

**NSW PARLIAMENTARY LIBRARY
RESEARCH SERVICE**

**The Consumer, Trader and
Tenancy Tribunal**

by

Rowena Johns

Briefing Paper No 11/03

ISSN 1325-5142
ISBN 0 7313 1738 6

May 2003

© 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent from the Librarian, New South Wales Parliamentary Library, other than by Members of the New South Wales Parliament in the course of their official duties.

NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE

David Clune (MA, PhD, Dip Lib), Manager (02) 9230 2484

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),
Senior Research Officer, Politics and Government / Law (02) 9230 2356

Talina Drabsch (BA, LLB (Hons)), Research Officer, Law (02) 9230 2768

Rowena Johns (BA (Hons), LLB), Research Officer, Law (02) 9230 2003

Roza Lozusic (BA, LLB), Research Officer, Law (02) 9230 3085

Stewart Smith (BSc (Hons), MELGL), Research Officer, Environment.. (02) 9230 2798

John Wilkinson (BA (Hons), MA), Research Officer, Economics..... (02) 9230 2006

Should Members or their staff require further information about this publication please contact the author.

Information about Research Publications can be found on the Internet at:

www.parliament.nsw.gov.au/WEB_FEED/PHWebContent.nsf/PHPages/LibraryPublications

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

CONTENTS

EXECUTIVE SUMMARY	1
1. INTRODUCTION	1
2. RECENT HISTORY OF CONSUMER PROTECTION	2
2.1 From the 1960s to 1997	2
2.2 Fair Trading Tribunal and Residential Tribunal: 1998 to 2001.....	6
3. PROCEDURES AND POWERS OF THE CONSUMER, TRADER AND TENANCY TRIBUNAL	9
3.1 Establishment of the CTTT	9
3.2 Objectives	10
3.3 Jurisdiction of the CTTT	10
3.4 CTTT locations.....	10
3.5 Membership structure	11
3.6 Applications.....	12
3.7 Divisions.....	12
3.8 Expert assessors	19
3.9 Conciliation	20
3.10 Mediation and neutral evaluation	20
3.11 Hearings.....	21
3.12 Representation	21
3.13 Costs	22
3.14 Rehearings and appeals.....	22
3.15 Enforcement of orders	23
4. OFFICE OF FAIR TRADING	24
4.1 Complaint handling	24
4.2 Case studies of compliance action.....	25
5. NEW BUILDING REFORMS TO PROTECT CONSUMERS.....	27
5.1 Building Legislation Amendment (Quality of Construction) Act 2002	27
5.2 Parliamentary Committee on Quality of Building Construction	28
5.3 Office of Home Building	30
6. CONCLUSION	32

APPENDIX A: Contact details of the Consumer, Trader and Tenancy Tribunal and the Office of Fair Trading

APPENDIX B: Application fees in the Consumer, Trader and Tenancy Tribunal

EXECUTIVE SUMMARY

This briefing paper examines the Consumer, Trader and Tenancy Tribunal, a super tribunal that determines consumer, credit, motor vehicle, home building, tenancy, strata, retirement village, and residential park disputes in New South Wales. Commentary is given on the statutory provisions governing the Tribunal, and illustrated by examples of the Tribunal's decisions since it commenced in February 2002. A recent history of consumer protection laws is outlined to show the derivation of the jurisdiction and objectives of the present Tribunal. Reference is also made to the complaint handling functions of the Office (formerly Department) of Fair Trading, to clarify its relationship to the Tribunal.

Recent history of consumer protection (pages 2-8)

- The *Consumer Protection Act 1969* established a Consumer Affairs Bureau and a Consumer Affairs Council within the Department of Labour and Industry, to respectively handle consumer complaints and advise the Minister on consumer matters. A separate Department of Consumer Affairs was created for the first time in 1976.
- Statutory tribunals to deal with disputes between consumers and providers of goods or services were authorised by the *Consumer Claims Tribunal Act 1974*. Subsequent legislation created specific bodies to handle credit, tenant, home building, motor vehicle and other complaints.
- One of the important statutes affecting consumers that was introduced in the 1980s was the *Fair Trading Act 1987*. It covers issues such as misleading and deceptive conduct with regard to goods and services, and mirrors the safeguards in Part V of the *Trade Practices Act 1974* (Cth).
- The Department of Fair Trading superseded the Department of Consumer Affairs in 1995. In 1998, various separate tribunals were consolidated into two bodies: the Fair Trading Tribunal and the Residential Tribunal. The statutory review of the tribunals that was conducted after two years recommended the merger of the tribunals.

Procedures and powers of the Consumer, Trader and Tenancy Tribunal (pages 9-23)

- The Consumer, Trader and Tenancy Tribunal was created by the *Consumer, Trader and Tenancy Tribunal Act 2001* and commenced operation on 25 February 2002. The Tribunal is comprised of 8 Divisions: General (ie. general consumer claims), Motor Vehicles, Tenancy, Home Building, Commercial (ie. consumer credit, licensing of travel agents, and commission fees of property agents), Strata and Community Schemes, Residential Parks, and Retirement Villages.
- Some of the Divisions limit the amount of money that may be claimed (eg. \$25,000 in the General Division and \$500,000 in the Home Building Division), but others have no upper limit. The jurisdiction of the Consumer, Trader and Tenancy Tribunal prevails over a court if at the time of the application there were no proceedings pending in a court.

- The *Consumer, Trader and Tenancy Tribunal Act 2001* strongly encourages the parties to attempt conciliation before a formal hearing is conducted by a Tribunal Member. Parties are normally expected to run their own cases and pay their own costs, although legal representatives are allowed and costs may be awarded in certain circumstances. These restrictions are intended to make the Tribunal process quick, informal and affordable.
- A party who disagrees with the determination of the Tribunal can apply for a rehearing if specific criteria are met. An appeal may be lodged with the Supreme Court on a question of law.

Office of Fair Trading (pages 24-26)

- After the re-election of the Carr Labor Government in the State Election in March 2003, the Department of Fair Trading became the Office of Fair Trading, within the Department of Commerce. Consumers can lodge complaints with the Office of Fair Trading, which can investigate the matter, assist the parties in reaching a solution, or refer the complaint to a more appropriate agency.
- Fair Trading can pursue compliance action through various methods including: issuing a public warning about unsatisfactory goods or unfair business practices; instigating a product recall; suspending or cancelling a licence; obtaining a written undertaking from a business; and commencing court action for misleading or deceptive conduct and other offences under the *Fair Trading Act 1987*. In the Supreme Court, undertakings can be enforced or injunctions obtained to restrain a person from particular conduct or from carrying on a business.

New building reforms to protect consumers (pages 27-31)

- Measures to enhance consumer protection in the building industry are in the process of being implemented during 2003. The *Building Legislation Amendment (Quality of Construction) Act 2002* amends the *Home Building Act 1989* to encourage residential building disputes to be investigated at an earlier stage. Specialist building inspectors from the Office of Fair Trading will be able to visit building sites and issue rectification orders. An application that has not undergone this procedure can be declined for hearing by the Consumer, Trader and Tenancy Tribunal.
- A new Office of Home Building, within the Fair Trading portfolio, is planned to be fully operational by 1 July 2003. The Office is intended to be the main point of contact for consumers with residential building problems, although the Consumer, Trader and Tenancy Tribunal will continue to be the relevant tribunal for formal determinations.

1. INTRODUCTION

The Consumer, Trader and Tenancy Tribunal commenced operation on 25 February 2002. The Tribunal was established by the *Consumer, Trader and Tenancy Tribunal Act 2001* and is comprised of 8 divisions: General, Commercial, Motor Vehicles, Home Building, Strata and Community Schemes, Tenancy, Retirement Villages, and Residential Parks. The Act, in conjunction with the *Consumer, Trader and Tenancy Tribunal Regulation 2002*, outlines the operations and procedures of the Tribunal. But the substance of its decisions is governed by the legislation relevant to each division, such as the *Residential Tenancies Act 1987* for disputes between tenants and landlords. It is estimated that the annual workload of the Tribunal will be over 70,000 cases.¹

The Consumer, Trader and Tenancy Tribunal was created by the merger of its two immediate predecessors, the Fair Trading Tribunal and the Residential Tribunal. Compared to those tribunals, it accords more specific managerial and administrative responsibilities to its Chairperson and Deputy Chairpersons, places greater emphasis on alternative dispute resolution, and introduces penalties for supplying false and misleading information. The Tribunal is the latest development after decades of endeavouring to make consumer tribunals more effective, economical, swift, and informal.

The complaint-handling service of the Office (formerly Department) of Fair Trading is also outlined by this briefing paper, as it is distinct from the powers of the Consumer, Trader and Tenancy Tribunal. The Office of Fair Trading conducts investigations, assists in obtaining solutions to consumer problems, and can pursue various remedies under the *Fair Trading Act 1987*. Lastly, forthcoming improvements to consumer protection in the residential building industry are summarised. Some of these initiatives have a bearing on the role of the Consumer, Trader and Tenancy Tribunal, such as preliminary, on-site investigation of building disputes by inspectors before a matter progresses to the Tribunal.

The legal content of this briefing paper was current at 20 May 2003.

¹ Graeme Durie (Senior Member of the Tribunal), 'The Consumer, Trader and Tenancy Tribunal', Paper presented at NSW Young Lawyers Seminar on Practice and Procedure in the Consumer, Trader and Tenancy Tribunal, Sydney, 24 July 2002, para 3.

2. RECENT HISTORY OF CONSUMER PROTECTION

2.1 From the 1960s to 1997

The post-World War II economic boom caused an increase in the availability and diversity of consumer goods and services, and an expansion of retail outlets. Advertising and marketing on a mass scale were facilitated through the new medium of television. These developments encouraged consumer spending and the use of alternatives to direct cash purchases. The individual consumer in the market place became increasingly vulnerable due to the multitude of choices, rapidly changing technology, and growth of large corporations. In response to this situation, the consumer protection movement rose to prominence in the 1960s. Some of the key developments in New South Wales since that time were:

1969: The Askin Liberal Government introduced the *Consumer Protection Act 1969*, recognising that, ‘The amazingly complex array of goods, their method of presentation and the system of marketing in any modern society make it an utter impossibility for consumers to exercise rational choice in all situations. Consumers need help and this is a government responsibility.’²

The Act established a Consumer Affairs Bureau and a Consumer Affairs Council. The Consumer Affairs Bureau was a unit of the Department of Labour and Industry under the direction and control of a Commissioner for Consumer Affairs. Its activities included giving advice to consumers, handling their complaints, and contributing to research, information and education. In its first year of operation, 3000 complaint files were opened. The Consumer Affairs Council was a representative body of private individuals from industry and the community, responsible for advising the Minister on the need for administrative or legislative action in the interests of consumers.³

1971: The *Builders Licensing Act 1971* created the Builders Licensing Board and provided for the licensing and regulation of individuals and corporations carrying out building work.

1974: The Consumer Affairs Council and the Consumer Affairs Bureau became part of a Ministry for Consumer Affairs. The *Consumer Claims Tribunal Act 1974* allowed consumer claims tribunals to be established to deal with disputes between consumers and providers of goods or services, with less expense, formality and delay than court action. The Act limited the amount of an order that a tribunal could make to \$500.

Consumer protection legislation on a national basis was introduced for the first time by the *Trade Practices Act 1974* (Cth), which contained consumer protection provisions in Part V.

² Consumer Protection Bill, Second Reading Speech, Hon Eric Willis MP, Minister for Labour and Industry, *NSWPD*, 12 March 1969, p 4447.

³ J Miley, *200 Years of Consumer Protection in New South Wales*, NSW Department of Consumer Affairs, 1987, pp 15-16.

1976: The Wran Labor Government was elected in New South Wales in May 1976. The Department of Consumer Affairs, a separate government department focusing on consumer issues, was created.

1977: The *Landlord and Tenant (Rental Bonds) Act 1977* required that all rental bonds be deposited with the Rental Bond Board to protect tenants.

1981: The *Consumer Credit Act 1981* regulated the provision of credit and the licensing of credit providers. It also established the Credit Tribunal of New South Wales.

1984: The *Consumer Credit Act 1981* was repealed. In its place, the *Credit Act 1984* regulated consumer finance issues such as credit contracts and loan contracts, rights of mortgagees and mortgagors, insurance for regulated mortgages, and contracts of guarantee between a guarantor and a credit provider with respect to the obligations of a debtor under a regulated contract.

The Commercial Tribunal of New South Wales was created by the *Commercial Tribunal Act 1984*. This Tribunal took over the jurisdiction of the former Credit Tribunal, determining disputes such as whether a credit contract or mortgage was unjust.

1986: The Register of Encumbered Vehicles (REVs) was instigated by the *Registration of Interests in Goods Act 1986*. This statutory public register holds information about motor vehicles and boats that have been used as security for a loan from a bank, finance company, credit union or other credit provider. A prospective purchaser of a vehicle can therefore check with the register to see whether it is encumbered.

1987: The *Fair Trading Act 1987* commenced, reflecting the safeguards in Part V of the *Trade Practices Act 1974* (Cth). Some of the activities covered by the Act are: misleading or deceptive conduct relating to goods; false representation; prizes and gifts; bait advertising; pyramid selling; and unsolicited goods.

The *Residential Tenancies Act 1987* outlined the rights and obligations of tenants and landlords, residential tenancy agreements, termination of agreements and so on. The Act also established the Residential Tenancies Tribunal of New South Wales. The orders that the Tribunal could make included an order that a rent increase was excessive, an order for termination of an agreement, or an order for recovery of possession of premises by the landlord.

The *Consumer Claims Tribunals Act 1987* replaced the *Consumer Claims Tribunals Act 1974*, effectively re-enacting the legislation with expanded procedural and administrative capacities.

The *Building Services Corporation Act 1987* abolished the Builders Licensing Board and replaced it with the Building Services Corporation (BSC). The functions of the BSC were: to protect the interests of home owners, purchasers, and users of building services; to license builders and take disciplinary action; to set, maintain and promote building

standards; to resolve disputes relating to building work; and to give advice about building contracts.

1988: The Greiner Liberal Government was elected in March 1988. A number of government departments were merged to form the Department of Business and Consumer Affairs.

1989: The *Building Services Corporation Act 1989* re-enacted the *Building Services Corporation Act 1987* to expand the BSC's licensing functions, its insurance schemes, and the disciplinary action it could take.

The *Consumer Claims Tribunals (Building Disputes) Amendment Act 1989* provided for the establishment of a Building Disputes Tribunal. The jurisdiction of the tribunal was to deal with building claims brought by clients or by licensed contractors, arising from the supply of goods and services for residential building work or specialist work. The Building Disputes Tribunal was intended to 'provide a cheap and speedy method of resolving disputes that the [Building Services] corporation's procedures are not designed to deal with.'⁴

1991: After the Greiner Government was re-elected in 1991, the separate status of the Department of Consumer Affairs was restored.

1993: The Australian Uniform Credit Laws Agreement 1993 was made between all the States and Territories on 30 July 1993, enabling the formulation of a Uniform Consumer Credit Code. The Australian Uniform Credit Laws Agreement 1993 requires amendments to the Code to be passed by a two thirds majority of the Ministerial Council for Uniform Credit Laws.

1994: The Uniform Consumer Credit Code commenced. The Code was developed in response to business and consumer concerns as a national initiative to standardise credit practice in Australia. The types of credit that are covered by the Code include personal loans, housing loans, credit cards, mortgages, and hire of goods. The template legislation was the *Consumer Credit (Queensland) Act 1994*, which was adopted by other jurisdictions. Section 5 of the *Consumer Credit (New South Wales) Act 1995* provides that the Consumer Credit Code (in the Appendix to the *Consumer Credit (Queensland) Act 1994*) applies as a law of New South Wales, and may be referred to as the *Consumer Credit (New South Wales) Code*.

1995: The Carr Labor Government was elected in April 1995. Later that year the Department of Fair Trading was created, superseding the Department of Consumer Affairs.

Federally, the Australian Competition and Consumer Commission (ACCC) was formed in November 1995 by the merger of the Trade Practices Commission and the Prices

⁴ Consumer Claims Tribunals (Building Disputes) Amendment Bill, Second Reading Speech, Hon Joe Schipp MP, Minister for Housing, *NSWPD*, 18 October 1989, p 11416.

Surveillance Authority. The ACCC is an independent statutory authority which administers the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and has additional responsibilities under other legislation. The ACCC's consumer protection role complements the work of State and Territory consumer affairs agencies that administer the mirror legislation of their jurisdictions.

1996: The Standing Committee of Officials of Consumer Affairs established the Uniform Consumer Credit Code Management Committee in 1996 to monitor and co-ordinate all activities relating to the Consumer Credit Code in order to ensure consistency in the Code's implementation and administration across jurisdictions.

The *Building Services Corporation Legislation Amendment Act 1996* dissolved the BSC, changed the name of the *Building Services Corporation Act 1989* to the *Home Building Act 1989*, replaced the BSC insurance schemes with a private insurance scheme, and tightened the form and content of home building contracts.

1997: A review of the Commercial Tribunal, Consumer Claims Tribunal, Building Disputes Tribunal, Residential Tenancies Tribunal, and the Motor Vehicle Repair Disputes Committee was conducted in 1997. A report was produced in August 1997.⁵

The review recommended that most of the separate tribunals be combined, resulting in two tribunals:

- *Fair Trading Tribunal* – formed by the amalgamation of the Commercial Tribunal, the Consumer Claims Tribunal, the Building Disputes Tribunal and the Motor Vehicle Repair Disputes Committee;
- *Residential Tribunal* – retaining the separate jurisdiction of the Residential Tenancies Tribunal but with a modified name.

Some of the recommendations that applied to several (or more) of the separate tribunals were:

- that legislation be amended to ensure that the principal member (eg. Chairperson) of the tribunal be also appointed as the Chief Executive Officer of the tribunal with responsibility for its overall operation and administration, and with authority to issue and enforce practice directions;
- that the legislation should state clear objectives against which a tribunal could be held accountable;
- that a consistent approach be adopted to the question of representation in tribunal

⁵ Gabriel Fleming (Consultant), *Review of the Commercial Tribunal, the Consumer Claims Tribunal, the Building Disputes Tribunal, the Residential Tenancies Tribunal, the Motor Vehicle Repair Disputes Committee for the Minister of Fair Trading*, 22 August 1997.

proceedings;

- that greater emphasis be given to alternative dispute resolution procedures such as mediation and conciliation;
- that the tribunals develop a comprehensive case management system, featuring identified time standards for the progress of matters, a listing policy which provides for credible hearing and other attendance dates, and an adjournment policy;
- that access to a rehearing be extended to allow for review where specific grounds are made out;
- that a formal, transparent protocol be developed for dealing with complaints.

2.2 Fair Trading Tribunal and Residential Tribunal: 1998 to 2001

On 20 October 1998, the Carr Government introduced the Fair Trading Tribunal Bill in the Legislative Assembly. It passed the Lower House unopposed on 27 October 1998. In the Upper House, the Government moved numerous amendments which had ‘arisen from negotiations with stakeholders’⁶ and were all agreed to. Some of the Opposition’s amendments were also agreed to. The Bill passed the Upper House on 1 December 1998. The *Fair Trading Tribunal Act 1998* received assent on 14 December 1998 and commenced (except for two provisions) on 1 March 1999.⁷

The key reform of the legislation was to consolidate the various consumer-related tribunals into the Fair Trading Tribunal, as recommended by the 1997 Review. The Government anticipated that:

Increased efficiency and effectiveness will be achieved through a common membership structure, elimination of duplicated registry services, an improved capacity to co-ordinate proceedings and the potential to better utilise resources. In addition, this positive change will avoid overlap between jurisdictions and reduce artificial distinctions and confusion for the community where a number of forums have concurrent jurisdiction... The volume and nature of disputes in the residential area are such that the maintenance of a separate tribunal was justified.⁸

The Fair Trading Tribunal was organised into 4 divisions pursuant to s 12 of the *Fair Trading Tribunal Act 1998*: Commercial Division, Home Building Division, Motor

⁶ Hon Jeff Shaw MLC, Attorney General, Fair Trading Tribunal Bill and Consumer Claims Bill, In Committee, *NSWPD*, 1 December 1998, p 10873.

⁷ *Government Gazette*, Number 25 of 26 February 1999, p. 972.

⁸ Fair Trading Tribunal Bill and Consumer Claims Bill, Second Reading Speech, Hon Paul Whelan MP, Minister for Police, *NSWPD*, 20 October 1998, pp 8625-8626.

Vehicles Division, and Consumer Claims Division.

Residential matters were kept separate, following the recommendation of the 1997 Review. Introducing the Residential Tribunal Bill in the Legislative Assembly on 20 October 1998, the then Minister for Housing, Hon Craig Knowles MP, explained that:

Disputes relating to housing and accommodation are viewed as particularly serious matters for the individuals involved and the community in general and consequently are best dealt with within a specialist tribunal. The Residential Tribunal Bill...does not affect the nature or scope of the tribunal's jurisdiction. It renames the tribunal [from the Residential Tenancies Tribunal to the Residential Tribunal] to more accurately reflect its jurisdiction, introduces certain features and improves the overall procedural flexibility to deal with its expanding and varied jurisdiction.⁹

The Residential Tribunal Bill passed the Legislative Assembly on 27 October 1998. In the Legislative Council, some of the amendments moved by the Opposition and the Hon Richard Jones MLC (Independent) were agreed to. The Government also moved numerous amendments, all of which were agreed to, and the Bill passed the Upper House on 1 December 1998. The *Residential Tribunal Act 1998* was assented to on 14 December 1998 and commenced (except for one provision) on 1 March 1999.¹⁰

The Residential Tribunal dealt with a range of property and real estate matters including residential tenancies, retirement villages, caravan/residential parks, and strata and community schemes. Compared to the former Residential Tenancies Tribunal, the Residential Tribunal was given an expanded ability to use alternative dispute resolution procedures such as mediation or preliminary conferences.

The legislation creating the Fair Trading Tribunal and the Residential Tribunal enabled parties to a dispute to seek the leave of the Tribunal for an internal rehearing. However, specific grounds had to be satisfied to exercise this option. This was intended to prevent the Tribunals from being inundated with unmeritorious applications for rehearings. Appeals on questions of law continued to be available to the Supreme Court in both Tribunals.¹¹

In the 2000-2001 financial year, the Residential Tribunal received nearly 50,000 applications and the Fair Trading Tribunal received about 13,500 applications.¹²

⁹ Residential Tribunal Bill, Second Reading Speech, Hon Craig Knowles MP, Minister for Urban Affairs and Planning, and Minister for Housing, *NSWPD*, 20 October 1998, p 8617.

¹⁰ *Government Gazette*, Number 25 of 26 February 1999, p 977.

¹¹ The Government originally proposed in the Fair Trading Tribunal Bill and the Residential Tribunal Bill to change the avenue of appeal to the District Court, advocating that this would make the appeal process less expensive and more accessible. However, Hon Richard Jones MLC successfully moved amendments in the Legislative Council to restore appeals on questions of law to the Supreme Court, 'in order to prevent multiplicity of appeals'.

¹² Consumer, Trader and Tenancy Tribunal Bill, Second Reading Speech, Hon John Watkins

The legislation for both the Tribunals required a review to be conducted two years after commencement.¹³ The review was carried out by an independent consultant between July and December 2000. The consultant recommended that the Fair Trading Tribunal and the Residential Tribunal be merged. Cabinet decided to establish a new tribunal with combined jurisdiction.¹⁴

MP, *NSWPD*, 19 September 2001, p 16892.

¹³ Section 82 of the *Fair Trading Tribunal Act 1998* and s 82 of the *Residential Tribunal Act 1998*.

¹⁴ Department of Fair Trading, *Annual Report 2000-2001*, Volume 1 of 2, p 11.

3. PROCEDURES AND POWERS OF THE CONSUMER, TRADER AND TENANCY TRIBUNAL

The Consumer, Trader and Tenancy Tribunal is an independent, specialist tribunal which facilitates the resolution of disputes through conciliation, or determines disputes at hearings. Proceedings are intended to be conducted in a quick, inexpensive, and relatively informal manner. The Tribunal started operating on 25 February 2002.

3.1 Establishment of the CTTT

The Consumer, Trader and Tenancy Tribunal Bill was introduced by the Carr Government on 19 September 2001. In the Second Reading Speech on the Bill, the then Minister for Fair Trading, Hon John Watkins MP, announced a ‘new super consumer tribunal’ which would amalgamate its predecessors, the Fair Trading Tribunal and the Residential Tribunal. The ‘substantial and substantive reforms to make the new tribunal a more effective and credible performer’¹⁵ included:

- consolidation of the separate tribunals into a super tribunal called the Consumer, Trader and Tenancy Tribunal, comprising 8 divisions;
- a stronger sense of managerial and administrative responsibility over the Tribunal, for example, by providing for a Deputy Chairperson (Registry and Administration) and Deputy Chairperson (Determinations);
- requiring procedural directions issued by the Chairperson to be publicly available;
- establishing an independent Peer Review Panel to review complaints or concerns referred to it;
- creating specific offences of giving false or misleading information in an application, and of wilfully contravening or failing to comply with an order of the Tribunal;
- imposing a limit of one rehearing per matter, in response to the high rates of some types of disputes being reheard.¹⁶

During the debates in both Houses, complaints from constituents and interest groups about the former tribunals were reported by Members of the Liberal, National and minor parties. Some of the recurring concerns were with the expertise of Tribunal Members in the matters assigned to them, delays in reaching a hearing date, access to tribunals for people in regional areas, and consistency of procedure.

The Consumer, Trader and Tenancy Tribunal Bill was not opposed by the Coalition and

¹⁵ Consumer, Trader and Tenancy Tribunal Bill, Second Reading Speech, *NSWPD*, 19 September 2001, p 16892.

¹⁶ For example, the Minister for Fair Trading noted in the Second Reading Speech on the Consumer, Trader and Tenancy Tribunal Bill that up to one third of building disputes were being reheard by the Fair Trading Tribunal, sometimes several times, and that parties had even sought a matter to be reheard before the initial proceedings were completed: *NSWPD*, 19 September 2001, p 16893.

passed the Legislative Assembly on 17 October 2001. In the Legislative Council, Hon Richard Jones MLC (Independent) successfully moved 7 amendments. The Bill passed the Legislative Council on 23 October 2001. The *Consumer, Trader and Tenancy Tribunal Act 2001* was assented to on 21 November 2001 and had commenced in full by 25 February 2002. The Act repealed the *Fair Trading Tribunal Act 1998* and the *Residential Tribunal Act 1998*.

3.2 Objectives

The objectives of the Consumer, Trader and Tenancy Tribunal (CTTT) are outlined by s 3 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the *CTTT Act 2001*):

- to determine disputes over which the CTTT has jurisdiction;
- to ensure that the Tribunal is accessible, its proceedings are efficient and effective, and its decisions are fair;
- to enable proceedings to be determined in an informal, expeditious and inexpensive manner;
- to ensure the quality and consistency of the Tribunal's decision-making.

Section 91 of the Act requires a review to be conducted after 3 years from the establishment of the Tribunal (ie. early 2005), to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for securing those objectives.

3.3 Jurisdiction of the CTTT

The CTTT does not have jurisdiction if, at the time when an application is made, an issue arising under the application is the subject of a dispute in proceedings pending before a court: s 21 of the *CTTT Act 2001*. In that situation the CTTT ceases to have jurisdiction to hear or determine the issue.

Equally, if at the time of the application to the CTTT there were no proceedings pending before a court, a court has no jurisdiction to hear or determine the matter, unless the application before the CTTT is dismissed for want of jurisdiction or is withdrawn. Therefore, the promptness with which an applicant lodges an application to the CTTT can be crucial if the respondent is contemplating court action.

Provision is made under s 23 for the CTTT to transfer proceedings to a court that has jurisdiction in the matter, if the parties agree or if the Tribunal so directs (of its own motion or on the application of a party). In the same way, proceedings that have been instituted in a court may be transferred to the Tribunal if it has jurisdiction.

3.4 CTTT locations

Registries of the CTTT are located at Sydney CBD, Parramatta, Hurstville, Penrith, Liverpool, Newcastle, Wollongong and Tamworth: see **Appendix A** of this briefing paper for contact details. Hearings are conducted at over 100 venues throughout New South

Wales, including the registry locations and other designated hearing rooms.¹⁷ The geographic location of the hearing is usually chosen for proximity to the place where the goods or services in question were purchased, the relevant work was carried out, or the credit contract, mortgage or lease was made or entered into. For disputes relating to strata schemes, tenancies, retirement villages and residential parks, the address of the premises may determine the choice of venue.

3.5 Membership structure

There are 4 tiers to the CTTT's membership structure, as outlined by s 6 of the *CTTT Act 2001*:

- **Chairperson** - The functions of the Chairperson are stated in s 12 and include 'to direct and monitor the procedural operations of the Tribunal to ensure that those operations are fair, economical, informal and as speedy as practicable' and to issue procedural directions to the Members of the Tribunal. The Chairperson is also the Chief Executive Officer of the Tribunal and is required to be qualified as a legal practitioner: s 8.
- **Deputy Chairpersons** - The Deputy Chairperson (Registry and Administration) is responsible for managing the staff and resources of the Tribunal, and does not hear or determine proceedings: s 13. The Deputy Chairperson (Determinations) is responsible for managing the Tribunal's adjudicative functions.
- **Senior Members** - The main role of Senior Members is to hear the more complex cases. Matters normally reserved for Senior Members include those where over \$25,000 is in dispute.¹⁸ A Senior Member is also in charge of each Division of the Tribunal.
- **Members** - Depending on the nature, complexity and public importance of the matter in dispute, it will be heard by a single Member or a panel of two or three Members: s 11. Members are appointed to the Tribunal as a whole and there is no legislative provision for appointment to be limited to any particular division.¹⁹ There is no requirement for Members other than the Chairperson and Deputy Chairperson (Determinations) to be lawyers, but in practice most of them are legally qualified.

Performance management and review are specifically addressed by Schedule 3 of the *CTTT Act 2001*.²⁰ Members are required to enter into a performance agreement with the

¹⁷ Information on the 'Welcome' page of the CTTT website, accessible via the link from <www.fairtrading.nsw.gov.au>

¹⁸ Graeme Durie (Senior Member of the Tribunal), 'The Consumer, Trader and Tenancy Tribunal', Paper presented at NSW Young Lawyers Seminar on Practice and Procedure in the Consumer, Trader and Tenancy Tribunal, Sydney 24 July 2002, para 7.

¹⁹ However, Durie observes that a scheme for specialisation in the allocation of cases is under consideration: *ibid*, para 7.

²⁰ The provisions in Schedule 3 do not regulate the conduct of the Deputy Chairperson (Registry and Administration) who is employed under the *Public Sector Employment and*

Chairperson, and the Chairperson enters into a performance agreement with the Minister. The performance agreement may deal with such matters as participation by the Member in a performance appraisal scheme, and the Member's accountability for his or her productivity and performance.

The Peer Review Panel established by Schedule 3 is comprised of the two Deputy Chairpersons and one other person appointed by the Minister. The functions of the Peer Review Panel are to review matters referred to it by the Chairperson, Director-General or Minister, and to provide advice in response. Matters considered by the Panel may include the investigation of complaints against Members, taking disciplinary action against them, and the educational and training needs of Members.

3.6 Applications

To make an application to the CTTT, the application form for the appropriate Division must be lodged with payment of the application fee. The CTTT is intended to be a low cost option. The application fees that were valid at the time of publication of this briefing paper are listed at **Appendix B**. The fees are set by cl 10 of the *Consumer, Trader and Tenancy Tribunal Regulation 2002* (the *CTTT Regulation 2002*). Currently, a reduced flat fee of \$5 applies to eligible students and eligible pensioners.

Within 7-14 days after receiving the application, the Registrar of the Tribunal sends the applicant and the respondent a 'Notice of Conciliation and Hearing'. The notice advises the recipients of the place, date and time to attend. A copy of the application form and any attachments are sent to the respondent.

It is an offence to knowingly make a false or misleading statement to the CTTT in an application or a proceeding: s 71. The maximum penalty is a fine of 50 penalty units (currently \$5500) and/or 12 months imprisonment.

3.7 Divisions

The Divisions to which an application for an order can be made are:

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

(i) General Division

The General Division deals with most consumer claims in relation to goods and services, and by mid 2002 it was receiving about 675 applications each month.²¹ Disputes span a wide range of issues including faulty goods and work not performed properly. If a claim is determined wholly or partly in favour of the claimant, the *Consumer Claims Act 1998* enables the CTTT to order that the respondent pay money to the claimant, perform specific work, deliver or replace goods, and so on: s 8.

The total value of an order that can be made by the CTTT in this Division is \$25,000, pursuant to s 14 of the *Consumer Claims Act 1998* and cl 6 of the *Consumer Claims Regulation 1999*. Section 7 of the *Consumer Claims Act* requires a claim to be lodged within 3 years from the date of supply of the goods or services.

The commencement of the *Holiday Parks (Long-term Casual Occupation) Act 2002* on 28 February 2003²² enables the CTTT to deal with disputes over breaches of holiday park occupancy agreements with long-term casual occupants. The General Division will be assigned these disputes.²³

Case Study – Sika v Whisper Air Pty Ltd [2003] NSWCTTT 331
(Consumer, Trader and Tenancy Tribunal, 3 April 2003)

Mr and Ms Sika purchased a reverse cycle air conditioner from the respondent company. The air conditioner did not provide adequate heat, generating a maximum temperature of only 15°C inside the home in winter. The parties attempted to negotiate a solution involving the supply of a gas furnace heater, but without success.

At the hearing before the CTTT, Ms Sika gave evidence that she informed the salesman from Whisper Air that the main priority was heating in winter. The Tribunal referred to s 19 of the *Sale of Goods Act 1923* in finding that the applicants had relied on the seller to provide them with advice and that the product supplied was not fit for the purpose required.

The Tribunal ordered the respondent to refund the amount of \$8386 paid by the applicants and to remove the air conditioner unit from the premises.

²¹ Durie, n 18, para 23.

²² *Government Gazette*, No 54 of 28 February 2003, p 3506.

²³ *Consumer, Trader & Tenancy Tribunal Bulletin*, April 2003, p 3. The Bulletin is available through the website of the Office of Fair Trading at <www.fairtrading.nsw.gov.au> Select the CTTT link, then 'Publications'.

(ii) Motor Vehicles Division

The Motor Vehicles Division handles disputes about new and used motor vehicles (including motor boats) and repairs. The jurisdiction to determine disputes in the Motor Vehicle Division, like the General Division, is governed by the *Consumer Claims Act 1998*. However, s 14(3) specifies that the \$25,000 monetary limit does not apply to new motor vehicles used ‘substantially for private purposes’. In other words, there is no monetary maximum in disputes about new defective cars. By mid 2002 there were approximately 140 applications per month to the Motor Vehicles Division, with about a third relating to defective cars worth over \$25,000.²⁴

Case Study – Lee v Larke Hoskins [2002] NSWCTTT 340

(Consumer, Trader and Tenancy Tribunal, 5 August 2002)

In February 2002, Mr Lee (the applicant) entered into a contract with Tony Azzi (Automobiles) Pty Ltd T/as Larke Hoskins, to purchase a 1997 Mercedes Benz SLK 230 for \$65,000. The prestige sales manager, Mr Elbaz, agreed to have certain work completed, at no cost to the applicant, before the vehicle was delivered. Ten days later, Mr Elbaz delivered the Mercedes Benz to the applicant’s home but none of the work had been done. The applicant accepted delivery on the assurance that the work would be performed in a short period of time. Despite repeated requests from the applicant, this did not occur.

The applicant requested orders from the CTTT that the respondent pay him \$1200 or fix or replace the faulty motor vehicle parts. The Tribunal was satisfied that it was a term of the contract between the parties that the respondent would repair the damaged body panel below the driver’s door, replace the scratched interior centre console, and supply a new remote locking key because the original had been lost. The respondent was in breach of the agreement by failing to perform its obligations. The Tribunal ordered the respondent to undertake the work by a specific date.

(iii) Tenancy Division

Issues for adjudication in the Tenancy Division include breaching a term of a lease, allegedly excessive rent increases, termination of the rental agreement, and return of the rental bond. The jurisdiction for tenancy disputes is found in the *Residential Tenancies Act 1987* and associated regulations. Clause 25A of the *Residential Tenancies (Residential Premises) Regulation 1995* provides that an order can be made to \$20,000 with respect to a rental bond or \$10,000 for any other matter. Representation of landlords by managing agents is expressly permitted in the CTTT by clauses 14(k) and 17 of the *CTTT Regulation 2002*. The Tenancy Division is the busiest division of the CTTT, with an average rate of 4300 applications per month as at July 2002.²⁵

²⁴ Durie, n 18, para 32.

²⁵ Durie, para 20.

Case Study – Department of Housing v CTTT & Anor [2003] NSWSC 150
(NSW Supreme Court, 31 March 2003)

Mr and Mrs Ingram were Department of Housing tenants. A breach of their right to quiet enjoyment and reasonable peace, comfort and privacy occurred due to harassment by a neighbour, who was another Department of Housing tenant. Section 22(1)(b) of the *Residential Tenancies Act 1987* makes it a term of every residential tenancy agreement that the landlord shall not interfere with, or cause or permit interference with, the reasonable peace, comfort or privacy of the tenant.

Evidence showed that the Department of Housing was aware of the threats and disturbances suffered by the Ingrams. The CTTT found that the Department's failure as landlord to take any active steps to prevent further breaches amounted to an implied license to the disruptive tenant. Compensation was therefore payable.

The Department of Housing appealed to the Supreme Court. Justice Shaw held that the CTTT was entitled to find that liability for the breaches of the tenancy agreement attached to the Department. The appeal was dismissed.

(iv) Home Building Division

The *Home Building Act 1989* limits the CTTT's jurisdiction to \$500,000 in home building disputes (s 48K), although in mid 2002 the bulk of matters involved around \$10,000 and few were above \$150,000. The monthly rate of applications at that time was approximately 650. Lawyers are more likely to appear in these disputes than any others before the CTTT.²⁶

Various time limits apply under the *Home Building Act 1989*. For example, in disputes about payment of money or supply of goods or services, a claim must be lodged within 3 years of the date of supply of the goods or services: s 48K(3). In determining a building claim, the CTTT can order one party to pay money to another party, or a builder to perform specific work, or that an amount of money is not due or owing, and so on: s 48O.

An applicant who wishes to pursue a building claim must first submit a 'Notification of Dispute' form to a CTTT registry. The matter will be considered for preliminary dispute resolution through the Building Conciliation Service (BCS). The BCS can enlist various specialists including: a mediator to assist the parties to find their own resolution; an independent expert to provide a technical report; and a neutral evaluator to give an assessment of the likely outcome of a hearing. If the dispute cannot be resolved through the help of the BCS, it will then proceed to a formal hearing.

A practice direction from the Chairperson of the CTTT dictates the procedure in building

²⁶ Durie, para 27.

cases depending on the amount of money involved.²⁷ Where less than \$25,000 is in dispute, the application will be put in the 'group list' and, if possible, determined on the first occasion. If more than \$25,000 is involved, there will be a 'first directions hearing' to enable the Tribunal Member to assess the case and make directions concerning the preparation of the case in a form that is appropriate for hearing. Directions may also require parties to engage in mediation or conciliation. Then a meeting of the parties' experts is held in the presence of a Tribunal Member (or a Tribunal-appointed building expert), and a case conference is attended by the parties in complex matters, before the application is set down for hearing.

Case Study – Collings Homes v Head & Ors [2002] NSWSC 1219
(NSW Supreme Court, 20 December 2002)

Mr and Mrs Head wished to build a new home on land they owned. They approached Collings Homes Pty Ltd (the plaintiff), a company which designs project homes. The plaintiff applied to the local council for development approval and procured a licensed builder who signed the building contract. The price for the plaintiff's services was to be \$38,500. Mr and Mrs Head decided not to proceed and requested a refund of the \$20,000 they had already paid to the plaintiff. When the plaintiff refused, the Heads successfully applied to the Home Building Division of the Consumer, Trader and Tenancy Tribunal for an order to repay the \$20,000.

The plaintiff appealed to the Supreme Court on jurisdictional and other grounds. Master Malpass held that the CTTT had erred in determining that the Head's application was a 'building claim' within the meaning of s 84 of the *Home Building Act 1989*. The plaintiff's services did not entail co-ordinating or supervising any work involved in the construction of a dwelling. Rather, the building of the dwelling was to be performed by the licensed builder, and no work had commenced. The decision and orders of the CTTT were set aside.

(v) Commercial Division

The Commercial Division deals with disputes over credit contracts, pursuant to the *Consumer Credit (New South Wales) Act 1995* (also known as the Consumer Credit Code) and the *Credit Act 1984*. Other matters that can be heard by this Division involve the licensing and conduct of travel agents under the *Travel Agents Act 1986*, and commission fees charged by agents licensed under the *Property, Stock and Business Agents Act 1941*. The housing prices of Sydney can make the amount of money in the latter type of dispute quite large. But the rate of applications in the Commercial Division is relatively low, at less than 25 per month by mid 2002.²⁸

²⁷ Consumer, Trader and Tenancy Tribunal, Chairperson's Directions, *Procedure in Building Cases*, Nick Vrabac, Acting Chairperson, 9 August 2002.

²⁸ Durie, n 18, para 34.

Case Study – Cuenca v Graeme Bleus Real Estate P/L t/as Elders Real Estate Gladesville [2002] NSWCTTT 458

(Consumer, Trader and Tenancy Tribunal, 3 September 2002)

Mr and Mrs Cuenca entered into an agency agreement with the respondent for the sale of their home at Ryde. The agreement gave the agent exclusive selling rights for the ‘agency period’, with a commission fee of 2.2% irrespective of whether the property was sold by the agent, any other agent, or the principal. The applicants themselves negotiated the eventual sale of the property to the purchaser for \$808,000. They sought an order from the CTTT relieving them from paying the agent’s commission, on the ground that the agent did not act in their best interests and therefore breached the contract.

The CTTT found that the property was sold by the principal (ie. the applicants), but that the respondent had introduced the purchaser to the property during the agency period and had performed its part of the agreement. The respondent was entitled to receive its commission of \$17,766. The application for relief from payment was dismissed.

(vi) Strata Schemes Division

The *Strata Schemes Management Act 1996* governs the handling of disputes about matters such as strata by-laws, maintenance levies, reallocation of unit entitlements, and alterations to common property. The steps that must usually be followed to pursue a complaint are:

- 1. Mediation
- 2. Adjudication
- 3. Determination

Section 125 of the *Strata Schemes Management Act 1996* confirms that an application cannot be made to the CTTT about a strata dispute unless mediation has been attempted first. The Office of Fair Trading provides a mediation service through its Strata Schemes and Mediation Services Branch: see **Appendix A** to this briefing paper for contact details.

An ‘Application for Mediation’ form must be filled out, then a mediator will contact those involved and arrange a time and place for the mediation session. The neutral mediator assists the parties to discuss options and reach a solution. Any offers or admissions made during the mediation session are confidential and cannot be used in other proceedings. If an agreement is reached, it is put in writing and signed by all parties. An agreement can be made into an enforceable order by a Strata Schemes Adjudicator, enabling fines to be imposed for breach of the agreement.

If no settlement is reached or the agreement breaks down, an ‘Application for an Order by an Adjudicator’ can be lodged with supporting documents. The parties do not appear in person before the Strata Schemes Adjudicator. Rather, the application and submissions received are considered, a decision is made on the papers, and reasons for the Adjudicator’s order are provided in writing. The order will generally be finalised within 3 weeks from the date when submissions close. Decisions of Adjudicators can be appealed to

the CTTT. Adjudicators can also refer disputes to the CTTT for hearing, for example, when complex legal issues are involved. Hearings before the CTTT are attended by the parties. The CTTT may impose fines of up to \$5500 for failure to comply with an order of a Strata Schemes Adjudicator or the Tribunal: s 202.

Case Study – Owners Corporation SP 33316 v Hansen [2002] NSWCTTT 396
(Consumer, Trader and Tenancy Tribunal, 19 August 2002)

Ms Hansen, an owner-resident in a strata title property, was served in October 2001 with a Notice to Comply with several by-laws under the *Strata Schemes Management Act 1996*. After the Notice was served, she committed further breaches of By-law 1, which deals with noise, by vacuuming her unit, hosing, and moving garbage bins between the hours of 1.00am and 6.00am. The Owners Corporation of Strata Plan 33316 sought an order from the CTTT for the respondent to be fined for contravening the Notice. The CTTT found that the respondent had ‘continuously and persistently’ breached the by-law, in contravention of the Notice served by the Owners Corporation. The Tribunal ordered the respondent to pay a penalty of \$100 to the Director-General of the Department of Fair Trading.

(vii) Retirement Villages Division

The Retirement Villages Division receives a relatively small number of applications, although large sums of money can be at stake.²⁹ The jurisdiction is derived from the *Retirement Villages Act 1999* and some of the areas of potential dispute are the terms of a retirement village contract, the legality of a village rule, and the sale or lease of premises by a resident. The CTTT may grant an application for termination of a residence contract on grounds such as the physical or mental incapacity of the resident, or a breach of the village contract by the operator or the resident. Section 127 of the Act confirms that the CTTT is not limited in the amount of money that it may order to be paid.

Case Study – Vandeeper v Glenaeon Retirement Village Pty Ltd [2003] NSWCTTT 312
(Consumer, Trader and Tenancy Tribunal, 24 March 2003)

Mr Vandeeper (the applicant) purchased an interest in a 199-year lease of a unit in Glenaeon Retirement Village. He applied to the CTTT that certain work needed to be carried out on the carpet, curtains, and walls inside his unit and that the operator of the village should pay for the work. The CTTT found that the operator was financially responsible under s 92 of the *Retirement Villages Act 1999* for the replacement of items of capital, including carpet, curtains and interior repainting. The Tribunal inspected the premises and formed the view that the unit did not need repainting or recarpeting at the present time. However, the Tribunal ordered that the backing of the curtains be replaced.

²⁹ Fewer than 5 applications per month were being received in July 2002: Durie, para 36.

(viii) Residential Parks Division

The concept of a ‘residential park’ under the *Residential Parks Act 1998* refers to land on which caravans and/or other moveable dwellings are placed, or an estate on which manufactured homes are placed. Issues for dispute may involve the terms of the residential tenancy agreement, notices of termination, alterations and additions to dwellings, rent issues, rental bonds, and so on.

Around 80 applications per month were received in this Division up to mid 2002, with a geographical concentration of work evident on the North Coast.³⁰ There may be multiple, related applications where numerous residents are affected, for example, by a rent increase. In rent increase cases, residents are often represented by tenancy advocates while owners are represented by lawyers.³¹

Case Study – Morris & Ors v Island Caravan Village [2003] NSWCTTT 259
(Consumer, Trader and Tenancy Tribunal, 17 March 2003)

Mr Morris and 7 other residents of the park sought an order from the CTTT under ss 55 and 56 of the *Residential Parks Act 1998* to declare that a proposed rent increase from \$66.00 to \$70.50 per week was excessive. The applicants argued that the rent increase exceeded the consumer price index; that the park was remote from shops, services and public transport compared to other parks in the geographical area; and that there were minimal amenities at the park for permanent residents.

The CTTT found that the rent increase was not excessive. The other parks nominated by the applicants were not comparable because Island Caravan Village had larger sites, water frontage, and a natural bush setting. The Tribunal was also satisfied that there had been a significant improvement in the maintenance of the road and the facilities provided by the park owner. The CTTT ordered that the rent not exceed \$70.50 per week for the 12 month period from the commencement date of the rent increases, but otherwise dismissed the application.

3.8 Expert assessors

Assessors can be appointed by the CTTT to assist in specialised areas of dispute. The Tribunal or the Chairperson may, with the consent of the parties, direct that an assessor inquire into an issue connected with the proceedings: s 16 of the *CTTT Act 2001*. An assessor may also be used by the Tribunal to assist and advise it in any proceedings but not to adjudicate: s 17. The Tribunal can make the assessor’s costs payable by the parties in circumstances described under cl 19 of the *CTTT Regulation 2002*, such as where a party requested the use of an assessor.

³⁰ Durie, para 37.

³¹ Durie, para 38.

3.9 Conciliation

Reaching a solution through negotiation between the parties is strongly encouraged by the CTTT process. Section 54(1) states that ‘Before making an order to determine any matter that is the subject of proceedings, it is the duty of the Tribunal to use its best endeavours to bring the parties in the proceedings to a settlement that is acceptable to all the parties.’ Although the parties are expected to attempt conciliation prior to a matter being heard by a Tribunal Member, conciliation is still voluntary.

At a conciliation, both parties can view each other’s evidence (eg. quotes, receipts, witness statements, photographs, reports), consider the strengths and weaknesses in each party’s case, and discuss the options. Some of the benefits of conciliation are that disputes can be dealt with more quickly, and the parties have greater control over the outcome, rather than having a decision imposed on them by the Tribunal.

Apart from the parties to the dispute, an interpreter may attend the conciliation where required, along with any person given leave to represent a party. A conciliator is also made available by the Tribunal. This is an impartial person who is trained in helping parties to achieve agreements. The conciliator can ensure that all necessary documentation is at the conciliation session, can identify and clarify the issues involved, and assist in exploring options and solutions.

If the parties reach an agreement, it is written down and signed. When a conciliator is present, he or she can transcribe the agreement and prepare a draft Tribunal Order. The written agreement is taken before a Member of the Tribunal in a hearing room, for approval and for making a formal Tribunal Order.

If the parties do not reach an agreement, the matter proceeds to a hearing. Opinions expressed at conciliation are not subsequently binding. Section 54(3) of the *CTTT Act 2001* confirms that any statement or admission made at a meeting or conference held for the purpose of conciliation is not admissible at the hearing or in any other legal proceedings.

3.10 Mediation and neutral evaluation

The CTTT may order that a matter arising in any proceeding be referred for mediation or neutral evaluation: s 59(1). ‘Mediation’ is defined by s 57 as a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to achieve their own resolution of the dispute. Neutral evaluation entails a person who has been selected by the Tribunal as an evaluator seeking to identify and reduce the issues of fact and law that are in dispute. The neutral evaluator assesses the relative strengths and weaknesses of each party’s case and offers an opinion as to the likely outcome of the proceedings.

The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation or neutral evaluation session, if the Tribunal is satisfied that its powers would have allowed it to make a decision in those terms: s 61.

3.11 Hearings

A formal hearing is generally attended by the parties in person. However, there is provision under s 38 for the CTTT to allow a person to ‘appear’ or give evidence by telephone. If a party who has been notified of the hearing fails to attend, s 25 authorises the matter to be dealt with in the absence of the party (commonly known as ‘ex parte’). The Tribunal also has the power to determine the matter solely on the basis of documents and other material lodged with the Tribunal, if the parties give their consent and it appears to the Tribunal that the issues can be adequately determined in this manner: s 34.

A formal hearing is presided over by a Tribunal Member or Members, who will direct the discussion. Parties are allowed to present evidence and ask questions of each other. The Tribunal may call any witness of its own motion, and examine or cross-examine a witness. A summons can be issued (at the direction of the Tribunal or on the application of a party) to require a person to give evidence or to produce documents: s 40.

However, the CTTT is not bound by the technical rules of evidence that operate in a formal court. It may inquire into any matter that it sees fit, subject to procedural fairness. Section 28 reinforces that the CTTT ‘is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.’ Generally, hearings are open to the public, unless the Tribunal decides otherwise: s 33.

After both parties have presented their case, the Tribunal Member will make a decision and give reasons. Sometimes the decision is ‘reserved’, meaning that it will be handed down at a later date.

3.12 Representation

In normal circumstances, parties are encouraged to conduct their own cases in the CTTT without legal representation. This reflects the ideals of keeping proceedings affordable, informal, and uncomplicated by legal jargon. Section 36 of the *CTTT Act 2001* confirms that ordinarily a party is not entitled to be represented, meaning representation by a legal practitioner or simply by another person. However, the Act allows exceptions to this general rule, such as:

- Where the amount in dispute does not exceed \$10,000, a party is only entitled to representation by a legal practitioner if the Tribunal is of the opinion that there are exceptional circumstances: s 36(3).
- A written or oral application for representation can be made to the Tribunal under s 36(2) of the Act, but only in the circumstances listed by cl 14 of the *CTTT Regulation 2002*. For example:
 - a party may be represented in the Home Building Division where the dispute involves an amount exceeding \$25,000;
 - an owners corporation constituted under the *Strata Schemes Management Act 1996* can be represented by an owner or the strata managing agent;

- a landlord of property can be represented by the managing agent of the property;
 - the Tribunal may permit representation where it forms the opinion that representation is ‘a matter of necessity due to the likelihood that complex issues of law or fact will arise in the proceedings.’
- If a party has been granted legal assistance under Part 2, Division 2 of the *Fair Trading Act 1987*, the parties in the proceedings are entitled to legal representation.
 - When the Tribunal finds that a party is a ‘special class of person’, the Tribunal may appoint another person who consents to represent the special person. This category applies to minors and people who are incapable of representing themselves because of intellectual, physical, psychological or sensory disability, advanced age, mental incapacity or other disability.

If a party is represented by a legal practitioner, the Tribunal may, as a condition of representation, require the legal practitioner to disclose the estimated cost of representing the party: cl 18 of the *CTTT Regulation 2002*.

3.13 Costs

The CTTT is intended to be a low cost option. Pursuant to this aim, the general rule is that parties are to pay their own costs. Discouraging the attendance of lawyers in the tribunal is one of the methods of reducing costs.

However, the CTTT may award costs in proceedings if certain criteria are met under cl 20 of the *CTTT Regulation 2002*. The criteria are categorised according to the amount of money in dispute:

- ***Less than \$10,000*** – the Tribunal may award costs if satisfied that there are exceptional circumstances.
- ***More than \$10,000 but not more than \$25,000*** – the Tribunal must be satisfied that there are exceptional circumstances, or it has made an order under s 30(2) of the Act that a party is causing disadvantage to the proceedings.
- ***More than \$25,000*** – the Tribunal may award costs in such circumstances as it thinks fit.

In addition, the CTTT may order the applicant to pay the costs of any proceedings that the Tribunal considers to be frivolous, vexatious, misconceived or lacking in substance, or otherwise not heard or proceeded with.

3.14 Rehearings and appeals

Orders are final and binding unless an application is made to the Chairperson of the CTTT that a matter should be reheard. To make an application for a rehearing, the amount claimed or disputed must be \$25,000 or less: s 68(13). The party seeking the rehearing must submit

that they have suffered a substantial injustice because:

- the decision of the Tribunal in the proceedings was not fair and equitable; or
- the decision was against the weight of evidence; or
- significant new evidence has arisen: s 68(2).

Further conditions are imposed on rehearings by Part 6 of the *CTTT Regulation 2002*. The Chairperson's decision whether to grant or refuse the application is final and not subject to review of any kind: s 68(8)(c) of the *CTTT Act 2001*. Subsection 68(10) confirms that the rehearing is dealt with as a fresh hearing and only one rehearing is permitted.

Appeals against decisions of the CTTT can be made to the Supreme Court but only on a question of law. The Supreme Court may affirm the CTTT's decision, substitute an order that in its opinion should have been made by the Tribunal, or remit its decision on the matter to the CTTT for a rehearing of the proceedings. In the latter situation, the Tribunal is to proceed in a manner consistent with the decision of the Supreme Court: s 67. The CTTT may also refer a question on an issue of law to the Supreme Court for a ruling: s66.

3.15 Enforcement of orders

It is an offence to wilfully disobey certain orders of the Tribunal, punishable by a fine of up to 50 penalty units (currently \$5500) and/or 12 months imprisonment: s 52. However, this does not apply to an order for the payment of money, or to a contravention of rent order pursuant to s 52 of the *Residential Tenancies Act 1987*.

Order to pay money - To enforce an order to pay money, the party wishing to enforce the order can write to the Registrar of the CTTT and ask for a certified copy of the order. Then the certified copy of the order should be registered as a judgment for debt in the Local Court. The onus is on the 'creditor' to provide sufficient information about the 'debtor' to enable enforcement action to be taken. For example, a landlord seeking to enforce payment of rent in arrears from a previous tenant would need to supply the new address of the tenant if the tenant had vacated the landlord's property. If the debtor is a company or business, the creditor should obtain its full registered company name from the Australian Securities and Investments Commission, or the business name from the Office of Fair Trading.

Order to do something - If a non-money order or decision of the CTTT has not been complied with by the date specified by the Tribunal, the person in whose favour the order was made may renew the proceedings by lodging a 'Notice to Renew Proceedings' form. This enables the Tribunal in certain circumstances to change the order for specific performance into an order for compensation.

Order for possession - An order for possession of premises may also be enforced. If a tenant has not vacated a place by the date specified by the CTTT in an order for possession, a request can be made to the Registrar for the issue of a warrant for possession. Such a request has to be made after the day that possession was to be given. A warrant for possession allows a Sheriff's Officer to gain access to the premises and ensure that the tenant departs and removes their goods.

4. OFFICE OF FAIR TRADING

The Office of Fair Trading is located within the Department of Commerce. This arrangement dates to the reorganisation of government departments after the Carr Labor Government was re-elected in the State Election in March 2003. Prior to the election, there was a separate Department of Fair Trading. In the 2001-2002 financial year, the Department of Fair Trading received 868,000 inquiries, and 26,000 formal complaints were lodged.³²

4.1 Complaint handling

Inquiries can be made to the Office of Fair Trading as a first point of contact for consumer problems. The Office may be able to assist directly with the problem through its Complaint Handling Service, or may refer the consumer elsewhere. A consumer should only lodge a complaint with the Office of Fair Trading if:

- an attempt has been made to resolve the problem between the consumer and the trader who provided the goods or services; and
- an application has not been lodged with the Consumer, Trader and Tenancy Tribunal; and
- a claim has not been lodged with the Local Court.

To register a complaint with the Office of Fair Trading, the consumer should complete the 'Complaints Form'. The Office of Fair Trading can then assess the complaint to determine the issues in dispute, the available options, whether a breach of the law has occurred, and whether the matter would be better handled by another organisation.

Further information on how to proceed with a complaint can be obtained from the Office of Fair Trading by phone, internet, or personally visiting a Fair Trading Centre. Contact details are provided at the end of this briefing paper at **Appendix A**.

Fair Trading consults with each party, which it aims to do within 20 working days,³³ and acts as an informal negotiator in an effort to resolve the complaint. However, an enforceable order to do something must usually be made by a court or tribunal rather than the Office of Fair Trading.

Some of the remedies which may be obtained by the Director-General of Fair Trading and/or the Minister for Fair Trading under the *Fair Trading Act 1987* are:

³² Department of Fair Trading, *Annual Report 2001-2002*, Volume 1 of 2, p 21. Enquiries included over the counter, by telephone, website, and email. The total figure of 26,000 complaints was comprised of 22,450 fair trading complaints (ie.regarding traders' goods or services), 2100 real estate complaints, and 1450 building complaints.

³³ The time estimate is from the website of the Office of Fair Trading at <www.fairtrading.nsw.gov.au> under 'Resolve a consumer, trader or tenancy problem'.

- a written **undertaking** from a person – if the undertaking is not complied with, it can be enforced by order of the Supreme Court (s 73A);
- **suspension** or cancellation of a licence, permit or authority granted under legislation administered by the Minister for Fair Trading (s 64A);
- issuing a **public warning** about dangerous or unsatisfactory goods, unfair business practices and other matters (s 86A);
- requiring a supplier to conduct a **product recall** of defective goods (s 34);
- an **injunction** obtained from the Supreme Court to restrain a person from carrying on a business, or engaging in certain conduct (s 65);
- an order to **disclose information** to the public, for example, by placing an advertisement – this order is also made by the Supreme Court (s 67);
- issuing a **penalty notice** for payment of money for certain offences, if the person does not wish the matter to be determined by a court (s 64);
- initiating **court proceedings** for offences against the *Fair Trading Act 1987*, eg. misleading or deceptive conduct (s 42), and false representations (s 44).

4.2 Case studies of compliance action³⁴

Mobile phones: Consumer complaints about the failure of LCDs (liquid crystal displays) on Nokia mobile phones led to discussions with the company in December 2001. Nokia signed enforceable undertakings pursuant to s 73A of the *Fair Trading Act 1987* in April 2002. The undertakings specified that customers with Nokia 8210 phones could have the LCD repaired at no cost, regardless of the age of the phone. Current and future warranties for that model were also extended by 12 months.

Home tutoring services: In October 2001, the Minister issued a public warning under the *Fair Trading Act 1987* about the activities of Sydney Home Tutors and Coaching Australia, due to a history of consumer complaints about unqualified tutors and services not provided. In January 2002, the Department obtained orders in the Supreme Court to prevent the two companies from operating their businesses in New South Wales.

³⁴

The case studies were adapted from: Department of Fair Trading, *Annual Report 2001-2002*, Volume 1 of 2, pp 15-18.

Motor dealers: In October 2001, the Director-General of Fair Trading suspended the dealer's license of LLRAC Pty Ltd t/as Campsie Intersection, pending instigation of legal proceedings, because of major odometer interference. Odometers on 21 cars were wound back 1.46 million kilometres. Graeme Gavin t/as Bankstown Intersection was prosecuted for similar offences. On 19 July 2002 he was convicted in Blacktown Local Court on 23 charges and was fined a total of \$67,357 (including costs).

Alternative health practitioners: Jeffrey Dummett advertised in a Lismore newspaper that he could diagnose illnesses by 'live blood analysis', which involved looking at a pinprick of a person's blood under a microscope. The Department obtained expert medical evidence to contradict his claims. In May 2002, the Local Court imposed fines and costs of \$33,950 for 22 offences under the *Fair Trading Act 1987* relating to false representations and 3 offences under the *Business Names Act 1962*.

Kitchen renovations: A father and son team, John and Damian Smith, advertised under various names as suppliers and installers of new kitchens, despite being unlicensed and uninsured. Consumers complained of shoddy work and excessive deposits. Fair Trading investigators posed as customers wanting a quote, and interim orders were obtained in the Supreme Court against the Smiths. In July 2002, the Smiths consented to final orders banning them from undertaking building work for 10 years.

Dangerous toys: Tests conducted on projectile toys that were purchased from the Reject Shop in Parramatta showed that 4 failed to comply with the relevant Australian Standards and posed a hazard to children's eyes. The Reject Shop conducted a public recall of the toys. On 8 April 2002, the Director-General accepted undertakings pursuant to s 73A of the *Fair Trading Act*, whereby the company agreed for the next 3 years to obtain a test report on compliance with the Australian Standards before selling any projectile toys.

5. NEW BUILDING REFORMS TO PROTECT CONSUMERS

5.1 Building Legislation Amendment (Quality of Construction) Act 2002

The reforms of the *Building Legislation Amendment (Quality of Construction) Act 2002* signify a change of direction in resolving building disputes. The tendency in the past has been to address problems at the end of the building process, when it is ‘often too late and burdensome on all parties.’ Instead, the emphasis will be shifted ‘to focus attention at the point at which homes are actually being built, with locally based building inspectors intervening when things go wrong.’³⁵ One of the specific problems that prompted the legislation was the failure of the system of self-certification of dwellings by builders. Previously, local councils had relied on developers to appoint the certifier of the building. The legislation was also influenced by some of the findings of the Joint Select Committee on the Quality of Buildings, which is explored below at **5.2** on p 28.

The Building Legislation Amendment (Quality of Construction) Bill was introduced by the Government in the Legislative Assembly on 13 November 2002 and passed unopposed on the same day. The Bill was amended in the Legislative Council and was assented to on 18 December 2002.³⁶ Some sections of the *Building Legislation Amendment (Quality of Construction) Act 2002* commenced on 1, 21, and 28 February 2003. The remaining provisions are expected to commence on 1 July 2003.³⁷

A key element of the ‘reform package’ that was announced in the Second Reading Speech is the formation of a separate Office of Home Building within the Fair Trading portfolio, although this is not established by the amending legislation: see more information at ‘**5.3 Office of Home Building**’ on p 30.

Some of the changes made by the *Building Legislation Amendment (Quality of Construction) Act 2002* to the *Home Building Act 1989* and its accompanying regulations are:

- provision for a home building advisory and advocacy service to the public;
- early investigation of building disputes to be conducted by inspectors from the Office of Fair Trading who will visit building sites and can issue orders. The CTTT is given the power to reject any application for a building claim that has not undergone this process;
- all work performed under residential building contracts is to comply with the Building Code of Australia and other relevant standards;
- applicants for building licenses or renewals are to meet financial solvency requirements.

³⁵ Building Legislation Amendment (Quality of Construction) Bill, Second Reading Speech, Hon John Aquilina MP, Minister for Fair Trading, *NSWPD*, 13 November 2002, p 6732.

³⁶ *Government Gazette*, No 13 of 10 January 2003, p 93.

³⁷ Department of Fair Trading leaflet, ‘Home Building NSW 2003: The Way Ahead’, February 2003.

The *Building Legislation Amendment (Quality of Construction) Act 2002* also amends other statutes. For example, improvements are made to the building certification process under the *Environmental Planning and Assessment Act 1979*. Certifiers must be appointed by the landowner and not the builder, must inspect buildings at critical stages, and will not be able to rely on reports from consultants.

5.2 Parliamentary Committee on Quality of Building Construction

The changes introduced by the *Building Legislation Amendment (Quality of Construction) Act 2002* reflect some of the recommendations of the Joint Select Committee on the Quality of Buildings. The Committee was appointed in March 2002. Its Terms of Reference included to ‘determine whether there are enough checks and balances existing to ensure consumers are guaranteed that their new homes are safe, properly certified and built to satisfactory standards’.³⁸ Some of the other specific Terms of Reference were to inquire into: the certification of buildings; the builders’ licensing scheme; the adequacy of disciplinary procedures; and the roles of the Department of Fair Trading and the Consumer, Trader and Tenancy Tribunal in dispute resolution under the *Home Building Act 1989*.

The Committee received numerous submissions from members of the public expressing dissatisfaction with the Department (as it then was) of Fair Trading, the former Fair Trading Tribunal, and the new Consumer, Trader and Tenancy Tribunal. The separate responsibilities of the Department and the CTTT caused confusion, and consumers complained about duplication of procedure, inconsistency of information, and ‘buck passing’ between the two organisations.³⁹

Some of the concerns explored in the Committee hearings in relation to the CTTT and the Department of Fair Trading were:

- allegations of unclear or conflicting advice from officers of the Department of Fair Trading about where consumers should take their complaints and what options were available;
- lack of co-ordination and communication between the Department and the CTTT. Evidence collected by the Investigations Branch of the Department was not necessarily supplied to the CTTT, or might not be given weight by the Tribunal Member. The procedures of the two organisations followed a different time frame, which could cause the needs or instructions of one to contradict the other;
- doubts persisted from the days of the Fair Trading Tribunal, as to whether the CTTT

³⁸ Parliament of New South Wales, Joint Select Committee on the Quality of Buildings, *Report Upon the Quality of Buildings*, July 2002, Term of Reference 1(a). The Terms of Reference are outlined on page (i) of the report.

³⁹ *Ibid*, Chapter 6, ‘Dispute Management’, especially ‘Overlap of Tribunal And Department of Fair Trading Investigations’, from p 141.

would have a sufficient number of Members with building expertise;

- some consumers considered that the voluntary mediation phase supervised by the Building Conciliation Service of the CTTT was ineffective, prolonging the duration of disputes;
- decisions of the CTTT in similar matters were not necessarily consistent. A lower standard than the Building Code of Australia was applied on occasions by the Tribunal. This was interpreted by aggrieved consumers as ignoring work that was technically defective and relieving the builder from meeting the basic Code requirements;
- some submissions suggested that the Tribunal allowed too many adjournments, which could be misused by one party to ‘wear down’ the other side.

The Committee concluded that the interpretation by the Department of Fair Trading and the CTTT of their respective responsibilities (ie. monitoring the conduct of licensed builders and compliance with the *Home Building Act 1989*, versus resolving contractual building disputes) can actually frustrate and exacerbate building problems.⁴⁰

The Joint Select Committee reported in July 2002. Among its 55 recommendations were:⁴¹

- The creation of a Home Building Compliance Commission to oversight home building regulation in New South Wales, including licensing and disciplining of builders. The Commission would be a separate organisation to the Department of Fair Trading but responsible to the Minister for Fair Trading. [Recommendation 1]
- The Home Building Compliance Commission would be the single government ‘front desk’ for consumer home building problems and licence complaints, replacing the Building Conciliation Service of the CTTT. Streamlined methods of dispute management would be adopted. For example, Commission assessors with legislative powers and building expertise would conduct on-site inspections, make determinations, and issue orders prior to the dispute advancing to the CTTT. [Recommendation 48]
- The investigation function of the Home Building Compliance Commission would remain separate to the CTTT’s processes, but the organisations would use common definitions of defective work, and reports of the Commission would have standing in the CTTT. [Recommendation 48]
- The CTTT should modify its use of technical witnesses and expert reports, for example, by establishing a standing panel of accredited building experts to assist where expert opinion is needed. The panel would provide a report on a disputed matter to both parties, to be jointly filed and the cost shared between them. [Recommendation 49]

⁴⁰ Ibid, p 151.

⁴¹ Ibid, pp 151-164.

- The review of the *CTTT Act 2001* (to be conducted 3 years after commencement) should include a performance audit of its home building dispute activities, with specific attention to such factors as caseload management, consistency of decisions, adjournment frequency, and treatment of cases caught between legislative amendments. [Recommendation 50]
- The CTTT would be required to refer its decisions regarding builders to the licence/audit unit of the proposed Home Building Compliance Commission. [Recommendation 51]

5.3 Office of Home Building

An Office of Home Building is being established within the Fair Trading portfolio to be the main contact point for consumers and builders in relation to residential building matters.⁴² The Office of Home Building is scheduled to be fully operational by 1 July 2003. Its main functions are expected to include: responsibility for the licensing and supervision of builders and tradespeople in the home building industry; providing an enhanced dispute resolution system for both consumers and industry; and assisting the building industry to improve its standards.

The Office of Home Building will be located at Parramatta in Sydney. When fully operational, it will have 170 staff including 25 specialist building inspectors who will undertake on-site dispute investigation and issue rectification orders. Early dispute intervention will be facilitated on a regional basis through the 22 Fair Trading Centres across the State and locally-based building inspectors. However, parties will retain their right to take their dispute to the Consumer, Trader and Tenancy Tribunal for a determination.

During the course of 2003, the Office of Home Building will also participate in the establishment of a pilot Advice and Advocacy Centre, where consumers can seek independent information, advice and specialist support about residential building matters.

Other changes that have been announced include:⁴³

- A new licensing process will incorporate mandatory continuing professional development (CPD) for licensees. It is anticipated that the CPD requirement will commence in the second half of 2003.
- A financial soundness test will be introduced in an attempt to ensure that every builder

⁴² Information on the Office of Home Building was obtained from the Fair Trading website at <www.fairtrading.nsw.gov.au> and from a Department of Fair Trading leaflet, 'Home Building NSW 2003: The Way Ahead', issued in February 2003.

⁴³ Department of Fair Trading leaflet, 'Home Building NSW 2003: The Way Ahead', February 2003.

has a financially viable business. Testing is expected to commence in the second half of 2003.

- The need for building consultants to be licensed will also be addressed, beginning in the second half of 2003 with the licensing of consultants who provide pre-purchase inspections.
- Builders and tradespeople will be required to give a compulsory information brochure to their clients when contracts are entered into. The brochure clearly sets out the rights and responsibilities of all parties to a contract, and will be available from 1 July 2003.
- Planning NSW has commenced work to establish a Building Professionals Board that will act as a single accreditation and registration body for all accredited certifiers, council certifiers, and building design professionals. The Board is intended to be operational by the end of 2003.

6. CONCLUSION

The *Consumer Protection Act 1969*, the first piece of legislation solely and specifically to concentrate on the subject, was described by the Minister for Labour and Industry at the time as ‘in many respects experimental, or perhaps I should say foundational, in nature but it does provide...solid foundations upon which we may build.’⁴⁴ Since then, the evolution of tribunals dealing with consumer-related problems has led to the gradual amalgamation of separate tribunals into the present super tribunal - the Consumer, Trader and Tenancy Tribunal.

It seems likely that the CTTT’s performance will be monitored by various stakeholders. Only months after the CTTT commenced operations, the Joint Select Committee on the Quality of Buildings questioned some aspects of the Tribunal’s procedures and efficiency with regard to building disputes. The statutes underpinning the jurisdiction of the 8 Divisions of the CTTT may also change. Consumer, strata, tenancy and building laws are regularly scrutinised and amended. This may occur to counteract a particular trend, to rectify problems that arise in practice with the use of services, to accommodate changes in technology or the marketplace, and so on. Protecting consumers in the home building industry has proved especially difficult⁴⁵ and more reforms are due to commence in July 2003.

The functions of the CTTT can also be affected by the powers and activities of other related agencies, such as the Office of Fair Trading and the forthcoming Office of Home Building. The CTTT faces a challenge to fulfil expectations that its ‘customers will benefit by improved access, streamlined procedures and more consistent and high quality decision making.’⁴⁶

⁴⁴ Consumer Protection Bill, Second Reading Speech, Hon Eric Willis MP, *NSWPD*, 12 March 1969, p 4437.

⁴⁵ As the Minister for Fair Trading, Hon Faye Lo Po’ MP, conceded in 1996: ‘For almost a quarter of a century successive New South Wales Governments have struggled to find a workable and permanent solution to the problem of protecting consumers who are building or renovating a home from the pitfalls of dealing with a shoddy or bankrupt builder.’ Building Services Corporation Legislation Amendment Bill, Second Reading Speech, *NSWPD*, 30 October 1996, p 5540.

⁴⁶ Department of Fair Trading, *Annual Report 2000-2001*, Volume 1 of 2, ‘Director-General’s Report’, p 4.

**APPENDIX A:
CONTACT DETAILS OF THE CONSUMER, TRADER AND TENANCY TRIBUNAL
AND THE OFFICE OF FAIR TRADING**

(Source: Website of the Office of Fair Trading at <www.fairtrading.nsw.gov.au> accessed on 15 April 2003)

CONSUMER, TRADER AND TENANCY TRIBUNAL

Phone number (all registries): 1300 135 399

Website: www.fairtrading.nsw.gov.au

LOCATION	POSTAL
<i>Sydney Registry</i> Level 12, 175 Castlereagh Street Sydney NSW 2000 Fax: 9641 6477	GPO Box 4005 Sydney NSW 2001
<i>Parramatta Registry</i> Level 2, 10 Valentine Avenue Parramatta NSW 2150 Fax: 9687 0839	PO Box 4117 Parramatta NSW 2124
<i>Penrith Registry</i> Level 1, 308 High Street Penrith NSW 2750 Fax: 4731 2969	PO Box 988 Penrith NSW 2751
<i>Liverpool Registry</i> Level 3, 33 Moore Street Liverpool NSW 2170 Fax: 9822 4537	PO Box 723 Liverpool BC 1871
<i>Hurstville Registry</i> Level 3, 4-8 Woodville Street Hurstville NSW 2220 Fax: 8567 0099	PO Box 148 Hurstville BC 1481
<i>Newcastle Registry</i> Level 1, 175 Scott Street Newcastle NSW 2300 Fax: 4925 1444	PO Box 792 Newcastle NSW 2300
<i>Wollongong Registry</i> Level 3, 43 Burelli Street Wollongong NSW 2520 Fax: 4220 5455	PO Box 319 Wollongong NSW 2520
<i>Tamworth Registry</i> 3-5 Kable Corner Complex Cnr Kable Avenue & Darling Street Tamworth NSW 2340 Fax: 6761 9099	PO Box 1033 Tamworth NSW 2340

OFFICE OF FAIR TRADING

Location: 1 Fitzwilliam Street, Parramatta NSW 2150

Phone: (02) 9895 0111 Fax: (02) 9895 0222 TTY: (02) 9338 4943

Website: www.fairtrading.nsw.gov.au

FAIR TRADING CENTRES

<p><i>Sydney</i> Level 21, 227 Elizabeth Street Sydney NSW 2000 Phone: 13 32 20 Fax: 1300 300 010</p>	<p><i>Blacktown</i> Level 3A, 13 Kildare Road Blacktown NSW 2148 Phone: 13 32 20 Fax: 1300 300 010</p>	<p><i>Hurstville</i> Level 3, 4-8 Woodville Street Hurstville NSW 2220 Phone: 13 32 20 Fax: 1300 300 010</p>
<p><i>Parramatta</i> Ground Floor 1 Fitzwilliam Street Parramatta NSW 2150 Phone: 13 32 20 Fax: 1300 300 010</p>	<p><i>Penrith</i> 518 High Street Penrith NSW 2750 Phone: 13 32 20 Fax: 1300 300 010</p>	<p><i>Liverpool</i> Shop 1R, 33 Moore Street Liverpool NSW 2170 Phone: 13 32 20 Fax: 1300 300 010</p>
<p><i>Albury</i> 490 David Street Albury NSW 2640 Phone: (02) 6041 3222 Fax: (02) 6041 2220</p>	<p><i>Armidale</i> 85 Faulkner Street Armidale NSW 2350 Phone: (02) 6773 8100 Fax: (02) 6772 9954</p>	<p><i>Bathurst</i> 154 Russell Street Bathurst NSW 2795 Phone: (02) 6333 1400 Fax: (02) 6333 1444</p>
<p><i>Broken Hill</i> 32 Sulphide Street Broken Hill NSW 2880 Phone: (08) 8088 0100 Fax: (08) 8088 5100</p>	<p><i>Coffs Harbour</i> 22 Park Avenue Coffs Harbour NSW 2450 Phone: (02) 6653 0700 Fax: (02) 6653 0777</p>	<p><i>Dubbo</i> 50 Wingewarra Street Dubbo NSW 2830 Phone: (02) 6884 2611 Fax: (02) 6884 2486</p>
<p><i>Gosford</i> 19-21 Watt Street Gosford NSW 2250 Phone: (02) 4324 6300 Fax: (02) 4324 5870</p>	<p><i>Grafton</i> 50 Victoria Street Grafton NSW 2460 Phone: (02) 6643 1705 Fax: (02) 6643 1405</p>	<p><i>Lismore</i> Ground Floor 29 Molesworth Street Lismore NSW 2480 Phone: (02) 6627 6500 Fax: (02) 6627 6555</p>
<p><i>Newcastle</i> Level 5, 400 Hunter Street Newcastle NSW 2300 Phone: (02) 4925 7000 Fax: (02) 4925 7028</p>	<p><i>Orange</i> 184-186 Lords Place Orange NSW 2800 Phone: (02) 6361 9866 Fax: (02) 6361 8350</p>	<p><i>Port Macquarie</i> 143 Horton Street Port Macquarie NSW 2444 Phone: (02) 6584 1330 Fax: (02) 6584 1225</p>
<p><i>Queanbeyan</i> Shop T 7, CityLink Plaza Morisset Street Queanbeyan NSW 2620 Phone: (02) 6298 4800 Fax: (02) 6298 4888</p>	<p><i>Tamworth</i> Kable Korner Complex Cnr Kable Ave & Darling St Tamworth NSW 2340 Phone: (02) 6761 9000 Fax: (02) 6761 9099</p>	<p><i>Tweed Heads</i> 43 Wharf Street Tweed Heads NSW 2485 Phone: (07) 5599 5211 Fax: (07) 5599 5035</p>
<p><i>Wagga Wagga</i> 8 Baylis Street Wagga Wagga NSW 2650 Phone: (02) 6921 5166 Fax: (02) 6933 9555</p>	<p><i>Wollongong</i> Ground Floor 63 Market Street Wollongong NSW 2500 Phone: (02) 4254 3433 Fax: (02) 4229 3929</p>	

SPECIALISED SERVICES

<p><i>Aboriginal Tenancy (within Renting Services)</i> Level 4, 234 Sussex Street Sydney NSW 2000 Phone: (02) 9377 9200 Freecall: 1800 500 330</p>	<p><i>Business Licence Information Service (BLIS)</i> Phone: (02) 9619 8722 Freecall outside Sydney: 1800 463 976</p>	<p><i>Creditline Financial Counselling Service</i> Freecall: 1800 808 488</p>
<p><i>Home Building Service/ Office of Home Building</i> To be fully operational at Parramatta by 1 July 2003. Contact Office of Fair Trading at Parramatta.</p>	<p><i>Rental Bonds (within Renting Services)</i> Level 4, 234 Sussex Street Sydney NSW 2000 Phone: (02) 9377 9000 Freecall: 1800 422 021</p>	<p><i>REVS (Register of Encumbered Vehicles)</i> Level 5, 1 Fitzwilliam Street Parramatta NSW 2150 Phone: (02) 9633 6333 Freecall outside Sydney: 1800 424 988</p>
<p><i>Strata Schemes and Mediation Services</i> Level 6, 234 Sussex Street Sydney NSW 2000 Postal: PO Box A805 Sydney South NSW 1235 Phone: (02) 9338 7900 Freecall outside Sydney: 1800 451 431 Fax: 9338 7999</p>	<p><i>Telephone Interpreter Service</i> Phone: 13 14 50</p>	<p><i>Tenancy (within Renting Services)</i> Level 4, 234 Sussex Street Sydney NSW 2000 Phone: (02) 9377 9100 Freecall: 1800 451 301</p>

**APPENDIX B:
APPLICATION FEES IN THE CONSUMER, TRADER AND TENANCY TRIBUNAL**

(Source: Clause 10 of the Consumer, Trader and Tenancy Regulation 2002, as at 20 May 2003)

10 Application fees

(1) In accordance with section 86 (2) (n) of the Act, the following fees are, subject to this Regulation, payable in respect of an application to have a matter dealt with by the Tribunal in the Division as specified:

(a) \$27 in the case of a matter in the Residential Parks Division, Retirement Villages Division or Tenancy Division,

(b) \$56 in the case of a matter in the Strata and Community Schemes Division,

(c) in the case of a matter in the General Division, Home Building Division or Motor Vehicles Division, or in the Commercial Division (unless it is a matter referred to in paragraph (d)):

(i) \$27 if the amount claimed or in dispute is not more than \$10,000 or if no amount is claimed or in dispute, or

(ii) \$56 if the amount claimed or in dispute is more than \$10,000 but is not more than \$25,000, or

(iii) \$150 if the amount claimed or in dispute is more than \$25,000,

(d) in the case of a matter in the Commercial Division:

(i) \$500 for an application under section 86 or 86A of the *Credit Act 1984*, or

(ii) \$62 for an application under the *Consumer Credit (NSW) Code* (except as provided by subparagraph (iii)), or

(iii) \$500 for an application under section 101 of the *Consumer Credit (NSW) Code* if the application is made by a credit provider.

(2) The application fee payable by a person who is an eligible pensioner or an eligible student is \$5.

(3) No fee is payable in respect of the following:

(a) an application under section 74, 115 or 116 of the *Credit Act 1984*,

(b) an application under section 68 or 88 of the *Consumer Credit (NSW) Code*,

(c) an application under section 5 or 6 of the *Credit (Home Finance Contracts) Act 1984*,

(d) an application by the Director-General of the Department of Fair Trading.

(4) In this clause:

eligible pensioner means any of the following persons:

(a) a person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government,

(b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as:

(i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces, or

(ii) the unmarried mother of a deceased unmarried member of either of those Forces, or

(iii) the widowed mother of a deceased unmarried member of either of those Forces, and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card,

(c) a person who receives a special rate of pension under section 24 of the *Veterans' Entitlements Act 1986* of the Commonwealth,

(d) a person who holds a Senior's Card (being a card of that name issued by the New South Wales Government).

eligible student means a person who is receiving full-time education at a school, college or university and is a recipient of a student assistance allowance from a Commonwealth government authority in respect of that education.