are conducted by a specialist Tribunal member and held on the site of the dispute with a view to clarifying the matters in dispute and, ideally, reaching an agreement which will finalise the dispute or, at least, narrow the issues in dispute.

## Role of Members

Tribunal members are independent statutory officers who make decisions according to law on the basis of the evidence presented. Members attempt to bring the parties to a mutually agreeable settlement through conciliation. If this is not successful, the member will hear and evaluate the parties' evidence, consider the submissions and make a determination in accordance with the law.

Unlike courts, the Tribunal's hearings are not bound by the rules of evidence. Tribunal hearings aim to be as informal as possible to enable both parties to present their cases.

Matters are as far as practicable, concluded on either the first or second hearing. Some 77% of matters are concluded on or before the first hearing. If a matter cannot be finalised at first hearing the member will adjourn the matter and make directions. Directions usually set a timetable for the exchange of documents between the parties so that each party is aware of the other's case in advance of the hearing.

In finalising a matter, a member issues a Tribunal order. An order is an instruction from the Tribunal which can be legally enforced. The Tribunal's InCourt facility enables these to be made online by the member and issued to the parties immediately after the hearing. Orders are usually accompanied by brief oral reasons. More detailed written reasons can be requested by the parties.

When a matter involves complicated legal arguments, the member may need to reserve their decision. This allows the member to research the legislation and case law prior to making a determination. When finalised, the decision will contain detailed reasons explaining how the member came to the outcome.

Members operate within a governance framework to achieve the Tribunal's objectives of consistent and fair decisions. Chairperson's Directions are issued pursuant to section 12 of the Act, prescribing the procedures to be followed by Tribunal members and parties. Directions cover areas such as summonses issued by the Tribunal, requests for adjournment and a code of conduct for expert witnesses. Chairperson's Directions are available on the Tribunal's website.

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 Council of Australasian Tribunals issued a Practice Manual for Tribunals during the year which was made available to members to promote Tribunal best practice. Tribunal members are also required to participate in a performance assessment process.

An annual conference was held for members in December 2005, in which new social housing legislation was a key theme. Through the member's intranet site, members were kept up to date on legal and procedural issues and of precedents and impacts of significant decisions made in other jurisdictions.

In August 2005, some members attended a course on 'Good Decision Writing' conducted by Professor James Raymond, a world renowned expert in this area, who was in Australia presenting the seminar to courts and tribunals. During the year members also attended various conferences and seminars relevant to the work of the Tribunal.

The Peer Review Panel is established under Schedule 3 of the Act to investigate education and training needs as well as complaints against members. In 2005-2006, one matter was referred by the Chairperson to the Panel. The matter is being investigated by the Panel.

Applications for rehearing are determined by the Chairperson or the Chairperson's delegate. During the year there were 1357 applications for rehearing representing 2.2% of all applications received. Of these, 385 were approved for rehearing.

The Supreme Court exercises supervisory jurisdiction in relation to appeals from Tribunal decisions. In 2005-2006 there were 63 known applications to the Supreme Court. Of the 59 appeals determined by the Supreme Court, 31 were dismissed, 7 were discontinued, 17 were referred back to the Tribunal for rehearing and 4 decisions were substituted.

## Staff of the Tribunal

Tribunal staff are staff of the Office of Fair Trading, within the Department of Commerce and are employed under the provisions of the *Public Sector Employment and Management Act 2002*. The reporting requirements under the *Annual Reports (Departments) Act 1985* are included in the NSW Department of Commerce Annual Report 2005-2006. As at 30 June 2006, there were 129 staff employed at the Tribunal.

## Membership

The Tribunal's membership consists of a Chairperson, two Deputy Chairpersons, senior members and members.

The Chairperson is the chief executive officer of the Tribunal and is responsible to the Minister for Fair Trading for its overall operation and administration.

All Tribunal members, except for the Deputy Chairperson

(Registry & Administration), are appointed by the Governor on either a full-time or part-time basis. The qualifications for appointment are set out in section 8 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

As at 30 June 2006, the Tribunal's membership comprised 7 senior members, 16 full-time members and 71 part-time members.

### Chairperson

Ransome, Kay

### Deputy Chairperson (Determinations)

Vrabac, Nick

### Deputy Chairperson (Registry and Administration)

Patenall, Dianne

### Senior Members

Balding, Margaret  
Bordon, John

Connolly, Reg  
Durie, Graeme

LeCompte, Lindsay  
Paull, Christine

Phillipps, Richard

### Full-time Members

Borsody, Agnes  
Carpentieri, Antony  
Deamer, Jane  
Forbes, Deborah

Halliday, John  
Hennings, Simon  
Lansdowne, Robyn  
McMillan, John

Murphy, Cameron  
O'Keeffe, Gregory  
Reid, Judy  
Rosser, Kim

Smith, Jeffery  
Smith, Peter  
Steer, Charlotte  
Thane, Kathy

### Part-time Members

Abela, Carol  
Adderley, Georgia  
Anforth, Allan  
Barnetson, Diane  
Beckett, Angela  
Bell, Diana  
Blair, Robert  
Bordon, George  
Brady, Brian  
Briggs, Phillip  
Britton, Anne  
Brophy, Moira  
Bryant, Garry  
Bullen, Mark  
Butler, Rex  
Carney, Catherine  
Chenoweth, Rieteke  
Cipolla, John

Cohen, Totti  
Conley, Jennifer  
Connelly, Janice  
Corley, Susan  
Courtney, Michael  
Dalley, Margaret  
Daniel, Sherene  
Duncombe, Sue  
Eftimiou, Maritsa  
Farey, Janet  
Faulkes, Wendy  
Faust, Sabina  
Gallagher, John  
Gilson, Mark  
Haertsch, Regina  
Harvey, Danae  
Holwell, Kim  
Hookey, John

Hunstman, Carolyn  
Ilett, Mik  
Isaac, Colin  
Keher, Christopher  
Kelly, Tom  
Kilimann, Glenn  
Lennon, David  
Long, Christine  
Lynch, Joanne  
Mallam, William  
Marzilli, Claudio  
McCaskie, Carol  
Miller, Jill  
Montgomery, Stephen  
Moore, Ted  
Newhouse, George  
Noone, Michael  
O'Moore, Rory

Perrett, Mary  
Pickard, Bryan  
Plibersek, Raymond  
Ross, Katherine  
Ross, Kim  
Sainsbury, Murray  
Sheedy, Tracy  
Shipp, Bernard  
Smith, Stephen  
Taylor, Lyndal  
Tearle, William  
Turley, David  
Walsh, William  
Walton, Julie  
White, Tony  
Williams, Kerry  
Williams, Louise

# Applications

The Tribunal received 61,089 applications, continuing a relatively stable pattern over the last four years.

The majority of applications (77%) are in the Tenancy Division.

The Tribunal's eight registries receive and list matters falling within their geographical catchment.

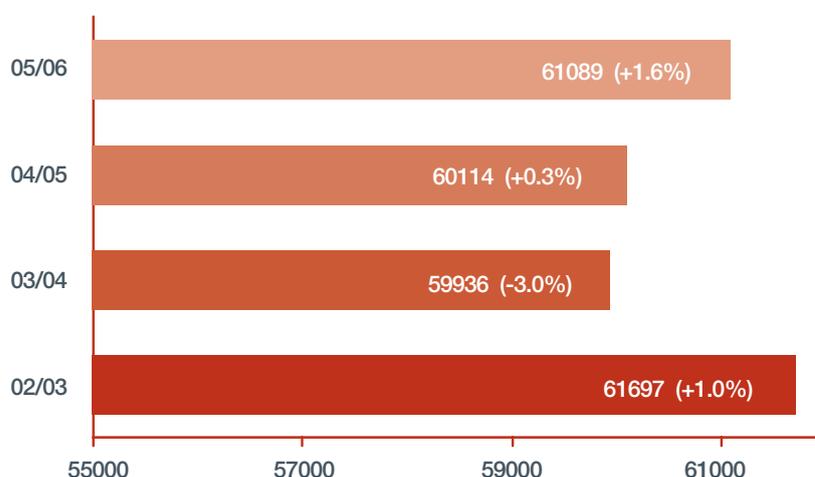
Applications in the Tenancy and Residential Parks Divisions can be lodged and tracked online.

30% of applications were lodged online.

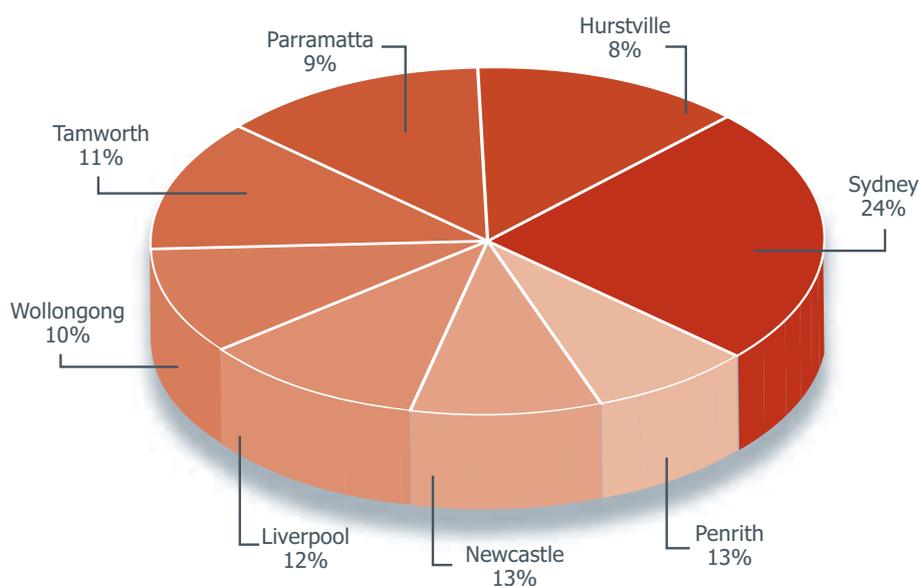
## Applications Lodged

DIVISION	APPLICATIONS RECEIVED	% OF TOTAL CTTT
Tenancy	47286	77%
General	5613	9%
Home Building	4004	6.5%
Residential Parks	1499	2.5%
Strata & Community Schemes	1181	2%
Motor Vehicles	1028	2%
Commercial	402	0.9%
Retirement Villages	76	0.1%
<b>Total CTTT</b>	<b>61089</b>	<b>100%</b>

## Yearly Lodgement Comparison



## Percentage of Applications Lodged by Registry



# Timeliness

The Tribunal aims to resolve disputes as quickly as possible.

The majority of cases (70%) are finalised within 35 days of lodgement.

In some divisions, matters are finalised even more quickly, for example in the Tenancy Division 85% of cases are finalised within 35 days.

Complex matters, for example claims exceeding \$25,000 and Strata and Community Schemes and Home Building matters, will take longer to finalise.

## Applications Finalised

DIVISION	0 – 28 DAYS	29 – 35 DAYS	36 – 49 DAYS	50 + DAYS	TOTAL
Tenancy	38190	2815	3358	9798	54161
General	2437	643	701	2091	5872
Home Building =<\$25K	888	282	369	1725	3264
Home Building >\$25K	41	23	38	523	625
Home Building other	210	21	33	122	386
Residential Parks	162	119	195	634	1110
Strata & Community Schemes	214	39	84	798	1135
Motor Vehicles	251	105	178	567	1101
Commercial	168	40	50	157	415
Retirement Villages	15	4	2	35	56
<b>Total CTTT</b>	<b>42576</b>	<b>4091</b>	<b>5008</b>	<b>16450</b>	<b>68125</b>

## Finalised at First Hearing

DIVISION	% FINALISED AT FIRST HEARING
Tenancy	78%
General	74%
Home Building =<\$25K	64%
Home Building >\$25K	59%
Home Building other	84%
Residential Parks	67%
Strata & Community Schemes	90%
Motor Vehicles	65%
Commercial	75%
Retirement Villages	71%
<b>Total CTTT</b>	<b>77%</b>

## Clearance Ratio

DIVISION	CLEARANCE RATIO
Tenancy	103%
General	104%
Home Building	106%
Motor Vehicles	107%
Residential Parks	72%
Strata & Community Schemes	96%
Commercial	102%
Retirement Villages	74%
<b>Total CTTT</b>	<b>102%</b>

Clearance ratio relates incoming workload with the Tribunal's capacity to finalise cases. At the end of the year the Tribunal did not carry a backlog of matters overall.

100% = keeping up with workload  
 Under 100% = accumulating backlog  
 Over 100% = reducing workload

# Accessibility

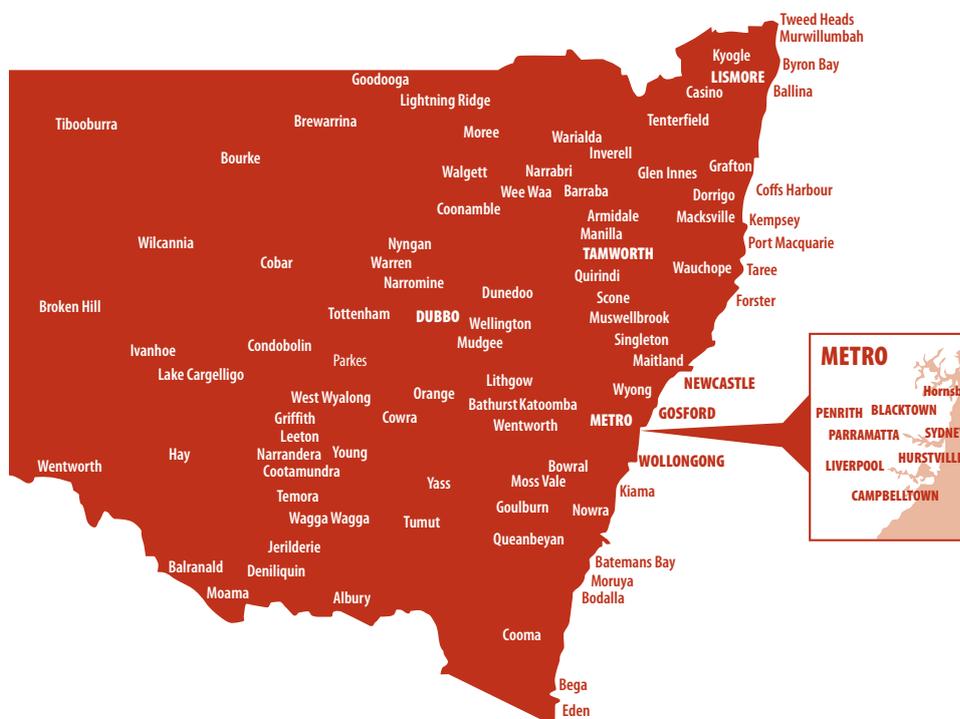
Accessibility is a key objective of the Tribunal.

The Tribunal sits at 95 locations to ensure that its services are delivered across the state's wide geographical base.

In addition, the Tribunal offers a variety of methods to communicate its role to all people who may require its services and in particular to inform parties about their rights and responsibilities.

## Locations

The map below shows where the Tribunal holds hearings across the state.



## Website

The Tribunal commenced a comprehensive website redesign in March 2005 and the much improved website was launched in December 2005.

There were 121,291 visits to the Tribunal's website [www.cttt.nsw.gov](http://www.cttt.nsw.gov) representing a large increase of 53% compared to the last reporting period.

Applications can be lodged online in the Tenancy and Residential Parks Divisions. This facility will be expanded to include the General, Home Building and Motor Vehicles Divisions in August 2006.

The website contains specifically designed resource pages for indigenous clients, students, seniors and tourists. It has information in seven other languages and Tribunal publications can be viewed online along with daily hearing lists and a frequently asked questions page.

## Publications

The following resources are also available on the Tribunal's website.

- Application forms for each Division including information on the types of orders that can be made
- Chairperson's Directions
- Fact Sheets on Residential Parks and Home Building Divisions
- What happens at the Tribunal? Information brochure
- Decisions – some Tribunal decisions are made available on [www.austlii.edu.au](http://www.austlii.edu.au)
- Bulletin – provides information about Supreme Court appeal decisions and jurisdictional issues

## DVD/Video

The **Get It Sorted** video/DVD produced in 2004 continues to provide a valuable resource to new Tribunal clients and is regularly requested. It is on a continual playing loop at all Tribunal Registries.



## CD-ROM

The newest addition to the range of educational resources offered by the Tribunal is a CD-ROM called, **CTTT – We're talking YOUR language**. The CD-ROM is an easy-to-understand guide about Tribunal services designed to be played on a computer, and provides information on how to prepare for a hearing.

It provides both written and oral information in eight languages: Arabic, Cantonese, Greek, Korean, Mandarin, Spanish, Vietnamese and English.

Filming for the CD-ROM was finalised in June 2006 and the CD-ROM itself will be available in August 2006

## Sound Recording

Hearings are sound recorded at the Tribunal's own purpose built venues and at other locations where facilities are available. Parties are able to obtain copies of sound recordings by writing to the Registrar. A fee is payable for this service.

It is proposed that sound recording facilities will be available at more hearing venues in the near future with the use of a new portable digital sound recording system. The system is presently being trialled at a number of locations.

## Interpreters

The Tribunal provides professional interpreters to assist parties during hearings and language assistance via telephone when requested. The Tribunal provides these services free of charge.

A total of 2,150 interpreters were used by the Tribunal in the 2005-2006 reporting period. The most common languages requested were Mandarin, Arabic, Cantonese, Vietnamese, Korean, Turkish, Greek, Serbian, Macedonian and Spanish.

The Tribunal has 15 registry officers providing language assistance in ten different languages. The Office of Fair Trading has 100 officers covering 30 languages who can also provide assistance to Tribunal clients.

## Hearing Impaired

The Tribunal also assists hearing impaired clients. Auslan interpreters are provided free of charge on request. A TTY telephone and hearing loop service is also available. The new CD - ROM, **CTTT - We're talking YOUR language**, will provide

information about Tribunal services in visual format for the assistance of the hearing impaired.

## Telephone Hearings

The Tribunal recognises that not all parties will necessarily be located near the place of dispute especially as more transactions are conducted online. The Tribunal utilises a flexible approach to hearing matters and regularly conducts hearings with either one or both parties over the telephone. Evidence may also be taken from witnesses over the telephone.

## Community Awareness

The Tribunal is committed to ensuring that all members of the community are able to access its dispute resolution services. Specialist information sessions were conducted across New South Wales targeting people from culturally and linguistically diverse communities. In partnership with the Office of Fair Trading, the Tribunal conducted information sessions about its services for Aboriginal communities at a number of regional locations.

A Tribunal information session was also delivered targeting non-English speaking background support associations and community groups in Hurstville. This session was recognised by the Community Relations Commission as an example of good practice in multicultural policy development in New South Wales.

Additionally, the Tribunal held another five information sessions which included:

- Retirement Villages information session at Gosford
- Overview of Tribunal services at Liverpool and Tamworth
- Tenancy information session at Penrith
- Strata and Community Schemes information session in Sydney

Tribunal members and Deputy Registrars were invited to speak at thirteen information sessions held by the Office of Fair Trading as well as a range of professional groups including the Financial Counsellors Association, Institute of Building Consultants, Australian Institute of Builders, Management Rights Association, Retirement Village Residents Association, NSW Police Department, Arab Council and LawAccess NSW.

The Tribunal was also actively involved in raising community awareness and promoting Tribunal services during Law Week and Fair Trading Week.

Consultative forums continue to play a key role in ensuring the Tribunal's services are valid and meet the needs of the community.

Organisations represented on forums for each division are detailed in appendix 4.

# Tenancy Division

## Jurisdiction

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

## Key Facts 2005-06

### Applications

Applications received 47,286

- 2.5% increase from 2004-05

Application Types:

• Termination	30,469
• Breach / Compensation	9,493
• Rental Bond	4,578
• Rehearing	1,186
• Other	904
• Excessive Rent / Increase	324
• Abandoned Premises /Goods	224
• Renewal	74
• Recognition as a Tenant	34

Lodged by landlords 40,812

Lodged by tenants 6,439

Lodged by occupants 35

Number of e-lodgements 17,907

### Hearings

Number of hearings 56,246

Number of adjournments 9,282

### Finalised Matters

Matters finalised 54,161

Final Orders:

• Made at hearing	35,463
• By consent	10,983
• Withdrawals	7,715

### Key Performance Indicators

91% Listed for hearing within 28 days

78% Finalised prior to or at first hearing

76% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 284

Supreme Court appeals determined 21

## Overview

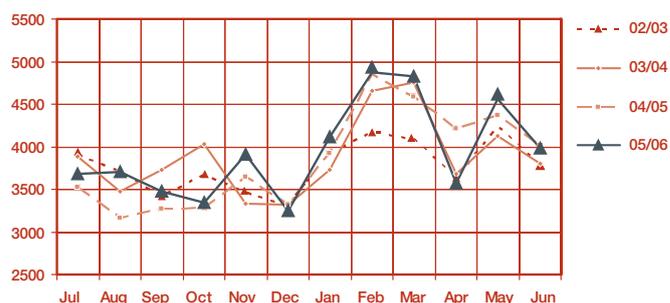
Living in a rental property means that a tenant has entered into a 'residential tenancy agreement' with a landlord. The Tenancy Division deals with disputes between landlords and tenants who have entered into such an agreement.

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 600,000 rental bonds held in trust by the Rental Bond Board, the number of applications to the Tenancy Division represents around 8% of all New South Wales residential tenancies.

## Application Lodgement



## Trends and Issues

Lodgements in this division continued to dominate the Tribunal's workload, accounting for 77% of the applications received this year. Applications increased by 2.5% or 1,161 compared to last year, and the lodgement trends continue to reflect those of previous years.

The majority of applications, 64%, continue to be received from landlords requesting termination of the tenancy due to breaches of the tenancy agreement, including non-payment of rent.

The success of the Tribunal's online lodgement service has seen 38% of all tenancy applications being lodged online. In most cases these applications are automatically listed through the Tribunal's computerised case management system and a notice of hearing is issued at the time of lodgement.

Over 20% of tenancy matters are finalised by way of conciliation, and 76% of matters are finalised within 35 days.

Changes to the *Residential Tenancies Act 1987* resulted in an increase in the Tribunal's jurisdiction in the area of social housing. Appendix 1 gives a summary of the changes.

Two information sessions were held specifically to focus on Tenancy Division issues. One session was held in Penrith and one was held in Sydney.

## Case Studies

### Agreement through conciliation...

*In many instances, the Tribunal, through its conciliation process is able to assist the parties to reach an agreement which benefits both parties.*

An elderly couple leased a unit and the rent was their main source of income. Their tenant had lived in the unit for 3 years and had always paid his rent on time. However, the tenant fell into arrears. There were no other issues with his tenancy. The landlord issued a termination notice to the tenant and when it had expired, lodged an application to the Tribunal to evict the tenant.

The Tribunal listed the matter for conciliation and hearing within 14 days of receiving the application. Both parties attended the hearing and the member encouraged them to try and reach an agreement. A conciliator was allocated to the matter. During the conciliation, it emerged that the tenant had lost his job and had been too embarrassed to inform the landlords. He said that he was now working again and the conciliator facilitated an agreement whereby the tenant would pay the arrears through a series of weekly instalments in addition to the rent. This agreement was then made into a binding order of the Tribunal.

As a result, the tenant was able to maintain his tenancy and the landlords were able to retain a tenancy they were otherwise happy with.

### Complex matters take more time...

*Although 70% of tenancy matters are finalised at or before the first hearing. Some require more than one hearing, in this case to enable the parties to be represented and to obtain and exchange further evidence.*

The dispute was over the rental bond which was considerable, given the rent of over \$15,000 a month. The landlord had lodged a claim against the bond for damage to the premises and cleaning costs. The tenant disputed the claim and lodged an application at the Tribunal seeking the full return of the bond.

At the first hearing, agreement could not be reached about the tenant's liability for damage and cleaning costs. Both parties sought to be represented. This was agreed to, given the size of the bond and the large amount in dispute. The matter was adjourned to enable the parties to obtain legal representation and to exchange documents and provide further evidence.

The matter was listed for hearing one month later. The Tribunal member reserved the decision in order to review the evidence provided by the parties. In the decision issued 3 weeks later, the Tribunal found the evidence supplied by the landlord was insufficient to claim any amount from the rental bond. Orders were made directing that the full bond be paid to the tenant.

### Determining jurisdiction...

*Sometimes applications are lodged with the Tribunal where it is not clear whether the Tribunal has the jurisdiction to determine the matter. The issue of jurisdiction can only be determined by a member after evidence is presented.*

A student living in university campus accommodation lodged an application at the Tribunal seeking an order that the landlord stop interfering with his right to enjoy the premises in peace, comfort and privacy. The student alleged that the landlord would not let him use the common area of the unit block for the purposes that he believed he was entitled to do so.

It became evident at the first hearing that there was an issue concerning jurisdiction as the *Residential Tenancies Act 1987* does not cover boarders or lodgers or any part of an education institution. In this case, the university had contracted a private company to manage the student accommodation. The student claimed that his accommodation arrangements with the private company were governed by the Act. The respondent claimed that the student was a lodger and that his residence was part of an education institute and therefore excluded from the Act.

The matter was adjourned at the first hearing to allow both parties to provide further evidence on the leasing arrangements and for the applicant to obtain the assistance of a tenancy advocate.

At the next hearing following the presentation of the parties' cases the decision was reserved allowing the member to examine the evidence before handing down the decision on whether the Tribunal had jurisdiction to determine the case.

The member issued detailed reasons for the decision which examined issues such as the student's relationship with the private company and whether a tenancy existed, the definition of a lodger and whether the accommodation was part of an educational institution. The decision drew on the material provided by the parties, such as the agreement between the student and the private company; previous Tribunal decisions; case law; dictionary definitions and the arrangements which existed between the university and the contractor.

In deciding that it did not have jurisdiction, the Tribunal member found that the student did not have a tenancy within the meaning of the Act and that he was a lodger. Additionally, the member considered the accommodation occupied by the student was much closer in nature to accommodation in an education institution than it was to a private rental situation. Accordingly, the application was dismissed.

# General Division

## Jurisdiction

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

## Key Facts 2005-06

### Applications

Applications received	5,613
• 2% increase from 2004-05	
Application Types:	
• Consumer Claims	5,177
• Rehearing	258
• Holiday Parks	55
• Pawnbrokers	34
• Renewal	89
Lodged by consumers	5,451
Lodged by other parties	162

### Hearings

Number of hearings	6,714
Number of adjournments	2,956

### Finalised Matters

Matters finalised	5,872
Final Orders:	
• Made at hearing	2,710
• By consent	1,750
• Withdrawals	1,412

### Key Performance Indicators

64% Listed for hearing within 28 days
74% Finalised prior to or at first hearing
52% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted	49
Supreme Court appeals determined	10

## 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.

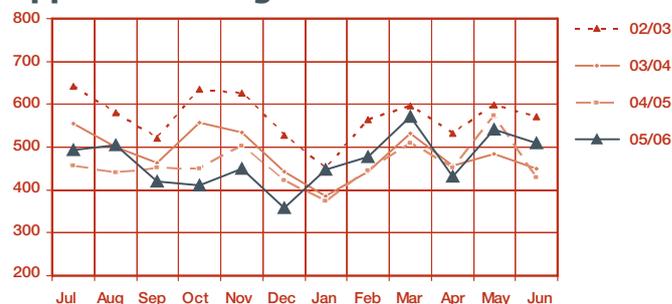
A consumer's claim must be against a supplier carrying on a business and not a private person, and the supply of goods and services must have occurred not more than 3 years ago. The common types of orders the Tribunal can make in this division are:

- 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.

## Application Lodgement



## Trends and Issues

Over the past four reporting periods, applications to the General Division have remained stable.

With the internet increasing a consumer's shopping choices and more purchases being made on-line, consumers and traders can be located across Australia or even overseas. The Tribunal provides flexible ways for consumers and traders to settle their dispute. This may be in person, via telephone hearing, and by way of written submissions.

Of significance to consumers purchasing goods or services online, the Supreme Court decision of *Oubani v MCI Technologies Pty Ltd & Anor* [2004] NSWSC 73 determined that irrespective of where the contract is formed, the Tribunal has jurisdiction under the *Consumer Claims Act 1998* so long as the goods or services were supplied in NSW.

Applications concerning both holiday parks and pawnbrokers have reduced significantly by 35% and 44% respectively, compared to the previous reporting period.

## Case Studies

### Faulty feline...

*Consumers have a right to receive what they pay for.*

A man purchased a pedigree kitten from a local cattery for \$1,600. Several days after the purchase, the new owner noticed that the kitten was not eating and showing symptoms of a high fever.

The kitten was taken to a veterinary clinic and diagnosed with feline infectious peritonitis, a fatal disease. The kitten died two days later. The man lodged an application at the Tribunal seeking orders for the refund of the purchase price plus veterinary costs.

The Tribunal heard that the applicant was misled about the kitten's age and health status at the time of purchase. The breeder had told the purchaser that the kitten had had two vaccinations, but the vaccination certificate showed only one vaccination was given.

Based on the evidence provided, the Tribunal found that the kitten was not, in legal terms, of 'merchantable quality' in that he was not a healthy kitten with a reasonable life expectancy when sold.

The Tribunal member, in written reasons provided to both parties, stated that the applicant did not get what he had paid for and ordered that the cattery pay the applicant \$1,600 and the veterinary fees incurred.

### Straightened out...

*Where the Tribunal orders certain services to be provided and the orders are not complied with, an application can be made to renew the proceedings and seek an order for monetary compensation.*

A young woman was not happy with the results of the hair straightening technique performed by her local hairdresser, where she had been a client for 10 years.

She had complained to the manager of the salon, but they were unable to reach agreement on how to address her dissatisfaction.

At the Tribunal hearing, the parties were invited to conciliate. The parties agreed that the salon would give the applicant a second procedure at no expense. The Tribunal made this agreement into a binding order.

When the young woman went to make an appointment for the second procedure, it was refused. She then lodged an application to renew the proceedings as the order had not been complied with.

The Tribunal heard the matter 23 days later and made an order that the salon refund the amount she had paid for the initial hair straightening procedure.

### When the numbers don't add up...

*When a supplier enters into a contract with a consumer to supply goods or services they have a responsibility to do so. The Tribunal can make orders where goods and services have not been provided in accordance with the contract between the supplier and the consumer.*

A man with a teenage son engaged the services of a local maths tutoring service. The father was asked to pay the company a \$500 deposit. He was informed via email that he would be contacted by a post-graduate university student to organise a time to begin the tutoring. Three weeks had passed and no contact had been made. The father tried to contact the tutoring service by telephone and email and did not receive a response. He lodged an application at the Tribunal seeking the return of the deposit as the services promised by the tutoring organisation had not been delivered.

No one from the tutoring company attended the hearing and the member was satisfied that the company had been notified of the hearing and that the matter could proceed in the absence of the company.

The Tribunal found that the tutoring company failed to provide the services it agreed to and made an order directing the tutoring company to pay the applicant the sum of \$500 immediately. The tutoring company did not comply with the order and the applicant requested a certified copy of the order for enforcement action in the Local Court.

### The ring cycle...

*Under the Pawnbrokers and Second hand Dealers Act 1996, the Tribunal is able to order that illegally pawned goods are returned to their rightful owner.*

An antique diamond ring was pawned by a woman claiming that it belonged to her grandmother and that, reluctantly due to financial circumstances, she needed to pawn it.

Within a few weeks, the New South Wales Police, alleging the ring was stolen, served the pawnbroker with a restoration notice. The notice named another woman as the rightful owner of the ring.

The pawnbroker applied to the Tribunal for an order that he be permitted to retain the ring as pawned goods. He gave evidence that he had accepted the ring in good faith and at no time did he have reason to believe that the goods were stolen.

The woman named in the notice gave evidence that she had recently been robbed and her engagement ring had been stolen. She tendered as evidence a copy of the police report of the robbery and a copy of her wedding photo identifying the unusual shaped diamond ring.

The Tribunal weighed up all the evidence and ordered that the ring be returned immediately to the woman claiming ownership of the ring.

# Home Building Division

## Jurisdiction

- Home Building Act 1989

## Key Facts 2005-06

### Applications

Applications received	4,004
• 10% decrease from 2004-05	
Application Types:	
• Claims under \$25,000	3,044
• Claims over \$25,000	581
• Rehearing	209
• Renewal	109
• Rectification Order	60
Lodged by consumers	2,756
Lodged by traders	1,131
Lodged by another party	106
Lodged by insurers	10

### Hearings

Number of hearings	8,217
Number of adjournments	6,241

### Finalised Matters

Matters finalised	4,275
Final Orders:	
• Made at hearing	1,973
• By consent	1,341
• Withdrawals	961

### Key Performance Indicators

53% Listed for hearing within 28 days
65% Finalised prior to or at first hearing
34% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted	37
Supreme Court appeals determined	22

## 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.

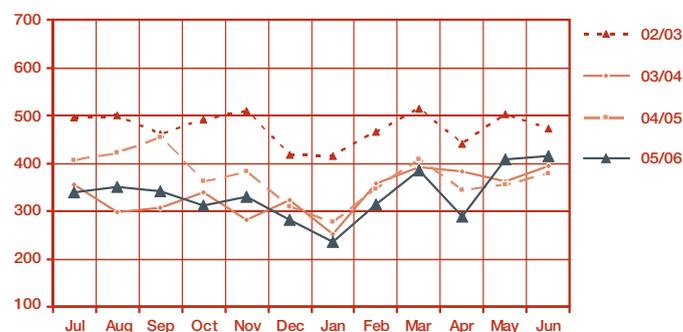
The Home Building Division deals with disputes between consumers, traders and insurers concerning residential building work up to the value of \$500,000. For example, a builder may lodge an application to the Tribunal for the home owners to pay for building work performed. Or a home owner may lodge an application when their builder does not carry out the building work as agreed in their contract 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 to limit undue delay in proceedings.

## Application Lodgement



## Trends and Issues

Applications to the Home Building Division have been slowly declining in number over the past four years with a further 10% decrease compared with the 2004-2005 reporting period.

The majority of Home Building claims concern home renovations under \$25,000, tending to involve complaints about defective work and appeals against insurer's decisions to decline home insurance claims.

In matters where the claim is less than \$25,000 the Tribunal is finalising 68% of matters at the first hearing. A further impact of the Office of Fair Trading's Home Building Service processes is a shift in the type of matters proceeding to hearing with the focus remaining on home renovation but dealing increasingly with unlicensed or inappropriately licensed traders.

## Case Studies

### Bridging the gap...

*The majority of home building applications relate to matters where the amount in dispute is \$25,000 or less and relate to home renovations. Many of these disputes can be resolved through the Tribunal's conciliation process and the negotiated agreement is turned into a binding order by the Tribunal.*

A young couple renovated their kitchen, replacing all the cupboards and upgrading the bench tops to marble. They were very pleased with the work and paid the contractor the full amount on completion.

Soon afterwards they noticed a crack in the marble bench top. The couple approached the contractor who inspected the crack and told them that one of them must have dropped something on the surface to cause the crack and refused to take any further action.

As all home building disputes must be referred to the Office of Fair Trading in the first instance, the couple took their complaint to their local Fair Trading Centre. The Centre attempted to settle the dispute, with the aid of an inspector from Home Building Service but without success, and advised the couple to lodge a claim with the Tribunal seeking an order that the contractor repair the bench top.

Both parties attended the Tribunal and, together with the conciliator, discussed the problems with the bench top. The applicants provided photographs and a report from the bench top supplier which showed that the crack could not be caused by a falling object and were able to persuade the contractor that they had not damaged the bench top.

The contractor admitted that there may have been problems with the installation of the cupboards which could have contributed to the crack in the marble. Both parties came to an agreement that the contractor would replace the bench top at no cost. The couple agreed to make arrangements for the contractor to have access to the house to undertake the rectification work.

This negotiated agreement was then turned into a binding order by the Tribunal.

### A conclave of experts...

*In cases where the amount in dispute is above \$25,000 and where both parties have called expert witnesses, the Tribunal may order that the experts meet in a conclave to clarify the issues in dispute with a view to resolving the dispute or, at the least, narrowing the issues in dispute.*

An application was made to the Tribunal concerning defective work in a new house, estimated at well over \$100,000 to rectify. Both parties submitted evidence regarding the extent of the defects and the projected costs to rectify the defective work. Although the defects were well documented, there was considerable difference of opinion regarding liability and cause of each defect.

Both parties had engaged building experts to provide a written report and the member ordered an expert conclave. The conclave was conducted on-site and facilitated by a Tribunal member with expertise in building matters. Each party's experts attended and together they reviewed the documentation and examined each defect.

At the conclave, the experts agreed on how to deal with many of the issues in dispute including the quality and aesthetics of the floor tiling, damage to the bathroom fixtures and uneven front stairs. The issue of the cause of the wall cracking was not resolved.

The parties prepared a joint report which was used at the next hearing to make a binding order on the issues where there was agreement and to allow the member to focus on the remaining issue in dispute.

### Unlicensed to build...

*Some consumers do business with unlicensed builders.*

*The Tribunal is able to hear such matters but can only make orders for the payment of money to enable the work to be rectified by a licensed builder.*

Water was leaking from the upstairs balcony of a home into the dining room. The home owners engaged a local builder to repair the cracks in the ceiling caused by the water damage and to repair the balcony to prevent further water ingress.

The builder did the work, but the home owners found that the ceiling still leaked and new cracks had appeared.

In accordance with the *Home Building Act 1989* all disputes must be referred to the Office of Fair Trading to attempt to resolve the dispute before it can be referred to the Tribunal. In the course of this process, it was found that the owners had used an unlicensed builder.

The owners sought a Tribunal order for the payment of \$6000 based upon quotations to rectify the work they had received from two other builders. When the matter came before the Tribunal, the parties conciliated and agreed that the builder would rectify the work. However, the Tribunal is unable to make a work order where a builder is unlicensed and made an order for the builder to pay the home owners the \$6000 sought so they could engage a licensed builder to do the work.

# Residential Parks Division

## Jurisdiction

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

## Key Facts 2005-06

### Applications

Applications received 1,499

- 4% increase from 2004-05

Application Types:

• Excessive Rent / Increase	1,078
• Termination	212
• Breach / Compensation	128
• Other	44
• Rehearings	23
• Renewals	13
• Rental Bond	1

Lodged by residents 1,225

Lodged by park owners 273

Lodged by occupants 1

Number of e-lodgements 65

### Hearings

Number of hearings 2,008

Number of adjournments 941

### Finalised Matters

Matters finalised 1,110

Final Orders:

• Made at hearing	577
• By consent	351
• Withdrawals	182

### Key Performance Indicators

11% Listed for hearing within 28 days

67% Finalised prior to or at first hearing

25% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 12

Supreme Court appeals determined 0

## Overview

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

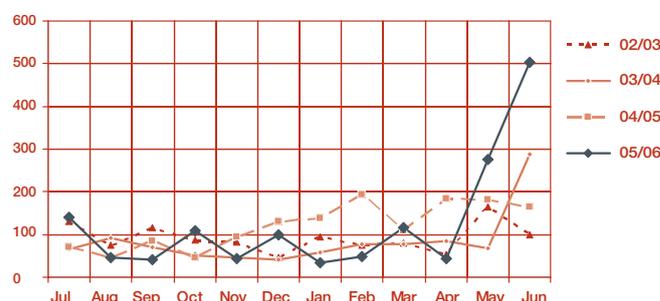
The resident and park owner are required by law to sign either a 'residential site agreement', 'moveable dwelling agreement' or 'residential tenancy agreement' depending on the situation.

The Residential Parks Act 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.

In this division, 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'.

## Application Lodgement



## Trends and Issues

The Tribunal dealt with 30 parks involving some 1,104 applications which represented 74% of all Residential Parks Division applications received in 2005-2006. The majority of these applications concerned rent increases and the withdrawal of facilities.

The end of 2005 - 2006 saw a huge increase in the number of residential parks applications (1,072% increase from April to June). In response to this, the Tribunal conducted a pilot program to improve the case management of multiple applications. The program included the enhanced use of informal dispute resolution strategies by combining the initial conciliation and hearing processes.

The success of the strategy resulted in its implementation as standard practice for multiple applications lodged in this division. Where there are multiple applications, the Tribunal is required to locate a suitable nearby venue to accommodate a large number of people. This means that in most cases matters are listed after 28 days from lodgement.

The Tribunal also published a Fact Sheet setting out the Tribunal's procedures for dealing with rent increase applications to assist park residents and owners.

## Case Studies

### **New approach, quicker result...**

*When faced with an increase in multiple applications lodged by park residents, the Tribunal adopted new approaches to dealing with these applications. This has resulted in matters being dealt with more quickly and more reliance placed on conciliation as a way of resolving the dispute.*

A park owner issued a rent increase notice to all park residents. The park owner met the legislative requirements of giving 60 days notice, stating the date on which the rent increase was to commence and the amount of the increase and served the notice by mail.

150 of the residential park residents lodged applications to the Tribunal seeking orders that the proposed rent increase was excessive and above the consumer price index. The applications were lodged within the required 30 days of the residents receiving the notice.

As the applications were essentially the same, they were dealt with together as a 'multiple application'.

The Tribunal dealt with these applications under its new case management approach to dealing with multiple applications. Two members experienced in residential parks matters were allocated to the hearing. This was to enable one member to focus on trying to bring the parties to an agreement, and allow the other to deal with any procedural matters that might arise.

Given that the park was situated some distance from the Tribunal's hearing venue and that many of the park residents were elderly and did not have private transport, the Tribunal arranged through the park owner to have the hearing in the park's community hall.

The matters were listed for hearing 4 weeks from date of lodgement of the applications. Hearing notices were issued to all parties together with a copy of the Tribunal's Residential Parks Fact Sheet which outlines the Tribunal's procedures for dealing with rent increase applications and provides assistance to residents in preparing for the hearing.

The parties reached an agreement at conciliation. A consent order was made that the rent increase was excessive and specified what rent was payable for the next 12 months.

### **Safety first...**

*The Tribunal continued to receive individual applications from park residents on a wide range of issues relating to their individual residential tenancy agreements.*

A park resident requested that the park owner keep the boom gates at the front of the park open at all times so that he did not have to go out to allow access to his regular visitors.

The matter was listed for hearing at the local Tribunal venue. The parties were unable to reach an agreement through conciliation.

The park owner submitted a petition signed by other park residents opposing having the boom gates open on the grounds of personal security. The park was located near a popular beach and residents were concerned that beach users would park their cars on the park site and possibly create a public nuisance.

The owner further argued that as a landlord he had a responsibility to protect the privacy, safety and amenity of all park residents.

The member dismissed the application, explaining that he had to consider the overall rights and needs of all the residents. After the decision was handed down, the owner offered to provide the applicant with an extra key to give to his son, who was his most frequent visitor.

### **Switched on...**

*The Tribunal can make various orders where there has been a reduction in services. The Tribunal can order that compensation be paid by way of a rent reduction.*

Due to an upgrade of the power supply to a residential park, the park owner needed to install a power pole within the park.

The park owner informed a resident within the park that it was necessary to install the power pole at the rear of his site. He explained that it was the only location within the park where the pole could be erected.

The resident was dissatisfied with the situation and lodged an application at the Tribunal for compensation.

At the hearing, both parties were asked to reach an agreement through conciliation, however the resident declined to participate.

The matter was heard on the same day and parties presented evidence. The park owner submitted a report issued from the electricity company showing that the proposed location of the pole is the only suitable location to support the essential power upgrade for the park.

The resident stated that he would lose approximately two square metres of the site after the installation of the power pole.

The Tribunal found that the proposed location of the pole was the only option available to the owner but that the installation of the pole would amount to a reduction of services. The Tribunal ordered that the resident be awarded compensation by way of a rent reduction.

# Strata & Community Schemes Division

## Jurisdiction

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

## Key Facts 2005-06

### Applications

Applications received 1,181  
• 8% increase from 2004-05

Application Types:

### Adjudication:

- General Orders 380
- By-laws 142
- Interim Orders 123
- Meetings, Decisions, Records of Owners Corporation 76
- Appoint Strata Manager 68
- Regarding Animals 48
- Contributions & Levies 19
- Insurance 3

### Tribunal:

- Appeals 146
- Penalty 115
- Unit Entitlements 27
- Amend or Revoke Order 16
- Initial Period 8
- Rehearing 8
- Caretaker contract 2

Lodged by lot owners 773

Lodged by owners corporation 387

Lodged by other parties 14

Lodged by occupier of a lot 7

### Hearings

Number of hearings 566

Number of adjournments 352

### Finalised Matters

Matters finalised 1,135

Final Orders:

- Made at Hearing or adjudication 983
- Withdrawals 113
- By consent 39

### Key Performance Indicators

90% Finalised prior to or at first hearing

22% Finalised within 35 days

### Key Performance Indicators

Number of rehearings granted 0

Supreme Court appeals determined 2

## Overview

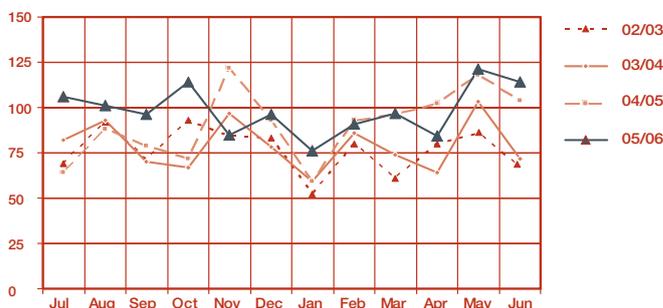
The word 'strata' literally means 'air space'. Strata title is a system of property ownership that usually relates to units where the owner owns the "air space" bounded by the walls of the unit but all unit owners share the ownership of parts of the building which is called common property.

A community scheme also involves a system of property ownership made up of 'lots' or units, which in themselves may be sub-divided into strata schemes, but the owner of a 'unit' may own the whole building in which they live, for example, a villa. All the owners of 'units' share the ownership of any 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 350 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.

## Application Lodgement



## Trends and Issues

Applications have been slowly increasing over the past four years, with a further 8% increase compared to the 2004-2005 reporting period. Since 2002-2003, applications in this division have increased by 29%.

Adjudication applications accounted for 73% of the workload. As these applications are decided on the papers, they are included in the 90% of the division's matters that were determined either prior to or on the first hearing. Additionally, appeals against Adjudicator's orders increased by 49% compared to last year.

The low number of matters finalised within 35 days is due to the four week submission period in adjudication matters. Adjudication matters are decided on the papers, producing the low rate of consent outcomes.

## Case Studies

### Pet problems...

*The issue of having pets in strata units is a common area of dispute, usually involving an owners corporation's refusal to allow pets even though this is not specifically prohibited in the by-laws of the strata scheme in question. In dealing with these matters, the Strata Schemes Adjudicator must consider the "reasonableness" of the refusal based on the evidence provided.*

A lot owner in a block of 20 units sought permission from the owners corporation to keep a toy poodle in her unit. The executive committee of the owners corporation refused this request.

Strata schemes issues which involve compliance with by-laws and provisions about keeping pets are determined by a Strata Schemes Adjudicator appointed under the Strata Schemes Management Act. Under this provision, relatively straight forward applications are determined on the papers by an Adjudicator.

The pet owner lodged an application for an Adjudicator's order. When a Strata and Community Schemes application is received by the Tribunal, the Registrar needs to be satisfied that the parties have attempted to mediate the dispute or that the dispute is not suitable for mediation.

Mediation is usually provided by the Office of Fair Trading's Strata Schemes and Mediation Unit or the local Community Justice Centre. In this instance mediation had failed. Being satisfied that mediation had been attempted, the application was accepted by the Tribunal.

The owners corporation was notified of the application and invited submissions on the matter. The owners corporation was required to notify all other lot owners of the application. The parties had four weeks to put their submissions to the Tribunal.

A number of residents in the unit block provided written submissions in support of the executive's decision, claiming that they believed the dog would cause disruption to their comfort, reduce the value of the block and set a precedent.

The applicant provided evidence that the dog was suited to apartment living and would be unlikely to cause interference with the other residents and their enjoyment of their property.

The other residents did not provide information supporting their claim that the dog would cause disruption to their enjoyment of their property or reduce the value of the property.

In coming to a decision, the Adjudicator considered the standard by-laws that state that a pet owner must get the approval of the owners corporation. However, an owners corporation cannot unreasonably refuse a request. Therefore the Adjudicator had to consider the 'reasonableness' of the refusal. While the views of the majority were considered, they did not convince the Adjudicator that they met the criteria of "reasonableness". As each case is considered on its merits, the Adjudicator did not believe that allowing the pet would create a precedent. The Adjudicator ordered that based on the written evidence provided by both parties, the request to keep the small dog was reasonable and was approved.

### Interim orders...

*Where a party considers that a matter needs to be dealt with urgently and prior to their 'substantive' application being decided, an Interim Order can be applied for. However, it is only where an Adjudicator is satisfied that the matter is so urgent that it requires they forgo the usual step of hearing from the other parties prior to making an order. This would usually only occur where the party applying satisfies the Adjudicator that there is a real and present danger to persons or property or where the Adjudicator considers that if they don't make an Interim Order, the applicant will be disadvantaged in such a way that cannot be remedied by further orders.*

A unit owner made an application to an Adjudicator for an Interim Order to have the owners corporation carry out urgent repairs to their unit and balcony. The lot owner alleged cracks had appeared in the walls and that water was entering the unit.

The Adjudicator considered the evidence provided and decided that there was not sufficient evidence of there being a real and present danger to persons or property to justify making an Interim Order in the absence of hearing from the owners corporation or other affected parties.

The Adjudicator stated the issues would be considered in the substantive application after all the parties had time to make written submissions. The applicant was also advised that if they had not already done so, they should seek mediation on the issues prior to proceeding with their substantive application.

### Dirty washing on the line...

*Where an owners corporation is seeking a penalty against a resident, the matter is heard by a Tribunal member*

At the annual general meeting of a large multi-million dollar apartment block, the issue of one resident hanging their washing on their balcony was raised. Proof of the breach of the by-law was provided and a decision was made by the owners corporation to issue the resident with a formal notice to comply with the strata plan's by-laws.

Some months later at an executive committee meeting, it was resolved to lodge an application with the Tribunal as the resident had not complied with the notice. The application sought an order that a penalty be imposed on the resident. The Tribunal member was satisfied that the resident had been served with the Notice to Comply and that the applicant had lodged the application within 12 months of service the Notice.

Only the owners corporation appeared at the hearing. It presented photographic evidence of a breach of the by-law after the date of the notice, together with evidence of numerous requests to the resident after the notice date asking them to stop hanging the washing on the balcony.

The Tribunal member found that a penalty should be imposed on the resident to emphasise the necessity of complying with the by-laws. A maximum penalty of \$500 was imposed. The resident was further ordered to pay the applicant's costs of bringing the application to the Tribunal.

# Motor Vehicles Division

## Jurisdiction

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

## Key Facts 2005-06

### Applications

Applications received 1,028

- 3% decrease from 2004-05

#### Application Types:

• Claims under \$25,000	780
• Claims over \$25,000	143
• Rehearing	83
• Renewals	22

Lodged by consumers 972

Lodged by other parties 56

### Hearings

Number of hearings 1,428

Number of adjournments 801

### Finalised Matters

Matters finalised 1,101

#### Final Orders:

• Made at hearing	575
• By consent	280
• Withdrawals	246

### Key Performance Indicators

36% Listed for hearing within 28 days

65% Finalised prior to or at first hearing

32% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 2

Supreme Court appeals determined 4

## 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.

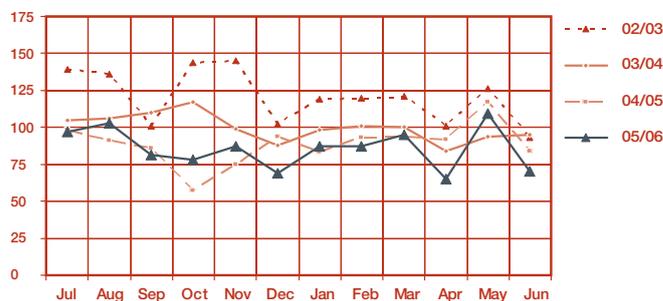
This division deals with disputes about vehicles that are used primarily for private use, and a 'motor vehicle' can mean a new or used car, motorcycle, tractor or other powered vehicle on wheels. The types of issues that may arise in this division include unsatisfactory repairs and maintenance, defective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

## Application Lodgement



## Trends and Issues

Applications to the Motor Vehicles Division have been slowly declining in number over the past four years, with a further 3% decrease compared to the 2004-2005 reporting period.

Of the 1,028 applications lodged, 280 or 27% were referred to MVRIA and 497 or 48% were referred to the Office of Fair Trading.

However considering the services available to parties for the early resolution of a dispute prior to hearing, a higher than average consent rate of 25% is achieved. The Tribunal consent average is 17%.

Matters are generally listed six weeks after lodgement to allow time for the referrals to be actioned. As a result the division experiences a below average number of matters listed and finalised within 35 days.

In the Tribunal's Sydney venue, the standard practice is to list motor vehicle matters separately in their own group list. Two members and a conciliator with motor vehicle expertise are assigned to the list providing a quality service.

## Case Studies

### Gearing up for a solution...

*The Tribunal refers issues concerning motor vehicle repairs to MVRIA before parties attend their first hearing. MVRIA mediators attempt to negotiate a settlement between motor vehicle owners and repairers. If an agreement is not reached, the matter will proceed to the Tribunal.*

A woman lodged an application to the Tribunal seeking orders to rectify repairs carried out on the gearbox of her car.

In accordance with Tribunal procedures, the application was listed for a hearing in six weeks to allow time for MVRIA to attempt settlement between the parties through mediation. The Tribunal advised MVRIA of the details of the dispute and an officer from MVRIA contacted both parties to arrange a meeting.

At the mediation, the repairer was adamant that the work carried out was satisfactory and claimed that the woman did not understand car mechanics and that the noise she complained of was normal for the age and make of her car. The woman did not accept or appreciate the repairer's comments. A MVRIA inspector inspected the car and prepared a report which highlighted some deficiencies in the repair work carried out. Nevertheless, no settlement was achieved.

The inspection report was forwarded to the Tribunal and placed on the file for the Tribunal to consider at the hearing.

The hearing was held at the Tribunal's Sydney Registry where motor vehicle matters are listed in a special list before a Tribunal member with expertise in motor vehicle disputes.

The parties were given another opportunity to settle the dispute using the Tribunal's conciliator. The conciliator went through the MVRIA report with the parties and was able to bring the parties to an agreement that the repairer would carry out the work to rectify the deficiencies identified in the MVRIA report.

Consent orders were made by the Tribunal.

### Bikie blues...

*Matters involving motor vehicle warranty issues are referred to the Office of Fair Trading. A Fair Trading inspector discusses the issues between the consumer and the trader to try to settle the matter.*

A young man purchased a \$25,000 motor bike and shortly afterwards noticed a number of defects in the paintwork and chrome fittings, as well as undue noise from the exhaust.

He went back to the dealer and requested that the repair work be carried out under the warranty. The dealer agreed to fix the exhaust but claimed that the paintwork and chrome defects had occurred since the bike left the showroom.

The bike owner then applied to the Tribunal for orders to rectify the chrome and paint work.

As the application related to a warranty issue, the application was referred to the Office of Fair Trading. One of the Office of Fair Trading's motor vehicle inspectors contacted the parties and arranged to meet at the dealership to inspect the bike.

Both parties found it difficult to prove how and when the chrome and paint defects occurred. The dealer was concerned about the young man's dissatisfaction and offered to pay half the cost of the paint and chrome repairs. The bike owner accepted this offer.

The application to the Tribunal was subsequently withdrawn.

### Contaminated evidence...

*In arriving at a decision the Tribunal's task is to carefully assess the integrity of the evidence presented by the parties.*

After a young man filled his sports car with petrol, the car began to misfire. He took the car to a repairer who claimed that the car's problem was most likely due to petrol contaminated with water. The repairer prepared a report along these lines and quoted the car owner \$3,500 to fix the car.

The driver went back to the petrol station with the receipt for the petrol, the repairer's report and repair quote and demanded that the operator meet the costs to repair the car.

The petrol station operator denied that his petrol was in any way contaminated. The driver lodged an application with the Tribunal claiming the cost of the petrol and the repairs to the car.

In the report presented by the applicant as evidence, it was asserted that water was present in the fuel tank of the car. The respondent, the petrol station owner, presented a report from the oil company refuting that their petrol contained any water. In addition, he supplied a technical report analysing a number of samples from the petrol station storage tanks which did not show any evidence of water contamination.

The Tribunal member found insufficient evidence was provided by the applicant to prove that the water found in the petrol tank came from the petrol supplied by the petrol station. The member also stated that the container used by the repairer to sample the petrol was not sterile and could have contaminated the result.

For these reasons, the application was dismissed.

# 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 2005-06

### Applications

Applications received 402  
 • 3% increase from 2004-05

#### Application Types:

• Consumer Credit Code	169
• Property, Stock & Business Agents	166
• Credit Act	22
• Finance Brokering	20
• Rehearing	13
• Termination – Return of Goods	4
• Waive Notice	4
• Credit – Home Finance	2
• Renewal	2

Lodged by interested / affected parties 172

Lodged by debtors 160

Lodged by credit providers 26

Lodged by owners 15

Lodged by mortgagors 12

Lodged by mortgagees 12

Lodged by lessees 5

### Hearings

Number of hearings 550

Number of adjournments 321

### Finalised Matters

Matters finalised 415

#### Final Orders:

• By consent	149
• Made at hearing	138
• Withdrawals	128

### Key Performance Indicators

65% Listed for hearing within 28 days

75% Finalised prior to or at first hearing

50% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 2

Supreme Court appeals determined 4

## 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.

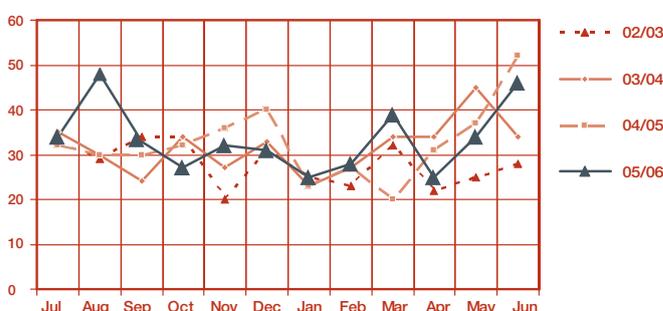
The *Consumer Credit (New South Wales) Act 1995* applies the *Consumer Credit Code*. The Code was developed to standardise credit practice across Australia and is uniform in all states with minor differences in Western Australia and defines the type of agreements that are categorised as credit contracts. The Code 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:

- where the borrower is suffering hardship and cannot meet their payments;
- to reduce, reschedule or recalculate payments or arrears;
- to postpone enforcement action;
- to reduce or waive interest charges;
- to determine reasonable agent commission and fees

## Application Lodgement



## Trends and Issues

The Commercial Division is one of the smaller divisions of the Tribunal, representing only 0.9% of the Tribunal's total workload. The division's workload this year increased by 3% or 12 applications compared to last year.

Many matters were finalised by agreement between the parties achieving an above average consent order rate during the year with 36% of matters reaching a mutually agreeable outcome.

A clearance ratio of 102% was achieved in the Division which illustrates that the Tribunal did not carry a backlog of matters.

## Case Studies

### Essential evidence...

*It is the responsibility of the applicant in any application to the Tribunal to prove that the order sought should be made. The Tribunal member must rule according to the law, regardless of the personal circumstances of the matter.*

A recently widowed woman sought an urgent stay order to stop the auction of her late husband's repossessed car. He had fallen terminally ill and was not able to make the repayments on the car. The car had been seized by the finance company a few days earlier from the applicant's home. The woman claimed she had no paperwork relating to the credit contract, default notice from the credit provider or a copy of a notice showing that enforcement was imminent.

The applicant contacted the Tribunal for legal advice. As the Tribunal is unable to give legal advice, she was given the contact details of a number of community legal services in her area. With their assistance, the woman lodged an application for a stay order preventing the finance company from disposing of the vehicle.

Urgent orders such as these are dealt with 'on the papers'. The Tribunal refused the stay order as it was not possible to determine whether the applicant had the authority to act on her late husband's behalf and therefore was a party to the contract with the finance company. However, the Tribunal directed that the matter be listed urgently due to the complexity of the case.

The application was listed for a hearing 7 days later. The parties were unable to reach an agreement. In presenting her evidence, the woman was able to prove that she was the wife of the man who had the contract with the finance company, but she did not have a grant of probate or letters of administration of the estate of her late husband and therefore was unable to legally prove that she had authority over the estate.

The finance company maintained that they had met all the notification requirements regarding the repossession.

The issue for the Tribunal member was to determine the legal standing of the applicant and whether the Tribunal could make the order sought. The application was dismissed.

### It's all in the name...

*It is common for applicants to incorrectly name a respondent by its business name and not its legal entity. The Tribunal can only make an order against a legal entity. Citing the correct legal entity name in an application can avoid delays in the hearing process.*

An application was lodged against a real estate agency seeking a refund of part of the commission that had been paid to the agent for the sale of a property. The applicant had assumed that the business name of the agency which appeared in all the advertising and stationery was sufficient to correctly identify

the respondent. In the application, the applicant named the business name of the real estate agency, as the respondent.

The Tribunal Registry conducted a business name search which revealed that a company owned the business name. The result of the search was placed on file to assist the member to identify the correct name of the respondent at the hearing.

The name of the respondent was amended and at the hearing, the matter had to be adjourned to allow the Notice of Hearing to be correctly served on the respondent in the name of the company.

### Contractual consent...

*The Consumer Credit (NSW) Code allows for a debtor to apply to change the terms of the contract if they find themselves unable to meet their obligations under a contract to repay a loan.*

A woman was involved in a serious car accident and sustained severe injuries. Her doctor advised that she would not be able to work for up to four months. The woman was a contractor and lost her job as a result.

The woman had a personal loan totalling \$22,000 and found that without her regular weekly income she was unable to make the payments required under her finance contract. She called her finance company and made an appointment to explain her situation. Her attempts to vary her contract to defer her repayments were unsuccessful and the woman lodged an application at the Tribunal applying to have her repayments postponed for four months.

The parties attempted to conciliate without success and the matter went to a hearing on the same day. The applicant presented evidence regarding her medical condition and had a letter from her previous employer stating their willingness to re employ her when she was deemed medically fit to return to work.

The finance company said that it would be financially unviable to continue to maintain the account if payments were deferred for four months. The company also submitted that the accumulation of arrears and interest would be difficult for the woman to meet further down the track and pointed out the impact this would have on her ability to obtain credit in the future.

The Tribunal member explored the minimum payment acceptable to both parties based on the applicant's ability to pay and the cost to maintain the account. Ultimately, the member made an order with the consent of the parties that the applicant pay an agreed amount plus interest for four months and upon returning to work, the contract would be extended for a further four months. Both parties agreed on the commencement date for this arrangement.

# Retirement Villages Division

## Jurisdiction

- Retirement Villages Act 1999

## Key Facts 2005-06

### Applications

Applications received 76

- 41% increase from 2004-05

#### Application Types:

• Breach	38
• Other	20
• Budget Dispute	8
• Rehearing	5
• Termination	3
• Residence Rules	1
• Renewal	1

Lodged by administering authority 50

Lodged by residents 26

### Hearings

Number of hearings 137

Number of adjournments 124

### Finalised Matters

Matters finalised 56

#### Final Orders:

• Withdrawals	24
• Made at hearing	21
• By consent	11

### Key Performance Indicators

44% Listed for hearing within 28 days

71% Finalised prior to or at first hearing

34% Finalised within 35 days

### Rehearings and Appeals

Number of rehearings granted 0

Supreme Court appeals determined 0

## 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.

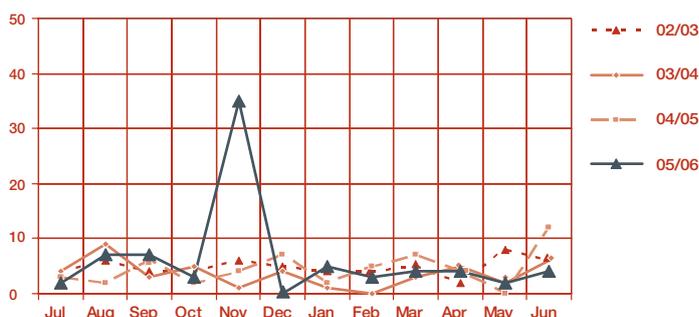
There are more than 700 known retirement villages currently in NSW, accommodating approximately 35,000 village residents. Churches, charitable organisations and community groups operate many retirement villages in NSW, but an increasing number are being operated by private companies.

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.

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.

## Applications Lodgement



## Trends and Issues

The Retirement Villages Division receives the lowest number of applications, accounting for only 0.1% of the Tribunal's total workload. For much of the year lodgement trends remained consistent with previous reporting periods. However, in November an unprecedented number of breach applications were lodged in respect of one retirement village. This accounted for the 41% increase in applications compared to 2004-2005.

In response to significant community interest in this division, the Tribunal conducted an information session on the Central Coast in November 2005. This session was specifically designed to focus on retirement villages and to improve public awareness of the Tribunal's role and activities in resolving disputes.

## Case Studies

### Budget blues...

*A statement of proposed expenditure is prepared by the village operator and provided to the residents prior to each financial year. The residents must vote on the statement within 30 days of receiving it. 50% of the residents must agree with the statement for it to be approved.*

Residents of a retirement village had concerns regarding the statement of proposed expenditure for the following year detailing a 10% increase over the previous year. The operating costs were to be funded by way of recurrent charges paid monthly by the residents. As a group the residents wrote a letter to the village operators, within 30 days of receiving the statement, about their concerns.

Negotiations took place, between the manager and the residents, however communication broke down. The chairperson of the Resident's Committee, on behalf of the residents, lodged an application with the Tribunal in respect of the expenditure proposed for the next financial year.

The matter was listed for a directions hearing after 10am which allowed time for the residents to travel to the local community hall. A number of residents attended the hearing and were represented by the chairperson of the Resident's Committee. The manager of the village attended on behalf of the operator.

Both parties produced evidence to support their claim regarding the proposed budget for the village. The Tribunal member ascertained that the evidence had not been examined by the other party prior to the hearing and therefore directed a timetable for the exchange of documents to occur. The member also determined that on the oral evidence provided at the hearing, the parties would not benefit from a mediation session and adjourned the matter for a full day hearing.

The village manager and a number of residents appeared at the next hearing. The member allowed extensive cross questioning by both parties on the evidence.

The Tribunal member reserved the decision in order to review the evidence and relevant case law. The decision handed down five weeks later determined that the proposed expenditure not exceed the standard CPI increase of 3% compared to the previous year.

### Elbow grease...

*Mediation is a tool used when resolving disputes between village owners and residents. It provides an opportunity to identify the issues in dispute and allows the parties to reach an agreement they can both live with.*

A retirement village owner prepared a budget which included a special levy for the painting of common areas within the village. The residents were opposed to the special levy for painting and voted against it.

The village owner lodged an application seeking to have the budget approved to include the special levy.

The village residents were represented by the Aged Care Rights Service which provides advocacy for residents of retirement villages.

The matter was listed for a 45 minute directions hearing at the community hall within the village. The matter was listed at 2pm to allow residents to attend after lunch was served in the hall.

At the directions hearing, the residents claimed that the common areas were painted less than three years ago. The Tribunal member directed that the village owner provide evidence as to the current condition of the common areas.

The matter was subsequently listed for a half day mediation at the village premises which allowed the 38 residents of the village to attend the mediation. With the assistance of a Tribunal member, it was identified that not all areas required re-painting and that cleaning would be sufficient in some areas.

The parties reached an agreement through mediation. The agreement outlined that some common areas would be cleaned and that no special levy was required for the small amount of painting needed.

### Changing circumstances...

*Operators and residents can apply for termination and vacant possession ending the residence contract on the grounds of unsuitability of the premises due to the resident's physical or mental capacity.*

An elderly village resident began leaving the premises during the night and was found wandering around the neighbouring streets on a number of occasions by local residents.

The operator liaised with the family members who claimed that these were isolated incidents as the resident was upset due to the recent passing of a close friend within the village. The resident and the family declined to find alternative accommodation despite the operator's recommendation.

The operator lodged an application for termination and possession ending the residence contract. The operator claimed that the accommodation was no longer suitable due to the resident's declining health.

At the hearing, the resident was represented by her family. Evidence was presented by both parties including a medical report from the resident's family doctor indicating that the resident was suffering from dementia and that her condition was unlikely to improve. The family then accepted that their mother required a higher level of supported accommodation.

The parties reached a consent agreement terminating the residence contract and allowing sufficient time to find alternative suitable accommodation in a nearby nursing home.

# Appendices

## Appendix 1. Legislation

The following 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*  
*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

### **Residential Parks Amendment (Smoke Alarms) Regulation 2006, Residential Tenancies (Residential Premises) Amendment (Smoke Alarms) Regulation 2006 and Retirement Villages Amendment (Smoke Alarms) Regulation 2006**

These regulations commenced on 1 May 2006, amending respectively the Residential Parks Regulation 1999, Residential Tenancies (Residential Premises) Regulation 1995 and the Retirement Villages Regulation 2000, to insert provisions into the standard contracts relating to the installation and consequential maintenance of smoke alarms.

### ***Statute Law (Miscellaneous Provisions) Act 2006***

The Act was assented to on 20 June 2006 and inserted into the Holiday Parks (Long-term Casual Occupation) Act 2002 section 27(1)(f), which gave the Tribunal the power to order the termination of an occupation agreement and make an order for possession of the site.

### ***Residential Tenancies Amendment (Social Housing) Act 2005***

The Act commenced on 28 November 2005 and made amendments to the *Residential Tenancies Act 1987*. References to sections are to the *Residential Tenancies Act 1987*.

In summary:

- Section 9 allows for a prescribed standard form of agreement to contain terms for social housing tenancy agreements (or a class of social housing tenancy agreements) entered into before the regulations prescribing those terms took effect.

- Section 14A allows a landlord under a social housing tenancy agreement to declare a further fixed term where the fixed term has ended by notice in writing to the tenant. At the end of the declared fixed term a further term may be set or s. 14 applies.
- Under s. 19A, which applies to all agreements, it is a term of every social housing tenancy agreement that the tenant must pay water usage charges determined in accordance with guidelines approved by the Minister. The section provides what must be set out in the guidelines.
- Section 19B incorporates into social housing tenancy agreements a term that a tenant who is in debt to the landlord in connection with that agreement or a prior social housing agreement, is to make reasonable arrangements for the payment of that debt, and is to comply with those arrangements and with any variations as agreed.
- Section 35 of the Act provides for circumstances in which another person may be recognised as a tenant and do not apply to the NSW Land and Housing Corporation or the Aboriginal Housing Office – s. 132.
- Section 35A deals with the making and enforcement of acceptable behaviour agreements for public housing tenants.
- The restrictions imposed upon landlords requiring or receiving charges for gas and electricity and cleaning of communal facilities under s. 37 do not apply to the NSW Land and Housing Corporation.
- Sections 40 and 41 of the Act which impose obligations upon the landlord to provide rent receipts and maintain rent records do not apply to the NSW Land and Housing Corporation or to the Aboriginal Housing Office.
- Under s. 47A a tenant under a social housing tenancy agreement whose rent rebate is cancelled, may apply to the Tribunal for an order declaring that the rent payable under the agreement or proposed social housing tenancy agreement for premises already occupied by the tenant is excessive.
- There are significantly different provisions under Division 2A regarding termination of social housing tenancy agreements which operate in addition to the other termination provisions.
- Section 63B deals with termination on the grounds of eligibility.
- Section 63C details the eligibility assessments of social housing tenants.
- Section 63D provides that prior to giving notice of termination the landlord is to give notice of the intention to do so and details of the right to apply for a review of that decision.
- Section 63E sets limits on the times at which such notices of termination can be given.
- Under s. 63F a landlord under a social housing tenancy agreement may give notice of termination on the ground that the landlord has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises.

- Section 63G provides that notice of intention to give the notice of termination must be given and inform the tenant of the right to seek a review of the decision.
- Specified time periods must be observed – s. 63H.
- Section 63 I is a special provision for termination of public housing tenancy agreements where the tenant has failed or refused to enter into an acceptable behaviour agreement or has seriously or persistently breached the terms of an acceptable behaviour agreement.

### ***Residential Parks Amendment (Statutory Review) Act 2005***

Part of the Act commenced on 3 February 2006 and part on 10 April 2006 with Sch 1 [15]-[17] yet to commence. The Act made amendments to the *Residential Parks Act 1998* in three broad areas. First, there are changes strengthening the provisions dealing with the events that take place before a resident enters a park; secondly, there are modifications to the day-to-day relationship between the park owner and the resident during the tenancy; and, finally, there are changes to the mechanisms that apply when the time comes for the tenancy to be brought to an end.

In summary, under the *Residential Parks Amendment (Statutory Review) Act 2005*: Advertising is required to spell out the fact that the land is subject to a tenancy and will not be owned by the resident.

- Failure to put this information in the advertisement will attract a penalty of up to \$2,200.
- Maximum penalty for failing to give incoming residents all the necessary information is increased to a maximum of \$2,200.
- Any additional clauses to those contained in the standard tenancy agreement are required to be provided on a separate sheet of paper.
- Additional information is required to be given to incoming residents on whether there have been any development applications over the previous five years, whether termination notices have been given to any residents on the grounds of a redevelopment, whether the park is on Crown land, what the electricity and gas arrangements are and whether homes can be sold while located in the park.
- It is an offence for park owners not to give residents a written tenancy agreement.
- Park liaison committees are no longer a mandatory obligation upon a park owner where there are 20 or more residents.
- However, if a majority of residents want to retain a committee this is still possible.
- Internal residents committees are formally recognised and entitled to meet without hindrance in suitable park facilities.
- Park disputes committees are dispensed with and residents are now able to take any park rule disputes directly to the Tribunal.
- Individual residents are able to pursue park rules matters in the Tribunal.
- Residents are prevented from selling their homes within the park only if both the disclosure material and the tenancy agreement so specify.
- These changes will not apply to Crown or National Parks and Wildlife lands.
- When residents are permitted to sell their homes, park owners are not entitled to restrict the use of “for sale” signs that are affixed to the homes.
- When residents find that their only option is to sell their home to the park owner but agreement cannot be reached on a fair price, the Tribunal has jurisdiction to break the deadlock and provide an independent valuation with the assistance of qualified valuers.
- Rent increases that do not exceed the consumer price index for the period involved are subject to review only when it can be established that a service or facility has been withdrawn or reduced.
- Park residents are to pay for any supply charges- as distinct from consumption charges- proportionately to the capacity provided by the park owner.
- Certain clauses have been prohibited from tenancy agreements: those that would allow park owners to allocate rent payments by residents to any charges, appointment of park owner as the sole selling agent for the resident’s home, indemnification of the park owner against legitimate and lawful claims by the resident, and requirements for residents to only use trades and services persons nominated by the park owner.
- Provisions enacted for the appointment of an administrator when things have gone seriously wrong with the management of a park.
- Access by emergency services to parks when needed by residents.
- Park owners required to obtain development approval from appropriate authorities before such a notice of termination can be validly given.
- In instances where development approval is not required, park owners required to seek approval from the Tribunal to authorise the issuing of a change of use termination notice.
- Minimum period of notice when a park redevelopment is proposed increased to 12 months.
- Termination notice to make it clear that residents have the right to remain in possession until the Tribunal orders them to leave, and to be paid compensation by the park owner in line with legislative requirements.
- Park owner required to notify Department of Housing at the time of issuing the notice of termination.
- Amendments to compensation provisions: residents entitled to get their compensation before they leave, compensation broadened so available for relocation of a home to another park up to 500 kilometres away, access to the Tribunal more than once over compensation and Tribunal given

power to establish a fair price for home where the resident and park owner cannot agree.

### ***Strata Schemes Management Regulation 2005***

The Regulation commenced on 1 September 2005 replacing the Strata Schemes Management Regulation 1997.

Major changes included:

- New Clause 5(3) – reflects the fact that modern accounting systems store information electronically and provides this as an alternative to hard copy systems.
- Model by-laws: Cleaning windows and doors (Schedule 1 Clause 11, Schedule 2 Clause 10, Schedule 6 Clause 11) – clarifies who is responsible for cleaning exterior and interior windows and doors.
- Model by-laws: Changes to floor coverings (Schedule 1 Clause 13, Schedule 2 Clause 12, Schedule 6 Clause 13) – provides advance information to owners corporation as to type of proposed changes to floor coverings.
- Model by-laws: Garbage disposal (Schedule 1 Clause 15, Schedule 2 Clause 14, Schedule 3 Clause 8, Schedule 5 Clause 7, Schedule 6 Clause 15) – additional clauses should ensure greater adherence to local councils' codes and regulations for the disposal of garbage, waste and recyclable materials.
- Model by-laws: Compliance with planning and other requirements (Schedule 1 Clause 20(1), Schedule 2 Clause 19(1), Schedule 3 Clause 14, Schedule 4 Clause 13, Schedule 5 Clause 14, Schedule 6 Clause 23(1) – additional provisions will ensure that lots are only used for the legally designated purpose.
- Model by-laws: Compliance with planning and other requirements (Schedule 1 Clause 20(2), Schedule 2 Clause 19(2), Schedule 6 Clause 23(2)) – additional provisions will minimise unsafe and unhygienic overcrowding in strata schemes.

## **Appendix 2. Access to Information**

Pursuant to s10 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 cl11 of sch1 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 in writing to the Deputy

Registrar at the Registry where the file is held.

Under cl38(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.

Five requests under the Freedom of Information Act 1989 were received during the reporting period. Of those requests, one was granted and two were withdrawn. The other two were refused either because the Tribunal did not hold the documents or the documents required were exempt under the legislation.

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

## **Appendix 3. Complaints**

In the reporting period 928 people wrote to the Tribunal outlining concerns about the Tribunal's practices and procedures. This represents a decrease of 2% compared to last year. This represents 1.5% of the total applications received. The majority of concerns remain dissatisfaction with the outcome of proceedings.

## Appendix 4. Divisional Consultative Forums

The organisations represented on the consultative forums are set out below

### Tenancy Division

Association to Resource Cooperative Housing  
Combined Pensioner and Superannuants'  
Financial Counsellors Association of NSW  
Gandangara Local Lands  
Housing Appeals Committee  
Legal Aid Commission  
NSW Aboriginal Housing Office  
NSW Department of Housing  
Office of Fair Trading  
Public Tenants Council  
Real Estate Institute of NSW  
Redfern Legal Centre  
South West Tenants Advice and Advocacy  
Southern Sydney Tenants Service  
Teacher Housing Authority of NSW  
Tenants Union of NSW

### General Division

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

### Home Building Division

Australian Institute of Building  
Building and Construction Council NSW  
Civil Contractors Federation  
Institute of Building Consultants  
Institute of Strata Title Management  
Master Builders Association  
Master Painters Association  
Master Plumbers and Mechanical Contractors Association  
National Electrical and Communications Association  
Office of Fair Trading  
Royal Australian Institute of Architects  
Swimming Pool and Spa Association  
The Law Society of NSW  
Timber Flooring and Finishing Association  
Vero Insurance

### Residential Parks Division

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

### Strata and Community Schemes Division

Combined Pensioner and Superannuants'  
Institute of Strata Title Management  
Management Rights Association (NSW) Inc  
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  
NRMA  
Office of Fair Trading

### Commercial Division

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

### Retirement Villages Division

Aged & Community Services Association  
Combined Pensioner and Superannuants'  
Council of the Ageing (NSW) Inc  
Housing Industry Association  
Nursing Homes and Extended Care Association  
Office of Fair Trading  
Retirement Village Association  
Retirement Villages Residents Association  
The Aged-Care Rights Association  
Wesley Mission

## Appendix 5. Application Fees & Charges

Consumer, Trader and Tenancy Tribunal fee schedule 1 July 2005 – 30 June 2006

### Tenancy, Residential Parks, Retirement Villages, and Strata and Community Schemes Divisions

Tenancy, Residential Parks and Retirement Villages Divisions	\$30.00
Strata and Community Schemes Division	\$61.00

### General, Home Building and Motor Vehicles Divisions

Claims or disputes not exceeding \$10,000.00 (or no specific amount claimed)	\$30.00
Claims or disputes between \$10,000.00 and \$25,000	\$61.00
Claims or disputes exceeding \$25,000	\$163.00

NB. The maximum claim in the General Division is \$25,000.00

NB. The maximum claim in the Motor Vehicle Division is \$25,000.00 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)	\$30.00
Claims or disputes between \$10,000 and \$25,000	\$61.00
Claims or disputes exceeding \$25,000	\$163.00
For applications under section 86 or 86A of the Credit Act 1984	\$542.00
For applications under the Consumer Credit (NSW) Code except -	\$68.00
For applications under section 101 of the Consumer Credit (NSW) Code if the application is made by a credit provider.	\$542.00

NB. 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 Code*; or
- (c) s5 or s6 of the *Credit (Home Finance Contracts) Act 1984*

### Pensioners and students

All application fees are \$5.00.

Please note: Fees for Rehearing and Renewal of Proceedings applications are the same as the substantive applications.

Copy of documents	\$2.00 per page (with a minimum charge of \$22.00)
Issue of summons	\$34.00

### Sound Recording and Transcripts

Sound Recording – standard (10 days)	\$16.50 per CD
Sound Recording – premium (5 days)	\$66.00 per CD
Transcripts	\$300.00 per hour of hearing time

- Fees and charges are reviewed each year. On 1 July 2006, fees and charges will increase.

## 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 2005-2006

	<b>\$'000</b>
<b>Salary and Related Payments</b>	
Salaries	6,183
Statutory Appointees	4,760
Employment Agencies/Security Services	847
Annual Leave	862
Overtime	19
Meal Allowance	0
Long Service Leave	399
Superannuation	1,166
Workers Compensation	115
Payroll Tax	739
Fringe Benefit Tax	92
	<b>15,182</b>
<b>Operational Expenditure</b>	
Office Accommodation	3,225
Postage and Couriers	300
Telephones	425
Minor Computer Purchases and Consumables	182
Fees	656
Training and Development Fees	48
Motor Vehicle Expenses	97
Travel Expenses	252
Minor Equipment, Consumables and Stores	389
Minor Miscellaneous Expenses	140
	<b>5,714</b>
Depreciation	<b>727</b>
Total Operational Expenses	<b>21,623</b>
Administrative On Costs	<b>3,558</b>
Total Recurrent Expenditure	<b>25,181</b>
Capital Expenditure	<b>834</b>
<b>TOTAL EXPENDITURE</b>	<b>26,015</b>
<b>REVENUE</b>	
Lodgement Fees	(1,889)
Contribution from Consolidated Funds	(5,136)
Contribution from Rental Bond Board	(8,368)
Contribution from Home Building Service	(1,571)
Contribution from Statutory Interest Account	(8,324)
	<b>(25,288)</b>
<b>Net Cost of Services</b>	727
<b>Less Non Cash Transactions</b>	727
Depreciation	727
<b>CASH DEFICIT</b>	<b>(0)</b>



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# Annual Report

2005 - 2006

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

[ctttenquire@cttt.nsw.gov.au](mailto:ctttenquire@cttt.nsw.gov.au)

Telephone: 1300 135 399

Facsimile: 1300 135 247

TTY: (02) 9641 6521

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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Consumer, Trader &  
Tenancy Tribunal