



## Civil and Administrative Tribunal Bill 2012

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#### CIVIL AND ADMINISTRATIVE TRIBUNAL BILL 2012

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#### Second Reading

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [4.42 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

It is with great pleasure that the Government introduces the Civil and Administrative Tribunal Bill 2012. This bill establishes the New South Wales Civil and Administrative Tribunal [NCAT]. Fifteen years ago the Administrative Decisions Tribunal Act passed through Parliament with bipartisan support. At the time the former Attorney General, the late Hon. Jeff Shaw, QC, described the proliferation of tribunals in New South Wales as "inequitable for litigants" and "an inefficient application of resources". It was Parliament's intention that the Administrative Decisions Tribunal would be the first step in reducing the large number of tribunals in New South Wales.

Yet, despite a number of recommendations and proposals for further consolidation over the past 15 years, New South Wales has maintained its ad hoc tribunal system. This is despite the fact that during the same period a number of other State and Territory governments in Australia have taken bold steps to reform their tribunal systems. One could say that New South Wales has been left behind. That is why in October 2011 the Attorney General, the Hon. Greg Smith, the Minister for Finance and Services, the Hon. Greg Pearce, and the Minister for Fair Trading, the Hon. Anthony Roberts, and I asked the Legislative Council's Standing Committee on Law and Justice—under my chairmanship, I might add—to consider opportunities to consolidate tribunals in New South Wales.

Under my chairmanship the standing committee conducted a thorough inquiry. It received 88 public submissions, held three public hearings and spoke to representatives from consolidated tribunals in a number of other jurisdictions. It was a very exhaustive and thorough inquiry. I thank the committee members for their hard work and dedication. I also thank those individuals and organisations who took the time to make submissions to the inquiry. The committee published its final report in March 2012. The report found that "stakeholders described the current tribunal system as complex and bewildering". To reduce this complexity, the committee recommended that the Government pursue the establishment of a new tribunal to consolidate existing tribunals where it is appropriate and promote access to justice. This bill establishes that tribunal.

The Government has identified 23 tribunals or other bodies that will join the New South Wales Civil and Administrative Tribunal. These include some of the larger and better-known tribunals, such as, the Consumer, Trader and Tenancy Tribunal; the Administrative Decisions Tribunal; the Guardianship Tribunal; and various health professional tribunals. A number of other tribunals, or other entities that exercise tribunal functions, will also join the New South Wales Civil and Administrative Tribunal, including the Local Government Pecuniary Interest and Disciplinary Tribunal; the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal; the various local land boards established under the Crown Lands Act 1989; and the Charity Referees, who exercise certain functions under the Dormant Funds Act 1942. The New South Wales Civil and Administrative Tribunal will take over the functions of the Vocational Training Appeal Panel.

As chairman of the Standing Committee on Law and Justice I am proud to be a part of this long overdue reform. I am proud to be part of the Government that has introduced this legislation. As I said, this important reform is long overdue and it has taken a Liberal-Nationals Government to have the strength to proceed with it. I am also proud to be part of a Government that is committed to continuing to improve services for the people of New South Wales. Tribunals perform an invaluable role within the justice system. They provide timely, efficient and flexible points of access for citizens seeking to resolve disputes or to have a review of executive action. They are also cheaper, faster and less formal than court proceedings. But the ad hoc nature of our current tribunal system creates inefficiencies. At the moment many of the separate tribunals maintain their own infrastructure, including

separate facilities and separate administrative structures.

**The Hon. Dr Peter Phelps:** Shame.

**The Hon. DAVID CLARKE:** Yes, it has been a shame and it has been a waste for many years. The Hon. Dr Peter Phelps is quite correct. The current tribunal system results in unnecessary duplication. It also creates much of the confusion referred to by the standing committee in its report. The New South Wales Civil and Administrative Tribunal will reduce these inefficiencies. It will be a one-stop shop for tribunal services. It will be independent, it will be transparent, it will be accountable and it will place customers at the centre of service design. At the end of the day this Government is committed to the customers—the people of New South Wales, who were overlooked for 16 years. We do what we do for the people of New South Wales.

The New South Wales Civil and Administrative Tribunal will have a single contact point, with one website and one phone number. When members of the public need to access a tribunal, they will not be confused about where they need to go. In almost every case, it will be the New South Wales Civil and Administrative Tribunal. The New South Wales Civil and Administrative Tribunal will have consistent client service standards. It will reach out to culturally and linguistically diverse communities. It will also make sure that tribunal users benefit from forms and materials that are simple and easy to understand. By taking advantage of existing tribunal facilities, the New South Wales Civil and Administrative Tribunal will also be able to provide greater access for people in rural and regional communities.

Economies of scale that come with a tribunal of this size also will provide opportunities to share resources more effectively. This will deliver benefits to the community through better value for money and a more consistent user experience. Best practice will be identified and rolled out across tribunals, leading to better quality decision-making and enhanced public confidence in our tribunal system. The Government acknowledges that not every tribunal has direct customers. For example, members of the general public do not file applications in every tribunal that will be consolidated. But all tribunals will benefit from this reform.

All members of the Civil and Administrative Tribunal will receive consistent training and professional development opportunities. The Civil and Administrative Tribunal's size and flexible membership structure will provide a collegiate and collaborative environment to work in. Under the Civil and Administrative Tribunal, our highly skilled members will receive new opportunities to share their knowledge and experience with a broader range of colleagues. For example, members of our health tribunals will be able to share their extensive professional discipline experience with members of the Administrative Decisions Tribunal's professional discipline lists.

Members of our smaller tribunals, such as the pecuniary interests and disciplinary tribunals and local land boards, will benefit from being part of a larger membership structure with more opportunities to interact with their colleagues. However, while members might discover new opportunities under the Civil and Administrative Tribunal, this does not mean that expertise will be lost. The Government is conscious of the need to preserve the specialist expertise of our current tribunals. When a member is appointed to the Civil and Administrative Tribunal, they will not automatically be able to hear any matter that comes before the tribunal. Members will be able to hear particular matters only if they are qualified to do so. Particular qualification requirements will be set in consultation with stakeholders.

The benefits associated with this reform are substantial. But the Government is aware of the challenges associated with establishing a tribunal of this size. A significant amount of work will need to be done before the Civil and Administrative Tribunal can begin hearing matters. That is why the Government has decided that the Civil and Administrative Tribunal will not open for business until January 2014. This will allow the Government to take a staged approach to the Civil and Administrative Tribunal's development. This bill represents the first stage of that process. The bill sets up the Civil and Administrative Tribunal's divisional structure. The Civil and Administrative Tribunal will have five divisions—consumer and commercial, administrative and equal opportunity, occupational and regulatory, guardianship and victims support. To reflect the unique arrangements under the Health Practitioner Regulation National Law, a separate health list has been created within the occupational and regulatory division. Other divisions also will be able to manage their caseload in lists.

Some tribunals, such as the Administrative Decisions Tribunal and Consumer, Trader and Tenancy Tribunal, will be accustomed to working in a divisional structure. Members of those tribunals would know that the Civil and Administrative Tribunal's structure will enable emerging jurisdictions to be easily absorbed in future. It also means that, should any of the small number of tribunals not joining the Civil and Administrative Tribunal straightaway be deemed suitable for consolidation in future, they will be able to do so with minimal disruption. The Civil and Administrative Tribunal's structure will provide each division with the flexibility to tailor services to meet the needs of their particular user groups. A one-size-fits-all approach will not be taken. Professional representation on panels will be preserved, and community members will continue to play a key role in assisting tribunals to reach fair and just outcomes.

The bill establishes the Civil and Administrative Tribunal's governance framework. The Civil and Administrative Tribunal will have five categories of member—the president, the deputy president, principal member, senior

member and general member. The bill provides that the President of the Civil and Administrative Tribunal will be a Supreme Court Judge. That will ensure that the Civil and Administrative Tribunal is independent and free from the direct control of the Executive. The bill also enables members of the Civil and Administrative Tribunal to be appointed before 1 January 2014, which means that the president and certain other members will be able to develop tribunal rules and enter into any other necessary arrangements to ensure that the tribunal is ready for business. To ensure that the skill and expertise held by the members of our existing tribunals is preserved under the Civil and Administrative Tribunal, the bill has transitional provisions that automatically transfer tribunal members to the Civil and Administrative Tribunal on 1 January 2014. All members will be appointed for the balance of their current terms, and their existing entitlements, including remuneration, will be preserved.

The bill has savings and transitional provisions that are required to transfer matters to the Civil and Administrative Tribunal when it opens for business, and other administrative provisions relating to the tribunal. However, the bill does not set any detailed provisions relating to practice or procedure; nor does the bill confer any jurisdiction on the Civil and Administrative Tribunal. That is because the Government wants to ensure that detailed requirements, including appeal structures, composition requirements for panels and other procedures, are set in consultation with interested stakeholders. Those provisions, as well as consequential amendments that are required to confer jurisdiction on the Civil and Administrative Tribunal, will be the subject of further legislation that the Government will introduce next year after a detailed consultation process.

The Government has established a steering committee to guide this consultation process and to ensure that the Civil and Administrative Tribunal opens for business by January 2014. The steering committee consists of senior departmental representatives, including the Director General of the Department of Attorney General and Justice and the Deputy Director General of the Ministry of Health. The steering committee shortly will invite stakeholders to form a reference group to assist the committee. The reference group will include representatives from the tribunals themselves, their user groups, professional associations and other interested stakeholders. Because those representatives will be experts on the tribunals that are being consolidated, the reference group will provide invaluable assistance to the steering committee and to the Government. The reference group also will provide a forum for stakeholders to voice any concerns and to ensure that the Civil and Administrative Tribunal meets their particular needs.

When developing this proposal, so far the Government has had the benefit of 88 public submissions to an inquiry by the Standing Committee on Law and Justice. The current bill also has been the subject of consultation across government. In addition, a number of tribunal heads and administrators have reviewed the bill and provided valuable advice. I thank everyone who has been involved in this project so far for the collaborative spirit in which they have approached the task. Many tribunals and departments have shown a willingness to embrace this change, which I find very impressive. The Government has received many expressions of interest from people who want to be part of the reference group. The Government looks forward to working with our tribunals and with the community to deliver a tribunal that meets and exceeds their expectations.

This legislation is a great advance and a great reform for the benefit of the people of New South Wales—a reform that has been brought into existence by a Liberal-Nationals Government. The Government is very proud of this legislation. We can be very proud of what this Government is doing for the people of New South Wales. The Ministers who initiated this legislation have created yet another piece of outstanding legislation for the people of New South Wales. I commend the bill to the House.