



## Consumer, Trader and Tenancy Tribunal Amendment Bill 2008

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Extract from NSW Legislative Assembly Hansard and Papers Friday 11 April 2008.

#### Agreement in Principle

**Ms TANYA GADIEL** (Parramatta—Parliamentary Secretary) [10.53 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Consumer, Trader and Tenancy Tribunal Amendment Bill 2008. The bill implements the recommendations of the statutory review of the Consumer, Trader and Tenancy Tribunal Act 2001 and the outcomes of an independent review of the tribunal's operations. The tribunal offers a valuable service to the people of New South Wales by providing an accessible, efficient and affordable avenue for the resolution of disputes about the supply of goods and services and issues relating to residential property.

The tribunal conducts hearings throughout New South Wales and deals with matters under eight separate divisions, namely, Tenancy, Home Building, Strata and Community Schemes, Retirement Villages, Residential Parks, Motor Vehicles, General and Commercial divisions. The tribunal is headed by the chairperson, who is assisted by two deputy chairpersons. The Deputy Chairperson (Determinations) is responsible for the tribunal's adjudication function and assists the chairperson in managing members. The Deputy Chairperson (Registry and Administration) is a non-sitting member and is responsible for the tribunal's financial, administrative and registry functions.

In the last financial year the tribunal received 64,168 applications and conducted 79,826 hearings. It is a very busy tribunal indeed. Despite this workload, most matters were finalised within 35 days from lodgement, either at or before the first hearing. This reflects the tribunal's mandate to provide an informal alternative to the courts system for quick and low-cost dispute resolution. Wherever possible, the tribunal aims to bring the parties to a mutually agreed settlement. In most matters, qualified conciliators bring both parties together before a hearing to help them reach agreement. The tribunal came into being in February 2002, replacing the former Fair Trading and Residential Tribunals, and is established under the Consumer, Trader and Tenancy Tribunal Act 2001.

The bill arises as a result of the lemma Government's consultation with interest groups and stakeholders during a statutory review of the Act's operation in practice. The review commenced with preliminary consultation being carried out with key interest groups to assist in identifying relevant issues for examination in the review. Following this an issues paper was prepared covering a wide range of topics, including jurisdiction, rehearings, appeals, member performance and procedure. Comment was also sought on any other relevant matters not specifically mentioned in the issues paper. Forty formal submissions were received in the course of the review, and I am pleased to say that more than a third of these came from individual consumers. The remaining submissions came from industry and consumer bodies, as well as individual traders, government agencies, and community and legal groups.

A report on the review was tabled in Parliament by my colleague the Hon. Diane Beamer. The review found that the policy objectives of the Act remain valid and that the terms of the Act are fundamentally appropriate for serving its objectives. It also found that the legislation could be improved in some areas to better meet the Act's objectives and improve the tribunal's effectiveness. In the course of the statutory review a number of operational issues arose. To respond to these the then Minister for Fair Trading commissioned an independent review of the tribunal's operations. The report on the operational review was publicly released on 13 July 2007. The Consumer, Trader and Tenancy Tribunal Amendment Bill addresses the recommendations of both reviews, as well as other matters that have since arisen.

I now take the opportunity to outline the main provisions in the bill. The bill clarifies members' qualification requirements by providing that members are to have ability or experience in alternative dispute resolution. This will replace the current requirement to simply have an understanding of, and commitment to, alternative dispute resolution. The tribunal chairperson is already required to be an Australian lawyer. The bill extends this to apply to the Deputy Chairperson (Determinations), recognising that the position holder is required to act as chairperson from time to time. The current deputy chairperson holds the appropriate qualifications.

The amendments will provide the chairperson with additional direction-making powers with regard to tribunal proceedings, to ensure that matters are dealt with as expeditiously as possible and in proportion to their cost and importance. The chairperson can currently give procedural directions to members about matters they are hearing. The amendment makes it clear that procedural directions can also be given for classes of proceedings.

The chairperson will also be able to delegate certain powers of an administrative nature to the registrar and deputy registrars of the tribunal. These will include powers to adjourn proceedings, withdraw an application if requested by the applicant, give procedural directions, and make orders giving effect to a settlement. The specific powers will be prescribed in the regulations.

The bill removes the tribunal's power to apprehend a person who has been served with a summons to appear before the tribunal. The Act currently provides that a person who is served with a summons to attend and give evidence at a tribunal hearing and fails to attend may, after the issue of a warrant, be apprehended, detained and brought before the tribunal. The review concluded that it is not appropriate for the tribunal to carry out this role. When the tribunal makes an order, it can give leave to the person in whose favour the order is made to renew the proceedings if the order is not complied with within the period specified by the tribunal. There is currently no time limit for the renewal of proceedings after the other party has failed to comply. The review found that this was not appropriate and could lead to cases being renewed many years after the original order was made. The amendment limits the period in which this can be done to 12 months after the compliance date specified by the tribunal.

The current time period for providing written reasons for decisions by the tribunal is seven days after a request is made by one of the parties to the matter. This issue generated a great deal of comment in submissions to the review. Many submissions noted that, despite the best intentions, the tribunal rarely provides written reasons within this period. Other comparable tribunals, such as the Administrative Decisions Tribunal, are not subject to seven-day time limits. The review concluded that a 28-day time frame would be more appropriate and would enable the tribunal to meet its legislative obligations. The Act allows a party to completed proceedings to apply to have the proceedings reheard, in limited circumstances. The grounds for an application are where the applicant may have suffered a substantial injustice because the decision of the tribunal was not fair and equitable; or the decision went against the weight of evidence; or significant new evidence has become available since the original proceedings were heard. It is important to note that a rehearing is not an appeal. Rather, a rehearing allows for a matter to be heard afresh by the tribunal.

The chairperson makes the decision about whether a matter can be reheard, and that decision is final. The review concluded that, in general, it is appropriate that there is only one opportunity for a rehearing application to be made to the tribunal. However, the review also found there might be limited circumstances where natural justice considerations should allow for a second rehearing application, such as where substantial new evidence arises after the first rehearing application has been refused. The review also recommended that there be tight restrictions and limits on this second rehearing application process. Accordingly, the bill introduces a right for parties to make a second application for a rehearing of a matter in limited circumstances.

An application can be made if significant new evidence becomes available after the first refusal, and that evidence suggests a substantial injustice has occurred to one or more parties. The application will have to be made within the time period prescribed in the regulations. The chairperson will be able to delegate the power to consider rehearing applications to the Deputy Chairperson (Determinations). An application for a rehearing of completed proceedings currently cannot be made where the amount in dispute was over \$25,000, or another amount prescribed in the regulations. The bill will remove the reference to a monetary amount from the Act and simply provide for the threshold to be prescribed in the regulations.

It is proposed to increase the threshold to \$30,000, in line with the increase to the tribunal's general jurisdiction from \$25,000 to \$30,000, which was implemented last September. The bill provides for all tribunal proceedings to be sound recorded, unless circumstances arise that make it unreasonable to do so—for example, where there is a technical malfunction the member is unable to rectify. The requirement for sound recording will increase the transparency of tribunal proceedings and ensure there is an accurate record that could be used to resolve possible future complaints. Recordings will have to be kept for a period to be prescribed in the regulations.

The bill creates a new Social Housing Division in the tribunal. The new division will deal with applications relating to social housing premises, which are defined in the Residential Tenancies Act 1987 as premises leased by a social housing provider. Social housing providers include the Land and Housing Corporation, the Department of Housing, the Office of Community Housing, the Aboriginal Housing Office, and registered community housing organisations. Tenancy applications make up the bulk of the tribunal's workload, comprising 77 per cent of all applications received in the last financial year. Currently around 25 per cent of tenancy applications are social housing matters. The tribunal has estimated that this amounts to more than 11,000 applications annually.

Changes to the Residential Tenancies Act over the past few years have introduced specific social housing provisions, including additional grounds for termination; legal recognition of acceptable behaviour agreements for public housing tenants; and additional consideration tribunal members may give to the special circumstances of social housing tenants. Social housing matters, accordingly, require specialist member knowledge and can take longer to resolve than other tenancy matters. The creation of the Social Housing Division will allow tribunal members to deal with these matters expeditiously whilst not delaying mainstream tenancy matters. Currently, the Act provides for full-time members of the tribunal to be paid in accordance with the Statutory and Other Offices Remuneration Act 1975, while the pay of part-time members is determined by the Minister. The bill provides that remuneration of all members is to be determined in the same manner—that is, in accordance with the Statutory

and Other Offices Remuneration Act.

The final amendment I will address today relates to the establishment of a Professional Practice and Review Committee for the tribunal. The committee's role will be to review and provide advice on matters referred to it by the Minister, the Commissioner for Fair Trading, the chairperson or another person prescribed in the regulations. Matters that will be able to be considered by the committee include the education, training or professional development of members; performance management of members; complaints against members and remedial or disciplinary action to be taken; and performance and complaints trends.

The committee will be comprised of the chairperson and deputy chairpersons of the tribunal, the Commissioner for Fair Trading and two other persons appointed by the Minister who have expertise in consumer protection, ethics, dispute resolution, education or public administration. The committee will be chaired by one of the independent appointees, who will have a deliberative vote and, in the event of an equality of votes, a second or casting vote. In addition, one or more members of the committee, if dissatisfied with advice provided by the committee on any matter, will be able to provide a minority report to the person who referred the matter to the committee. The bill also provides for the procedures of the committee and reporting on its activities.

The statutory review also recommended that the tribunal's maximum general jurisdiction of \$25,000 be increased to \$30,000. This recommendation was implemented on 1 September 2007 when the Consumer Claims Regulation was remade. In concluding, this bill delivers a range of refinements and improvements to the Consumer, Trader and Tenancy Tribunal Act to significantly improve the tribunal's ability to resolve disputes between consumers and traders effectively. It comes as a result of the Government's statutory review, which involved extensive consultation with stakeholders, and the independent review of the tribunal's operations, and it deserves to receive strong support. I commend the bill to the House.