

# **OPERATIONS REVIEW OF THE CONSUMER, TRADER AND TENANCY TRIBUNAL (CTTT)**

**Report to the Minister for Fair Trading**

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## EXECUTIVE SUMMARY

In June 2006 the Minister for Fair Trading commissioned an operations review of the Consumer, Trader and Tenancy Tribunal (CTTT).

The operations review follows a statutory review of the *Consumer, Trader and Tenancy Tribunal Act 2001* and Report to Parliament in March 2006. The statutory review identified a number of operational matters relating to the day to day operations of the Tribunal and recommended that they be further examined in an operational review.

The aim of the operations review is to enquire into and report back to the Minister for Fair Trading on issues relating to the procedures and administration of the Consumer, Trader and Tenancy Tribunal. The purpose of the review is to examine and assess any relevant operational, procedural, administrative and organisational matters concerning the Tribunal's current and future ability to efficiently and effectively meet its statutory objectives in practice - expedition, informality, low cost, consistency in decision making, and accessibility.

The Review involved: an extensive review of a wide range of documentation, websites, videos and educational materials; observation of Tribunal hearings, conciliation processes and Registry operations; and discussions with Tribunal members and Registry staff as well as with interest groups.

Since its establishment in early 2002, the focus of the Tribunal has been on merging the staff, functions and practices of the former Fair Trading and Residential Tribunals, and in putting in place structures, staffing and procedures to assist the Tribunal in achieving the objectives of the *Consumer, Trader and Tenancy Tribunal Act 2001* in the most cost effective way. While much work has already been done and continues to be done in relation to structural improvements, member performance management, use of technology, streamlining of procedures and information and communications, the operations review identified areas and issues for further improvement and action.

In particular the Review identified that there needs to be a strategic focus and framework for the future directions of the Tribunal, to lead and guide the planned reforms, and to provide the basis for the Tribunal to move to a new integrated performance-based culture, with a focus on client service and the achievement of quality outcomes consistent with the objectives of the legislation.

The strategic framework should be underpinned by a clear set of values and expectations of all staff, members and registry staff, focused on cooperation, partnership, respect, responsiveness, innovation, service and continuous improvement.

Consistent with the Terms of Reference, the Review makes findings and recommendations in relation to a broad range of operational matters including:

- Listing and hearing procedures, including proportionality and conciliation;
- Adjournments, delays, and finalisation of matters;
- Member training and expertise requirements;
- Member performance management, appraisal and conduct;
- Optimum member numbers and locations;
- Registry role and function;

- Use of technology, e-delivery and tele/video conferencing;
- Review Panel role and function;
- Complaint handling procedures;
- Informing the public about procedures and processes.

Of particular significance are recommendations relating to:

- A more flexible approach to the listing of matters to maximise the use of hearing time, and the delegation of more routine functions to Deputy Registrars;
- Improvements in the provision of information to parties to assist them in preparing for Tribunal hearings and to minimise the number of adjournments;
- New arrangements to improve the Tribunal's Complaints Handling Processes and to align them to best practice standards;
- Improvements in the arrangements for performance management of members including an enhanced role for the Deputy Chairpersons and senior members;
- Development of an Education and Training Plan and annual training and development program and the temporary engagement of an Education and Training Officer;
- Changes to the composition and role of the Review Panel to strengthen its independence and effectiveness in relation to complaints, member performance, and education and training; and
- The introduction of improved data collection and monitoring and reporting regimes to enhance the Tribunal's capacity to monitor and evaluate its performance across a range of areas and to provide timely, accurate and informative reports on the Tribunal's operations;
- The development of a comprehensive strategic plan and an information and communications strategy;
- Structural changes to enhance the efficiency and effectiveness of the Tribunal's operations including the establishment of an Information and Communication Unit and a Continuous Improvement Unit.

The report concludes by looking to the future and identifies the need for strategic leadership and significant cultural change in order to position the Tribunal to meet future needs. The improvements recommended in the operations review have been framed to guide the Tribunal in moving to this next stage.

The Review acknowledges and appreciates the support and assistance provided by the Chairperson, Deputy Chairpersons, members and Registry staff of the Tribunal and the Commissioner of Fair Trading and their significant contribution to the outcomes of the Review.

# 1. BACKGROUND

In June 2006 the Minister for Fair Trading commissioned an operations review of the Consumer, Trader and Tenancy Tribunal (CTTT).

## ***1.1 Statutory Review of the Consumer, Trader and Tenancy Act 2001***

The operations review follows a statutory review of the *Consumer, Trader and Tenancy Tribunal Act 2001* and Report to Parliament in March 2006.

Although confined to matters concerning the Tribunal's enabling legislation, the statutory review identified a number of operational matters relating to the day to day operations of the Tribunal and the activities of the members, which were considered by the statutory review to be important in ensuring the overall effectiveness of the Tribunal in meeting its statutory objectives.

Operational matters which arose during the course of the statutory review included:

- Complaints handling procedures;
- Operation of the Peer Review Panel;
- The attitude and behaviour of some members;
- The way in which the Tribunal provides information regarding its operations;
- The transfer of cases between divisions;
- The publicising of the availability of assessors, mediators and neutral evaluators and their use by members at hearings;
- Delays caused by adjournments;
- Time taken to deliver reserved decisions;
- The scheduling of hearings, especially in non-metropolitan areas;
- The adequacy of venues in rural or non-metropolitan areas; and
- The effectiveness of the Tribunal's methods in carrying out conciliation.

## ***1.2 Minister's Announcement of the Operations Review***

In announcing the Operations Review of the CTTT on 4 July 2006, the Minister for Fair Trading commented on the need for the CTTT to provide a constantly improving service for the public and to explain to clients - consumers, traders, tenants, landlords - how things work in practice.

The Minister outlined some of the key challenges of the Tribunal including: continued improvements to service delivery; consistency in the Tribunal's decision making; and overcoming difficulties posed by language, cultural and literacy barriers and the tyranny of distance in the regions. She noted that there are many factors to addressing these issues, such as the qualifications and training of members, listing and hearing procedures, use of technology; how complaints are handled; and how the Tribunal informs the public about who it is and what it does.

The Minister said she had commissioned an independent operations review of the Tribunal "*peering behind the curtain, taking an honest look behind the scenes*" because "*while we can have the best legislation in the world, its all for nought if it is not implemented appropriately.*"

The Minister acknowledged that the Tribunal is already efficient but said she wanted to explore the gaps and the opportunities in practical terms, to make sure “*we’re on the right course, now and for the future.*”

The Minister noted that the Operations Review is to be conducted in consultation with the Chairperson of the Tribunal and the Commissioner for Fair Trading.

### ***1.3 History of the Consumer Trader and Tenancy Tribunal***

The Consumer, Trader and Tenancy Tribunal was established in early 2002 following the enactment of *The Consumer, Trader and Tenancy Tribunal Act 2001* in February 2002.

Prior to this, various fair trading - type Tribunals had existed to hear consumer and related claims, including:

- **The Consumer Claims Tribunal** which was established in 1974 to provide a low cost, informal, speedy and accessible alternative to traditional court procedures for small consumer claims;
- **The Fair Trading Tribunal** which was established in March 1999 as part of a rationalisation of separate tribunals for general consumer disputes, motor vehicles, home building and certain commercial matters; and
- **The Residential Tribunal** which was also established in 1999 as a successor to the previous Residential Tenancies Tribunal, to deal with a range of property and real estate matters including residential tenancies, retirement villages, strata and community schemes and residential parks.

### ***1.4 The Role of Tribunals in the Legal System***

Tribunals have an important role in the legal system in providing informal, flexible, accessible, cost effective and fair means of dealing with a broad range of issues including civil disputes between parties, administrative reviews of government decisions, protective powers in relation to vulnerable members of the community and disciplinary proceedings.

Most Tribunals are established by statutes which set out their powers and determine their jurisdiction. Tribunals are not courts and are not bound by the rules of evidence. However they have a number of features in common with courts. They are required to operate within a legal framework determined by the relevant statute(s), they must ensure parties are afforded procedural fairness and they must assess and evaluate evidence, make decisions and provide reasons.

Features which distinguish tribunals from courts include the fact that tribunals are able to operate more flexibly than courts, they tend to be more accessible to parties, parties are not required and in some cases are discouraged from having legal representation, they can be staffed with members with specialist skills and expertise in areas other than law, and staffing arrangements are generally more flexible than courts.

These features pose significant operational challenges for Tribunals in meeting their statutory obligations in the most efficient and effective way.

## **2. TERMS OF REFERENCE**

The aim of the operations review is to enquire into and report back to the Minister for Fair Trading on issues relating to the procedures and administration of the Consumer, Trader and Tenancy Tribunal.

The Minister for Fair Trading seeks an independent evaluation of the Tribunal's operating practices to ensure that its key objectives concerning expedition, informality, low cost, consistency in decision making, and accessibility are being achieved.

Its purpose is to examine and assess any relevant operational, procedural, administrative and organisational matters concerning the Tribunal's current and future ability to efficiently and effectively meet its statutory objectives in practice.

Without limiting the scope of the review, the following key areas of the Tribunal's operations should be examined:

- Listing and hearing procedures, including proportionality and conciliation;
- Adjournments, delays, and finalisation of matters;
- Member training and expertise requirements;
- Member performance management, appraisal and conduct;
- Optimum member numbers and locations;
- Registry role and function;
- Use of technology, e-delivery and tele/video conferencing;
- Review Panel role and function;
- Complaint handling procedures; and
- Informing the public about procedures and processes.

## **3. APPROACH**

The Review involved:

- Review of a wide range of documentation including policies, briefing notes, files, statistical material, correspondence, forms and best practice guidelines;
- Review of communication and educational materials including the website and videos;
- Observation of Tribunal hearings, conciliation process and Registry operations;
- Discussions with Chairperson, Deputy Chairpersons, members, registry staff, and officers of the Tribunal; and
- Discussions with interest groups.

The review acknowledges and appreciates the support and assistance provided by the Chairperson and Deputy Chairpersons of the Tribunal, the Commissioner of Fair Trading, members and staff of the Tribunal and Office of Fair Trading and the contributions of interest groups and individuals who contributed to the review.

## **4. THE CONSUMER, TRADER AND TENANCY TRIBUNAL (CTTT)**

### ***4.1 The Consumer, Trader and Tenancy Tribunal – Statutory Objectives***

The CTTT is an independent decision making body whose primary function is to resolve disputes between consumers and traders and landlords and tenants.

The Tribunal's objectives are set out in section 3 of the *Consumer, Trader and Tenancy Tribunal Act 2001* and are to ensure that:

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

The Tribunal deals with a very large number and diverse range of matters including small retail transactions, motor vehicle purchases, residential parks agreements, multi million dollar strata developments, residential tenancy matters, social housing tenancy matters, home building defects, credit provision and retirement villages.

Sixteen Acts confer jurisdiction on the Tribunal which comprises eight Divisions:

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

### ***4.2 Strategic Directions***

Since its establishment in early 2002 the focus of the Tribunal has been on merging the staff, functions and practices of the former Fair Trading and Residential Tribunals, and in putting in place structures, staffing and procedures to assist the Tribunal in achieving the objectives of the *Consumer, Trader and Tenancy Tribunal Act 2001* in the most cost effective way.

While there is no overall strategic plan for the Tribunal, the Tribunal's operations are driven by the need to meet all of its statutory obligations within the available budget.

### **4.3 Operational Priorities for 2006**

The Tribunal identified 5 key operational priorities for 2006:

#### **1. Enhanced Technology**

- **Upgrade of the Case Management System** to increase the capacity for on-line lodgement and orders in all Divisions and to provide Division specific case management and reporting systems.
- **Trial of the use of videoconferencing** as a means of reducing the cost of proceedings and to provide improved services delivery to regional NSW.

#### **2. Organisational Structure**

- **Review of the organisational structure** and membership requirements of the Tribunal as a result of recommendations of the Review of the CTTT Act.

#### **3. Early Resolution of Disputes**

- **Strategic Partnerships** with Fair Trading Centres in promoting early resolution of disputes, and with Fair Trading Centres, Law Access and community organisations to prepare parties for appearing in the Tribunal where a matter has not been resolved.
- **Development of information tools** to assist in the early resolution of disputes including the development of a "Ten Tips" bookmark and a Conciliation Fact Sheet for clients to ensure the Tribunal is informal and accessible and disputes are resolved as early as possible.

#### **4. Divisional Practices**

- **Differential Case Management** including refining of practices in the General and Tenancy Division to ensure they are efficient and effective and meet the needs of the parties

#### **5. Enhancing Public Value**

- **Access to the Tribunal** including analysis of client focus groups to identify areas where the Tribunal can refine its practices to ensure greater access by those in need of the Tribunal's services.
- **Performance and Accountability** including enhancing management reporting structures and capabilities to ensure accountability to government and the public.

### **4.4 Scope**

The Tribunal has a staff of 230 including 97 members of the Tribunal (Chairperson, two Deputy Chairpersons, 7 senior members, 16 full-time members and 71 part-time members) and 133 staff employed in the Registry of the Tribunal.

The Tribunal's annual budget for 2005-2006 was \$21,126,271.

Some key statistics which give a flavour of the scope and operational performance of the Tribunal in 2005-2006 include:

- 61,089 applications were received;
- 77.4% of applications were lodged in the Tenancy Division;
- 29% of applications were lodged electronically;
- 85% of all applications were listed for hearing within 28 days of lodgement;
- 76,647 hearings were conducted in 95 locations throughout NSW;
- 68,125 matters were finalised;
- 77% of all matters were finalised at first hearing;
- 68.5% of all matters were finalised within 35 days;
- 3% of all applications were for rehearing, with 28% of applications approved for rehearing;
- 24% (21018) of final orders (89142) related to adjournments comprising 4338 (4.9%) adjourned prior to hearing and 16679 (18.7%) adjourned at hearing;
- 121,291 visits were made to the CTTT website.

#### **4.5 The Next Stage**

Since the establishment of the CTTT in early 2002, there has been a process of continuous improvement to streamline the operations of the Tribunal consistent with the objectives of the governing legislation. While much work has already been done and continues to be done in relation to structural improvements, member performance management, use of technology, streamlining of procedures and information and communications, the review identified issues and areas for further improvement as part of the continuous improvement process.

In particular there needs to be a strategic focus and framework for the future directions of the Tribunal to lead and guide the planned reforms and to provide the basis for the Tribunal to move to a new integrated performance-based culture with a focus on client service and the achievement of quality outcomes consistent with the objectives of the legislation.

The strategic framework should be underpinned by a clear set of values and expectations of all staff, members and registry staff, which are focused on cooperation, partnership, respect, responsiveness, innovation, service and continuous improvement.

The improvements recommended in this Review have been framed to guide the Tribunal in moving to this next stage.

## **5. LISTINGS AND HEARINGS INCLUDING PROPORTIONALITY AND CONCILIATION**

### ***5.1 Applications***

In 2005 2006 the Tribunal received 61,089 applications, a slight increase on the number of application received in the previous year (60,114). Consistent with the previous year, the majority of applications (77%) were in the Tenancy division, 9% were in General Division, 6.5% in the Home building Division, 2.5% in the Residential Parks Division, 2% in Strata and Community Schemes Division, 0.9% in the Commercial Division, and 0.1% in the Retirement Villages Division.

Since October 2003 consumers have been able to lodge and pay on-line for residential tenancy applications and, more recently, residential parks applications. In 2005-2006, 17,972 (29%) applications made to the Tribunal in the last financial year were made via the internet. Applications were lodged on-line by tenants (1268), landlords (6689), Department of Housing (9391), occupants (19), park owners (62) and residents (3).

On-line lodgement of applications was extended to the General, Home Building and Motor Vehicle Divisions on 1 July 2006, and 108 applications have been lodged on-line by traders (7), consumers (99), insurers (1) and others (1) since that date.

Statistics show that the e-lodgement rate of applications is increasing each month with 29% of applications lodged electronically in July 2006, 32% in August, and 36% in September.

Most interest groups commented favourably on the on-line application facility, particularly its ease of access, and capacity to save time in processing applications and recommended that it be promoted widely in communications and publications.

The Department of Housing, which submits large numbers of applications on-line, commented that the system sometimes has difficulty coping with the lodgement of large numbers of applications which can slow down the process and cause frustration to applicants. The Review was advised by the Tribunal that the current system, like all web-based systems, has limitations on the number of applications which can be lodged at any one time. The system has been designed in consultation with the Department of Housing and the issue has not been raised in consultation forums. The Tribunal will discuss the matter further with the Department of Housing and try to resolve the issue technically or through training, as appropriate.

The CTTT website includes useful information and instructions about the electronic lodgement of application including a flow chart which outlines the steps in the process. Applicants can also track the progress of their application electronically.

### **Findings and Recommendations**

The rate and pattern of applications to the CTTT has been consistent over the past four years, with most matters being lodged in the Residential Tenancy Division. The electronic lodgement facility for applications is generally working well and usage is increasing each month.

It is recommended that:

- **The CTTT review the computerised Case Management System to ensure that it has the capacity to manage the increasing number of electronic lodgements of**

**applications across all Divisions and to provide for high volume lodgements from the Department of Housing.**

- **The CTTT promote the use of the electronic lodgement facility on its website, in communications and publications, through the Office of Fair Trading (OFT) and relevant interest groups and associations.**
- **The CTTT monitor and report on the usage of the electronic lodgement facility including identifying patterns and trends in usage and policy implications such as the issue of access for disadvantaged groups or people in remote locations.**

## ***5.2 Listings and Hearings***

Listing of applications is a complex task because of the large number and broad range of types of matters listed, the type of hearing required, the location and length of the hearing and whether there is a requirement for a particular member to hear it. Listing of applications is primarily a function of the Registry which aims to fill hearing days to capacity in order to utilise Tribunal resources efficiently and effectively.

In 2005 2006 the CTTT held 74,647 hearings across 95 locations.

A review of listing procedures was undertaken in 2003 and the current listing system was implemented in March 2004.

A “hearing day” is 6 hours broken into two half days, allowing the Tribunal to engage part-time members for half days if required, particularly in country centres.

Applications to the Tribunal are listed in accordance with Divisional Listing Guidelines. The guidelines, which have been developed over a number of years, set out the listing parameters for the first listing of applications in all eight Divisions of the Tribunal as well as for rehearings and notices of renewal. The parameters include the time allocation, list type, listing timeframe and whether or not a matter is auto listed. These guidelines are kept under review and are refined on a regular basis.

Each of the eight Registries (Sydney, Newcastle, Penrith, Liverpool, Tamworth, Wollongong, Hurstville and Parramatta) lists matters falling within its geographical catchment.

The listing parameters have also been built into the Tribunal's computerised Case Management System (CMS) to enable applications lodged electronically to be automatically listed by the system.

If an application is not finalised on the first occasion, subsequent listings are done by the Registry in accordance with the member's instructions.

### **5.2.1 Types of listing**

The Tribunal uses different types of listings, depending on the type of application. These include:

- group lists;
- directions hearings;
- conciliation;
- mediation;
- formal hearings (special fixtures);

- hearings on the papers;
- expert conclaves;
- case conferences.

#### **5.2.1.1 Group Lists**

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

In a single 6 hour hearing day there are 4 lists before a single member: at 9:15am, 11:15am, 1:15pm and 2:15 or 3:15 pm. The number of matters listed depends on the type of applications lodged, but generally, a member will deal with between 20 and 30 matters in a day.

In cases where both the applicant and respondent appear, the parties are encouraged to resolve their dispute through negotiation. Where there are two or more Group Lists in a single venue, the Tribunal provides a conciliator to assist in this process. If an agreement is reached between the parties, the Tribunal will make consent orders confirming the agreement.

If there is no agreement, the matter will either be heard on the day, if time permits, or be listed for another day. If only one party appears, the matter may be heard *ex parte* on the day.

If a matter is unable to be finalised on the day because the parties are not prepared or there is insufficient time to deal with it properly, the member makes procedural directions and lists the matter on a subsequent day to enable it to be finalised.

#### **5.2.1.1 Adjournments to Another Listing**

Matters that are adjourned from their initial listing in a Group List can be listed back in a later Group List or they can be listed as a Special Fixture, or Formal Hearing, at the direction of the Tribunal member.

All adjourned matters, whether they are adjourned from an initial Group List or from a Formal Hearing, are listed according to set timeframes. The guidelines provide that Tenancy Division termination applications must be listed no later than 4 weeks from the adjournment, other Tenancy matters no later than 6 weeks, and all other Divisions between 8 to 12 weeks of adjournment.

#### **5.2.1.3 Directions Hearings**

The Tribunal uses a process of directions hearings in more complex matters such as large home building applications and complex strata applications. The purpose of the directions hearing is to identify the issues in dispute, to set a timetable for the hearing of the application and to make directions for the exchange of evidence. Directions hearings usually take 30 or 45 minutes but can be longer in very complex matters. Some directions hearings are undertaken by teleconference to minimise time and cost to parties and the Tribunal.

#### **5.2.1.4 Conciliation**

Under the Consumer, Trader and Tenancy Tribunal Act, the Tribunal is under an obligation to bring parties to a settlement wherever possible. Conciliation is a process most commonly used to achieve settlement and generally in conjunction with group listings of applications. Conciliation is also used extensively in matters involving multiple applications about the same dispute, for example, in residential parks and retirement village disputes. It is a process, however, that can be and is used at any time to assist in the resolution of a dispute.

In the metropolitan area, Newcastle, Gosford and Wollongong, Tribunal members and specifically employed staff act as conciliators to assist parties reach a resolution of their dispute. In other regional areas the Tribunal member hearing a group list will act as both conciliator and hearing member as appropriate to the matter before them. The process of conciliation is discussed further in section 5.5 of this report.

#### **5.2.1.5 Mediation**

Mediation is utilised in complex matters where it seems likely the matter may settle with the assistance of a mediator. Members of the Tribunal act as mediators. Mediations in large matters are often set for a half or full day.

#### **5.2.1.6 Formal hearings**

Formal hearings (or special fixtures) are used to determine disputes where attempts at settlement fail. These hearings can run over a few hours or sometimes several days in the case of very complex matters.

Parties and witnesses generally give evidence on oath or affirmation and the Tribunal member makes a decision at the conclusion of the proceedings. Sometimes the decision is reserved and delivered at a later date.

#### **5.2.1.7 Hearings on the papers**

There is provision under the Consumer, Trader and Tenancy Tribunal Act for matters to be determined on the papers with the consent of both parties. Parties are given an opportunity to provide all relevant documents and to make any written submissions on the issues in dispute before a decision is made by a Tribunal Member.

In the Strata and Community Schemes Division all applications for adjudication are dealt with on the papers after all parties have been given an opportunity to make written submissions. This process is set out in the Strata Schemes Management Act and the Community Land Management Act.

Applications for rehearing under Section 68 of the Consumer, Trader and Tenancy Tribunal Act are dealt with on the papers after parties have been given an opportunity to make submissions.

#### **5.2.1.8 Expert conclaves**

In large matters where there are expert witnesses on both sides, the Tribunal might convene a meeting of experts presided over by a Tribunal member with relevant expertise in the area. The aim of the process is to take the experts through the issues in dispute in order to secure an agreement and finalise the matter or, if this can't be achieved, to narrow the range of issues in dispute. The Tribunal advises that the process has been particularly effective in large home building cases.

#### **5.2.1.9 Case conferences**

Case conferences are used by the Tribunal to narrow issues in dispute and achieve resolution if possible or, if settlement is not achieved, to facilitate the preparation of the matter for hearing. The conference is presided over by a Tribunal member. Case conferences are most frequently used in large home building matters where both parties are legally represented.

### **5.3 Allocation of members to hearing lists**

The allocation of members to hearing lists is over sighted by the Deputy Chairperson (Determinations). Members are allocated to lists, taking into account a range of factors including the location and expertise of members and the availability of full-time and part-time members.

All full-time members are required to sit 5 days per week. Provision is made for non-hearing time for decision-writing upon request and after assessment by the Deputy Chairperson (Determinations). While there are established listing patterns for full-time and part-time members, these can change to deal with changes made at short notice to lists (e.g. because a matter is withdrawn and the member needs to be allocated other work or because of a member's unavailability due to illness) or to meet special listing needs including the need for urgent hearings.

The allocation of members to matters is a complex task involving consideration of a range of factors including geographic location, the expertise of members, the nature and complexity of matters, cost and the need to maintain the skills, knowledge and expertise of members.

The issue is complicated by the fact that group lists are generated electronically based on an estimate of time for particular matters. However it is not known whether both parties will attend, whether the matters will be resolved by conciliation or whether the matters will be heard or require adjournment for a directions hearing or formal hearing of the matter, because the matter might be quite complex, because the parties were insufficiently prepared or because there was insufficient time for the member to deal with the matter on the day.. The combination of these factors makes listing and the allocation of members' time quite complex.

Members commented that the current scheduling arrangements of four lists per 6 hour hearing day does not allow sufficient time for matters to be heard at the first listing and contributes to the high rate of adjournments. They suggested that two lists per day would provide more flexibility in finalising matters at the hearing. The Chairperson however does not support two listings per hearing day because it would limit flexibility in the use of hearing time and would cause inconvenience to parties. The current four lists per hearing day are designed to minimise waiting time for parties and to enable more complex matters to be scheduled separately from more routine matters.

Members also commented on the constant disruptions to their listing patterns at short notice and the need to travel, again with short notice, to other locations. They expressed concern that this can result in members arriving late for a hearing particularly if air travel is involved and the flight is delayed because of fog. Some interest groups also commented on the late arrival of members for hearings in country locations and the poor perception this creates. In this regard, the Council of Australasian Tribunal (COAT) Practice Manual for Tribunals notes that punctuality of members is important in commanding the confidence of the parties who appear before them and of the general public. In situations where there is a risk of delay, members should travel to the location the evening before the scheduled hearing day to ensure they are punctual for the hearing.

In locations where only a half day hearing is involved the hearing could be scheduled in the afternoon to minimise the risk of delays in airline schedules.

The statutory review received a number of submissions relating to the listing of matters and hearings. A number of submissions commented that teleconferencing has made hearings more accessible to parties in remote locations. Others commented that the Tribunal should allocate members with suitable experience in a matter. Others touched on adjudication without

a hearing, expressing the view that adjudication should only take place if both parties have adequate representation and if appropriate checks are in place to ensure both parties understand the process and have the capacity to participate in the process. It was also suggested that the most appropriate topics of adjudication without hearing would be rent arrears and water usage.

One group representing tenants commented to the statutory review that there should be no hearing on the first listing of the matter except by consent. The group put the view that the notice of hearing should invite the parties to conciliation and for further directions if required, thereby assisting the parties in understanding the hearing process and litigants will know what to expect. Such a practice however would add to the cost and delay in finalising matters.

## **Findings and Recommendations**

The question of how to maximise the efficient and effective use of hearing time was a key focus of the Operations Review. The review notes the work that has been done to date in this area including the engagement of conciliators for locations where there are two or more Group Lists, the use of teleconferencing in some locations and the proposed trial of videoconferencing.

The review observed proceedings in a number of locations including Group Lists, conciliation, directions hearings and special hearings and involving a range of matters, from some simple tenancy matters to quite complex home building and commercial matters. The Review was impressed at the skills required by Tribunal members in being able to digest the facts and substance of matters in quite a short period of time, to take account of any relevant law in the particular matter and to frame orders in front of a room of people, many of whom are waiting for their matter to be heard.

However the Review noted that in some Group Lists, involving a large number of matters where both parties attend, it is possible for members to have to wait for a considerable time while the parties attempt to resolve the matter through conciliation, before they actually hear a matter. In such situations the member's involvement in the listed matters occurs quite late in the hearing at the point when the member makes consent orders to give effect to the outcomes of the conciliations.

The Review noted three ways in which the use of the hearing time in Group Lists could be enhanced, through:

- better use of data to inform the listing process and parameters;
- the use of Deputy Registrars in making consent orders following successful conciliation; and
- a more flexible approach to the allocation of matters to members in locations where there are two or more Group Lists operating concurrently.

Statistics provided by the Tribunal to the Review show that of a sample of 24,949 of matters group listed on days when conciliators attended, two parties appeared in 7,872 or 32% of those matters and conciliators assisted in 6,838 or 27% of those matters. Of the 6,838 conciliated matters 4,749 matters were finalised by consent or withdrawn, 412 were adjourned by consent, 178 matters were partly settled and 1,500 matters proceeded to hearing. The statistics suggest that approximately 20% of this sample of matters were resolved through conciliation. A further refinement of this type of data for Group Lists across the State would provide a basis for refining the listing parameters to enhance the use of hearing times for the resolution of disputed or *ex parte* matters.

The delegation of authority from the Chairperson to Deputy Registrars to produce consent orders following successful conciliation would also facilitate the capacity of the Tribunal to deal

with matters quickly and smoothly and to maximise the use of hearing times. Safeguards would need to be built into the processes to:

- limit the delegation to certain types of matters;
- ensure that the Deputy Registrar is satisfied that the parties have reached agreement by consent; and
- ensure that the parties are provided with the opportunity to have the matter heard before the Tribunal member if they have any concerns;
- provide training for members and Deputy Registrars in the new arrangements.

In the city or large metropolitan centers there should be flexibility to maximise the efficiency and effectiveness of hearing time by allocating members across lists in order to assist in conciliation of matters, hearing of *ex parte* matters and matters which are not resolved by conciliation. Such flexibility would assist in managing the flow of matters, maximising the resolution of matters at the hearing and minimising the need to adjourn matters for further listing.

In the country members perform the role of both conciliator and member. This is accepted practice, provided the member makes a clear distinction between when they are conciliating and when the hearing commences, and provided neither of the parties objects. Submissions to the statutory review and to the operations review suggest that this practice does not always occur in some locations and is not well understood. Clarification is required for parties, members and Registry to ensure consistency across the State.

It is recommended that:

- **In the city or large metropolitan centres members be allocated across lists in order to assist in conciliation of matters, hearing of *ex parte* matters and matters which are not resolved by conciliation.**
- **The Tribunal trial the use of Deputy Registrars to issue consent orders following successful conciliation of matters.**
- **A Chairperson's Directions be published clarifying the circumstances in which members can conciliate and determine matters, that training be provided for members and Registry on this topic, and that the matter be placed on the agenda for discussion with interest groups at the numerous consultative forums conducted by the Tribunal.**
- **The Tribunal undertake six monthly reviews of listing parameters and procedures, informed by data from the Case Management System, input from members, Registry and the Business Development Manager, and feedback from consultative forums, in order to optimise the number of matters listed per hearing time and to maximise the use of hearing times in resolving matters fairly and expeditiously in accordance with the objectives of the Act.**
- **The Tribunal expand the use of teleconferencing and videoconferencing for Tribunal hearings, particularly for direction hearings and less complex matters in remote locations**

## **5.4 Proportionality**

The issue of proportionality was considered by the statutory review which supported the proposition put forward by the Tribunal that the Chairperson be given direction making power with regard to a particular class or classes of proceedings.

The statutory review commented that this should help to ensure that matters heard in the Tribunal are dealt with in proportion to:

- Costs;
- Complexity of the issues;
- Importance; and
- The financial position of the parties

The statutory review also noted that this would also help to ensure that cases are dealt with expeditiously and fairly, and that the resources of the Tribunal are allocated in an appropriate manner.

The statutory review recommended that The Chairperson be given the direction making powers to make procedural directions with regard to a particular class or classes of proceedings to ensure that cases are dealt with in proportion to their cost and complexity. The recommendation was intended to highlight that the Tribunal, and therefore members of the Tribunal, must deal with cases in ways that are proportionate to the matters in dispute in the case and do not impose significant cost burdens on the parties, while taking into account the fact that the Tribunal resources are limited.

The issue of proportionality is complex and involves achieving a delicate balance between all of the objectives of the Act.

The operations review was informed of examples where the principle of proportionality is not being followed and where a disproportionate amount of the Tribunal's time and resources are being spent on matters involving simple issues or amounts of only a few dollars. Interest groups commented on the onerous evidentiary requirements placed on parties by some members in relation to minor tenancy, motor vehicle and strata matters. The Department of Housing raised concerns about the particular difficulties it has in meeting the evidentiary and procedural requirements of the Tribunal. The Review understands that the Chairperson of the Tribunal is working with the Department of to examine alternative procedures tailored to the particular requirements of social housing tenancy matters.

The following case provides an example of where the principle of proportionality was not applied. The matter involved the purchase of a whip costing \$20.60 plus \$10 postage. The applicant has purchased the whip on e-Bay but shortly after the whip had broken while her young son was playing with it. The applicant sought a refund of the cost of the whip plus postage. The application was lodged on 26 June and the matter was listed for hearing on 14 August in a Group List at Maitland. As the respondent resided in Western Australia, he was served with details of the hearing. The respondent sent in a statutory declaration as to his non appearance at the hearing and his response to the matter. The applicant appeared at the hearing and a decision was made at the hearing in favour of the respondent. Oral reasons were given at the hearing but a request for written reasons was made on 28 August. A very lengthy statement of the reasons for the decision was published on 5 October 2006.

The Review was also advised of a more difficult matter involving a \$2.50 bus fare. The matter has developed into a complex and lengthy case because of the principles involved and the unwillingness of the parties to negotiate settlement of the matter. The case high lights the need

for the Tribunal to distinguish very clearly its role in resolving consumer disputes expeditiously, fairly and inexpensively from the role of the courts in resolving issues of principle and law.

In some cases the behaviour of the parties results in a disproportionate amount of time being spent on quite simple matters. An examination of a sample of files identified cases involving relatively simple tenancy matters which had been adjourned because of simple procedural issues or the non attendance of parties. In some cases interpreters had been engaged to attend the hearings. In one residential tenancy case involving an application for payment of arrears and return of possession an application was lodged on 23 February 2006 and a hearing date set for 13 March 2006. On the day of the hearing an adjournment was sought by the applicant to allow further negotiations to occur between the parties, the adjournment was granted and both parties were notified of the adjournment and that they would receive further advice of a new hearing date. on 14 March 2006 the parties were advised of the new hearing date of 29 March 2006. on 29 March 2006 the Tribunal made orders in relation to payment of rent arrears and payment of rent. The orders also included provision for the matter to be re-listed for a hearing in relation to the termination of the tenancy in the event of non compliance with the orders. The parties were advised of the orders on 3 April 2006. On 19 April 2006 the applicant sought a re-listing of the matter as the respondent had defaulted in complying with the orders made on 29 April 2006. On 21 April 2006 the matter was listed for hearing on 1 May 2006. ON 1 May 2006 the matter was dismissed by the Tribunal because of the non appearance of either party.

The Review also observed situations where matters had to be adjourned because the parties were not adequately prepared. These situations high lighted the importance of providing applicants and respondents, well before the hearing, with as much information as possible about the process, proceedings and what they have to do to prepare. This will go some way to ensuring that the parties are adequately prepared and that matters can be dealt with as far as is practicable at the first hearing.

## **Findings and Recommendations**

The principle of proportionality is applied to some extent to the Tribunal's procedures. For example the principle underpins the Tribunal's processes for listing of matters and the notional time allocations made for different types of matters. The principle also underpins the Tribunal's conciliation model, the adjudication of strata matters and the more recent procedures adopted in relation to dealing with residential parks matters. The proportionality principle also underpins the Tribunal's attempts to minimise the costs of proceedings by controlling the length of formal hearings as far as possible, and by using teleconferencing and videoconferencing for directions hearings and matters in remote locations.

Nonetheless there are opportunities to strengthen the application of the principle and to reinforce its importance to members and Registry staff. This can be achieved through increased use of the Registry in relation to less complex matters which are currently handled by members. (This is discussed later in the report in the context of the role of the Registry). It can also be achieved through leadership and direction from the Chairperson through a Chairperson's Directions (The Chairperson has prepared a draft Chairpersons Direction on the issue of proportionality but it is still being carefully refined), through effective case management including improved monitoring and reporting, and through education and discussion with members focused on the objectives of the Act and the role and responsibility of members in ensuring that the Tribunal meets those objectives.

It is recommended that:

- **The Chairperson's Directions on proportionality be finalised and publicised.**
- **The Chairperson establish working groups comprising members and Registry staff to examine review procedures and practices in each Division in order to identify ways in which the procedures can be streamlined and tailored to the particular requirements of each Division and in accordance with the principle of proportionality. This work should be informed by an analysis of data and case studies, input from members and Registry staff and consultation with relevant interest groups.**
- **Training be provided for members and Registry staff on the issue of proportionality including the opportunity to discuss the principle and its application in meeting the objectives of the Tribunal as well as case studies relating to the principle.**
- **The Chairperson, Deputy Chairpersons and senior members develop protocols to monitor the progress of cases and to provide guidance to members in applying the principle of proportionality to matters.**
- **The Chairperson delegate to the Registrar and Deputy Registrars functions of a more routine matter which are currently being handled by members in order to allow members' time to be allocated to more complex matters.**

## ***5.5 Conciliation***

The Consumer, Trader and Tenancy Tribunal Act provides that it is the Tribunal's duty to use its best endeavours to bring the parties in the proceedings to a settlement that is acceptable to all parties before making an order to determine any matter. If such a settlement is reached, the Tribunal must make orders to give effect to the settlement, provided it has the power to make such an order. Any statement or admission made during settlement discussions is not admissible at the hearing of the matter concerned or in any other legal proceedings.

A member or the Registrar may hold preliminary conferences to confer with parties in proceedings and make any determination that is agreed to by the parties. In such cases, the determination has effect as a decision of the Tribunal. If proceedings are not determined and the matter proceeds to a hearing, evidence is not to be given and statements are not to be made as to anything said or done at the preliminary conference unless the parties otherwise agree. If any party objects to the member's participation, then a member who presided over a preliminary conference may not determine the subsequent proceedings.

Submissions to the statutory review commented that the process of conciliation was helpful in reaching settlement without a formal hearing. While the majority thought the conciliation process was working effectively, a number commented on operational matters including the methods adopted by the Tribunal in carrying out conciliation.

The statutory review found that the concept of conciliation prior to adjudication of disputes was soundly based and that current conciliation provisions provide a cost-effective alternative dispute resolution process. While acknowledging that there are operational and administrative changes that may assist the conciliation process, the statutory review recommended the current legislative provisions of the Act concerning the obligation of the Tribunal to use conciliation prior to ruling on disputes should be maintained.

The COAT Practice Manual for Tribunals discusses best practice in relation to alternative dispute resolution (ADR) procedures, including conciliation. The manual notes in particular the need to:

- determine whether the alternative dispute resolution procedure is facilitative, advisory or determinative;
- specify the knowledge skills and ethics of conciliators;
- ensure separation between ADR process and the hearing

The CTTT has developed a conciliation model with two main objectives:

- to provide a conciliation service that meets the Tribunal's statutory requirement of assisting all parties to attempt to settle matters prior to going to a hearing; and
- to provide an informal, confidential and speedy service that allows parties to have personal input into the resolution of their dispute and therefore maintain 'ownership' of their dispute in such a way that maximises parties' satisfaction with the process.

The Tribunal's conciliation process is closely linked to the hearing process, rather than operating as a separate tier of dispute resolution prior to a hearing. It is based on an assessment of applications and the assumption that the bulk of the Tribunal's disputes lend themselves to potential quick resolution. In this way, it reflects the principle of proportionality.

The Tribunal uses Tribunal members working as conciliators or specially trained non-member conciliators. In country venues where it is not possible to provide the services of a conciliator, the member, with the agreement of the parties, might act as both conciliator and hearing member.

The conciliation process of the Tribunal involves the following steps:

- Information is provided to the parties on the hearing and conciliation process prior to the hearing.
- The member explains the process to the parties and seeks their agreement to try to settle the dispute.
- The conciliator conducts an early assessment of the likelihood of the parties reaching agreement.
- A conciliator deals with a number of matters concurrently, moving from one conciliation group to another.
- The conciliators role is one of "guided assistance", leaving the parties as much as possible to determine their own settlement.
- Where possible a pro forma Agreement Form is used to assist the parties systematically work through the process.
- A conciliator monitors that the agreement can be turned into enforceable orders and assists in the final wording of the agreement.
- The agreement is then referred to the member to give effect to the agreement through a consent order.
- Where no agreement is reached, the member may hear the matter on the day or adjourn the matter with direction to the parties as to how to prepare the matter for the next hearing

The Tribunal's conciliation model provides for a form of "evaluative mediation" (according to the terminology of the National Alternative Disputes Resolution Advisory Council's definitions of conciliation) in which the conciliator plays a more participatory role in the process than in mediation generally, by having an advisory role in relation to both the content and the possible

outcome of the dispute. This is consistent with the Tribunal's legislative duty to promote assisted or guided settlement of disputes within a legal framework.

The Tribunal acknowledges that its Conciliation Model poses a number of challenges including:

- Achieving the efficient resolution of disputes while ensuring the protection of the parties' legal rights;
- Being able to respond to the number of conciliations in any one list while providing a clear and consistent process which provides procedural fairness and gives the parties an opportunity to be heard and have ownership of the outcome
- Guiding the parties to settlement so that they feel ownership of the resolution of their dispute whilst ensuring that it can be made within the legal framework.

The Tribunal has developed guidelines on the conciliation process for use by conciliators.

The Tribunal's website also includes information on the process and a video has also been prepared outlining the process. The video has recently been produced in languages other than English.

An information sheet on the conciliation process is provided to parties at the commencement of conciliation. This sets out the principles and steps in the conciliation process for the parties to read prior to the hearing. The document also serves as a Conciliation Report to the Tribunal and the basis for making consent orders.

A specific Conciliation Fact Sheet is being developed to go to all parties prior to hearing to assist the parties to understand the conciliation process prior to attending the Tribunal

The operations review heard concerns from some parties that the conciliation process does not work well, particularly in country locations where there are no dedicated conciliators and where members both conciliate and hear matters, subject to the concurrence of the parties. It was reported to the Review that in some country locations members adjourn matters on the grounds that they cannot determine a matter in which they have been involved as a conciliator. Other reports indicated that members sometimes do not clearly distinguish between when they are conciliating a matter and when they move into determining a matter.

Clarification by way of a Chairperson's Directions is required to ensure that members and parties are aware that it is acceptable for members to conciliate and determine matters, provided the parties do not object, and that the member distinguishes clearly between the two processes.

The Review also heard criticisms of some conciliators who attempt to push settlement of matters rather than guiding the process. An examination of complaints files also suggested that this is an area of concern to be addressed by the Tribunal. In one case, for example, an elderly tenant complained about the treatment she had received in the conciliation process. She complained in particular that she had been forced into a room with the agents for the landlords, having been treated rudely and distressingly by the agent on previous occasions. She also complained that the conciliator appeared to be very familiar with the agent and that the conciliator made smart and derogatory comments to the tenant. In another case a party complained about the conduct of the conciliator alleging that the conciliator was very familiar with the other party in the matter and that the conciliator pushed for a resolution of the matter in favour of the other party. The complainant expressed the view that they wished they had known more about the conciliation process before they attended so that they could have been more assertive about their rights in relation to the treatment they received and the outcome that was reached.

From observations of the conciliation process in action, the Review can appreciate how parties might feel pressured in the conciliation process particularly if they are not familiar with the process and they are not well prepared. Parties coming to the process for the first time can feel at a disadvantage to those who are familiar with the process, particularly “regular” participants such as agents representing landlords. In this context it is imperative that conciliators remain impartial and respect the rights of all parties to put their case and be heard.

The attitude, conduct and demeanor of conciliators is particularly important in minimising any possible perception of bias on the part of the conciliator. It is also imperative that the focus of conciliators is on facilitating an outcome which is fair in the circumstances and acceptable to both parties. Such an approach needs to be distinguished from the application of a standard approach in all cases which is focused on trying to drive the parties to “meet in the middle” as the basis for a negotiated settlement. This latter approach can result in the parties feeling that they were forced into agreeing with the outcome or that the outcome is not fair. It is imperative therefore that a Tribunal member or Deputy Registrar, acting under delegation from the Chairperson, be required to be satisfied that the agreement was made willingly by the parties without pressure or duress, before a consent order is made following conciliation.

Clarification of the role (including the limits of the role) of conciliators, whether members or conciliators from Registry, development of standards and a code of practice and ethics for conciliators, as well as training for conciliators to develop their knowledge, skills and techniques, are required to ensure that the conciliation process truly facilitates the resolution of disputes in a fair and sensitive manner in accordance with the objectives of the legislation.

## **Findings and Recommendations**

Conciliation is an inherent part of the Tribunals procedures and is generally working well in assisting parties to resolve their disputes. Statistics provided by the Tribunal show that of the 39,639 matters listed at the 8 venues where conciliators worked (53% of the Tribunal’s workload), 24,949 (63%) of matters were group listed on days when conciliators attended. Two parties appeared in 7,872 or 32% of those matters and conciliators assisted in 6,838 of those matters. The outcome of those conciliations were 4,749 matters were finalised by consent or withdrawn, 412 were adjourned by consent, 178 matters were partly settled and 1,500 matters proceeded to hearing.

A limitation of the current arrangements is the limited number of conciliators. The above statistics demonstrate for example that there were 37% of matters which were group listed on days when conciliators did not attend. In these cases the Tribunal member would have performed conciliation and determination of the matter. If conciliation is an inherent part of the Tribunal proceedings, the Tribunal should explore opportunities, within the available budget, to increase the number of conciliators available to assist in proceedings.

The role of members in both conciliating and determining matters needs to be clarified for parties and members to ensure consistency across the State.

The role of conciliators, whether members or Registry conciliators, needs to be clarified, and standards of conduct developed for those involved in the conciliation process. This needs to be complemented by training including the examination and discussion of case studies.

Information about the conciliation process including the Facts Sheet on conciliation should be provided to the parties well before the hearing to ensure that they understand the process and can prepare adequately for it. The Facts Sheet could be attached to or incorporated in the notice of hearing. It should also be tailored to the requirements of particular Divisions.

It is recommended that

- The CTTT explore opportunities, within the available budget, to increase the number of conciliators available to assist in proceedings.
- The CTTT clarify the role of conciliators, including members and Registry conciliators, and develop standards of conduct for those involved in the conciliation process. This work should be informed by best practice outlined in the COAT Practice Manual for Tribunals and members and conciliators should be involved in the process.
- The Tribunal provide training for members, conciliators and Registry staff on the Tribunal's conciliation model and the role of conciliation in the Tribunal's dispute resolution processes. Training should also focus on the knowledge, skills and conduct of conciliators and include discussion of relevant case studies.
- The Tribunal include information facts sheet on the conciliation process, specifically tailored to the Division and type of matter, with all notices of hearings so that parties are well prepared for the process and have any necessary documents and other material when they arrive at the hearing.
- The Chairperson issue a Chairperson's Directions clarifying the circumstances in which members can both conciliate and determine the same matter, and that this topic be placed on the agenda of consultative forums.

## **6. ADJOURNMENTS, DELAYS AND FINALISATION OF MATTERS**

### ***6.1 Adjournments***

The Tribunal's Guarantee of Service states that its clients can expect:

- A hearing within 10 to 28 days from lodgement, except for the Tenancy Division where the standard is 21 days;
- Written Notice of the orders forwarded within 7 days.

Statistics provided by the Tribunal show that:

- the average days between lodgement of an application to registration was 1.5, up slightly on last year;
- the average days between lodgement of application to first hearing date was 20.4 days, also up slightly on last year; and
- the average days between an order made to date typed order is sent to the parties was 2.4 days, down slightly on last year.

Statistics also show that 52,289 or 77% of all 68,125 finalised matters across all Divisions, were finalised prior to or at first hearing, and 15,836 at the second or subsequent hearings. The percentage of matters finalised prior to or at the first hearing is highest in the Strata and Community Schemes Division (90%) where matters are dealt with by adjudication on the papers. The percentage of cases finalised prior to or at the first hearing is lowest in the Home Building Division for matters involving amounts of more than \$25,000. This reflects the

complexity of those matters. The percentage of matters finalised prior to or at first hearing in the Motor Vehicles Division is only 65% and could reflect the practice, conveyed to the Review, that parties in this Division do not expect that matters will be finalised at the first hearing and consequently do not go prepared for a hearing.

A key factor affecting the finalisation of matters is the number of times a matter is adjourned for a further hearing. Not only does this delay finalisation of matters but it significantly increases the Tribunal's costs.

Consistent with two of the Tribunal's objectives to ensure that its proceedings are efficient and effective and that proceedings are determined in an informal, expeditious and inexpensive manner; the Tribunal should continuously strive to increase the number of matters finalised prior to or at first hearing and reduce the number of adjournments as far as is possible, while ensuring that the other two objectives are met, namely that the Tribunal is accessible and that its decisions are fair and consistent.

In 2005-2006 there were 21,017 adjournments including 4,338 matters adjourned prior to hearing and 16,679 matters adjourned at hearing. The overall percentage of adjournments to total orders made was 24% although the percentage varied substantially from Division to Division.

The highest rate of adjournments was in the Home Building Division where matters tend to be more complex and involve substantial amounts of money. Adjournment rates in Retirement Villages are also high (75%) and in Motor Vehicles (45%) and Residential Parks Divisions (43%). There were 9,282 adjournments in the Residential Tenancy Division representing 15% of orders made. A large proportion of these matters were Department of Housing matters which were adjourned because of difficulties in obtaining evidence and because of changes to the law relating to social housing tenancies.

In the Tenancy Division 79 tenancy matters were adjourned for more than 5 times. An examination of 28 of these matters indicated that:

- 21 of the matters had been finalised after 5 adjournments;
- 3 of the matters had been finalised after 6 adjournments;
- 3 of the matters had been finalised after 7 adjournments;
- 1 of the matters had been finalised after 8 adjournments; and
- 1 of the matters had been finalised after 9 adjournments.

The cases involved a range of matters including:

- breach of the rental agreement (7);
- termination of rental agreements (10);
- rental bond matters (5);
- excessive rent (2); and
- compensation and other matters (5).

The Review was advised that a number of these cases related to Department of Housing matters and that discussions are taking place between the Tribunal and the Department to try to minimise the impediments to the expeditious resolution of matters.

## Findings and Recommendations

The cases high light the need for improved data, monitoring and reporting to enable cases with a large number of adjournments to be identified at an early stage, the reasons for adjournment to be assessed, and action taken to expedite the finalisation of the matter.

In a substantial number of cases, adjournments are required because the parties are unclear about the process and inadequately prepared. Although the documentation on the website (including a Chairpersons Directions on Adjournments) and on application forms and videos reinforces the importance of being prepared for the initial hearing, parties continue to attend hearings inadequately prepared to proceed.

It is imperative that the Tribunal continues to reinforce the need for preparation and specify what parties need to bring to the Tribunal hearings in order to ensure that parties are properly prepared and ready to proceed at the first hearing. The information must be specific to the Division and type of matter in question and be available in multiple languages for parties whose language is other than English. This will greatly assist in reducing the number of adjournments. It will also assist in overcoming a practice, identified to the Operations Review by some Interest Groups, whereby experienced parties deliberately attend the first hearing unprepared in order to avoid conciliation and to ensure that they are listed for a further hearing on the matter.

It is recommended that:

- **The Tribunal improve the data, monitoring and reporting on cases to enable cases with a large number of adjournments to be identified at an early stage, the reasons for adjournment to be assessed, and action taken to expedite the finalisation of the matters.**
- **The Tribunal develop information specifying what parties need to bring to the Tribunal hearings in order to ensure that parties are properly prepared and ready to proceed at the first hearing. The information should be specific to the Division and type of matter in question and be available in multiple languages for parties whose language is other than English. The material should accompany all notices of hearings.**

## ***6.2 Reserved Decisions and Reasons for Decisions***

At the conclusion of a hearing a member may make the decision then and there and usually provide brief oral reasons for the decision or the member may reserve the decision and deliver it at a later date.

Where the decision has been made at the hearing, a party has a right to request written reasons within 14 days of receipt of the decision.

Under the Act written reasons are to be provided within 7 days of a request. There is no legislated mandated time standard for reserved decisions but the Tribunal has set an internal standard of 30 working days for the delivery of reserved decisions.

The statutory review commented on delays in providing written reasons and reserved decisions. Section 49 of the Consumer, Trader and Tenancy Act 2001 provides that:

- 1) The Tribunal must, within the time prescribed by the regulations, give notice of its decision in a matter that is the subject of proceedings to the parties in the proceedings. The notice must indicate that any party may, within 14 days of receiving notice of the decision, request the Tribunal to provide a statement of reasons for its decision.

- 2) Any party may, within 14 days of receiving notice of the decision, request the Tribunal, in the manner prescribed by the regulations, to provide a statement of reasons for its decision. The statement must be provided within 7 days after the request is made.
- 3) The statement may be brief but must:
  - a) set out the decision and the reasons for it, and
  - b) set out the findings on any material question of fact, and
  - c) refer to the evidence or any other material on which the findings of fact were based.

Section 50 of the Act provides that the Tribunal may direct the Registrar to correct an obvious error in the text of a notice of the decision or a written statement of reasons for the decision. An obvious error might be typographical, an accidental omission, an inconsistency or a defect of form.

Submissions to the statutory review commented that written reasons were very rarely provided within the current 7 day time limit. Most thought that 14 or 28 days from the date of request would be a more realistic timeframe.

The Tribunal in its submission stated that, while currently there is no requirement for the Tribunal to give reasons for a reserved decision, reasons are generally provided as a matter of course. However, the Act currently does not provide a form of the statement of reasons. The Tribunal suggested that the Act be amended to stipulate that the statement of reasons for reserved decisions should be in a similar form to that for written reasons for a decision which is provided for in Section 49 (3).

The statutory review concluded that the current stipulation that written reasons be provided within 7 days of request is unworkable. The statutory review recognised that the Tribunal has made its best endeavours to meet this timeframe but recommended that a more appropriate period of time would be 28 days from the date of request.

The review also accepted the Tribunal's suggestions with regard to the form of written reasons for reserved decisions.

The issue of delays in obtaining reserved decisions was also raised during the operations review. Delays in obtaining decisions account for 6.5% of the 930 complaints received by the Tribunal in 2005 2006.

A report generated by the Case Management System in early October 2006 identified 59 outstanding decisions, including 33 reserved decisions and 26 requests for written decisions. The Tribunal has pointed out that the number of reserved decisions is quite small and needs to be considered in the context of the number of decisions made by the Tribunal each day and the fact that the vast majority of matters are dealt with orally at Tribunal hearings.

About 26 of the 59 matters had been with the member for less than one month, 25 matters had been with members for between one and two months and 8 for more than two months, including one matter which had been outstanding since June, two since July and one since April.

The outstanding decisions included 22 matters in the Home Building Division, 12 matters in the Residential Tenancy Division, 11 in General Division, 6 in the Strata and Community Schemes Division, 3 in Motor Vehicles Division, 2 in the Commercial Division and 3 in the Residential Parks Division.

In addition to concerns about delays in obtaining reserved and written decision, the operations review was advised of concerns in relation to the quality of decisions. In particular decisions were sometimes perceived to be very legalistic and difficult for parties to understand. Others

commented that the decisions are sometimes difficult to interpret and, if they prescribe a series of outcomes which have to be completed in a sequential order, this is not always clear.

The COAT Practice Manual for Tribunals identifies that best practice decisions should be:

- comprehensible for the parties;
- written for the audience;
- concisely without lengthy reproduction of the evidence; and
- written without lengthy reproduction of the evidence.

## **Findings and Recommendations**

A challenge for the Tribunal is to meet the requirements of the CTTT Act in terms of timeframes and format, meet the requirements of other legislation impacting on the decision, while at the same time trying to produce reasons which are clear and concise and which will stand up to scrutiny in the event of an appeal or rehearing.

The Chairperson oversees the quality and timeliness of decisions. A report on outstanding reserved decisions and written reasons is provided to the Chairperson each month. The Chairperson monitors delays and communicates with members regarding outstanding decisions. The Chairperson also reviews written reasons from time to time to monitor quality. In August 2005 some members attended a course on “Good Decision Writing” conducted by Professor James Raymond, a world renowned expert in this area, and the Chairperson intends to arrange for more members to have access to this training as opportunities arise.

It is recommended that:

- **The monthly report on outstanding reserved decisions and requests for reasons, which is provided to the Chairperson to enable her to ensure that they are completed within the statutory timeframes and in accordance with the Tribunal’s guarantee of service, be enhanced by including reasons for the delay and by analysing the data to identify the number of matters outstanding by the length of time, the nature of the matters, the members handling the matters and any factors which might be contributing to the delay.**
- **Senior members, the Deputy Chairperson (Determinations) and the Chairperson develop protocols to regularly monitor written decisions to ensure quality of decisions within the principle of proportionality.**
- **Ongoing training be provided to members to assist them in preparing clear and concise reasons for decisions in accordance with the legislative timeframes and format.**

## **7. OPTIMUM MEMBER NUMBERS**

Since the establishment of the Tribunal in 2002 the structure of the Tribunal and the number of members has been under review. In July 2004 the then Minister for Fair Trading commissioned a review of the structure of the Tribunal to provide an assessment of the Tribunal’s membership structure, with specific reference to the ratio of members required per location to service current and expected demand for the Tribunal’s services.

At the time there were 17 full-time members, 6 Senior Members and 102 part-time members. The Review concluded that the number of members was in excess of requirements. This,

together with the fact that the vast majority of members were appointed to the metropolitan area, meant that members were required to travel away from their home registry when work was not available. It also posed difficulties in training and skilling members due to irregular sitting patterns for many members and the significant cost in delivering training to a large number of members. The size of the membership also made it difficult to manage performance and achieve consistency. Part-time members were particularly affected because of the lack of available work in some areas.

The Review committee proposed a number of parameters for determining the appropriate number and mix of members. These included:

- the roles of the Chairperson, Deputy Chairpersons, Senior Members and Members;
- the majority of appointments should be part-time;
- part-time members should sit regularly;
- the number of members appointed needs to be able to deal with seasonal fluctuations in workload;
- the workload is not expected to increase significantly in the near future;
- listing practices and procedures will continue to be refined.

The Committee recommended that the Tribunal aim to implement a structure over the next three years (2004 to 2007) which would comprise

- Chairperson 1
- Deputy Chairpersons 2
- Senior Member 5-6
- Full-time Members 10-12
- Part-time Members 60-65
- Total 78-86\

The Committee also examined the most appropriate location for Tribunal members and concluded that at least one full-time member should be based at each Tribunal Registry to provide registry officers with immediate access to a member in order to deal with interlocutory and other matters. The committee recommended that in addition to the Chairperson, Deputy Chairpersons and Senior Members, 8 full-time and 31 part-time members should be based in the metropolitan area and 3 full-time and 30 part-time members should be based in country locations. The Committee recognised that the proposed structure would only be achieved over time as members leave and through the reappointment process.

At 1 August 2006 there were 16 full-time members (14.4 FTE) and 71 part-time members (70 FTE), of whom 52 are active members. A recruitment process is currently underway as a significant number of appointments expire in early 2007. This process will enable further implementation of the earlier recommendations about the membership structure. It will also provide an opportunity to recruit members with a broad range of skills in appropriate locations throughout New South Wales and minimise the need for members to have to travel except where required for specialised and complex matters or for relief arrangements or urgent situations.

The change in the number of members since the inception of the CTTT is set out in the following table.

| Date              | 2002 | Recommended 2004 | June 2005 | August 2006 | Change 2002-6 |
|-------------------|------|------------------|-----------|-------------|---------------|
| Chairperson       | 1    | 1                | 1         | 1           | 0             |
| Deputy Chairs     | 2    | 2                | 2         | 2           | 0             |
| Senior Members    | 6    | 5-6              | 6         | 7           | +1            |
| Full-time Members | 17   | 10-12            | 17        | 16          | -1            |
| Part-time Members | 102  | 60-65            | 83        | 71          | -31           |
| Total             | 128  | 78-86            | 101       | 97          | -31           |

## Findings and Recommendations

There has been a progressive reduction in the number of members since the establishment of the Tribunal in 2002 and further reductions are proposed.

It is recommended that:

- **The recommendations of the 2004 structural review concerning the number and allocation of full-time and part-time members to the metropolitan and county locations be implemented as quickly as possible through the current recruitment process for Tribunal members.**
- **The process for the allocation of members be reviewed annually, and before each new recruitment intake, taking into account comprehensive data on Tribunal listings and hearings including the number of matters resolved by conciliation, *ex parte* matters, the time and cost of matters in each Division, and the number of hearings conducted by teleconference and video conference.**

## 8. MEMBER PERFORMANCE MANAGEMENT, APPRAISAL AND CONDUCT

### 8.1 Competency Requirements of Members

Issues relating to the skills, expertise and conduct of members were raised in both the statutory review and the operations review of the CTTT. Comments included:

- Members must have a navigable understanding of the legislation they are applying;
- Members should have expertise in the matter they are hearing;
- The Tribunal should allocate members with suitable experience in a matter;
- Members must have expert knowledge or an independent expert should be engaged;
- There is a need for a clear list of qualifications and skills of members;
- Members lack skills in mediation, and ability to exercise sound judgment;
- The Code of Conduct needs to be enforced;
- CTTT should conduct customer surveys to gain regular feedback on the conduct and professionalism of members; and
- Some members appear to be biased in their dealings in relation to particular matters.

The COAT Practice Manual for Tribunals notes that one of the features that distinguishes tribunals from courts is that their membership commonly includes persons with a wider range of qualifications and expertise other than law. The diversity of membership broadens the skills and knowledge base of tribunals, enhancing their capacity to make decisions in specialised areas of administration.

Defining the skills and knowledge expected of tribunal members is important for the recruitment, induction and training of members and for the management of their performance and professional development. While their professional backgrounds may be diverse, tribunal members all require a common set of core skills and abilities.

The Administrative Review Council suggests that the following key competencies are essential or desirable for members of Australian administrative review tribunals:

- Understanding of merits review and its place in public administration;
- Knowledge of administrative review principles including knowledge of administrative law generally;
- Knowledge of principles underlying the review of administrative decisions, including concepts of procedural fairness and knowledge of the rules of evidence (even though they don't apply to tribunals);
- Analytical skills including the capacity to interpret legislation and to analyse evidence;
- Personal skills and attributes such as interpersonal skills gender and cultural awareness;
- Communication skills including the ability to write reasons in a clear and concise fashion.

The Judicial Studies Board in the United Kingdom has developed a framework of six "headline"competencies" that it regards as generic for all United Kingdom tribunal members. They are:

- *Law and Procedure*: Understanding of the legal framework, jurisdiction and procedures of the tribunal and the subject matter of its jurisdiction;
- *Equal Treatment*: Awareness of and respect for cultural and other differences and the particular needs of persons with disabilities;
- *Communication*: Effective communication between tribunal chairpersons, members and parties;
- *Conduct of Hearings*: Conducting themselves in a manner that establishes and maintains the independence and authority of the Tribunal;
- *Evidence*: Undertaking necessary case preparation, identifying and assimilating facts and expert evidence, and asking questions concerning material issues;
- *Decision-making*: Taking an active part in deliberation and decision making.

## **8.2 Member performance management and appraisal**

### **8.2 1 Legislative Provisions**

Schedule 3 of the Act sets out the provisions relating to the performance of members. The Act envisages that:

- members will have a performance agreement with the Chairperson which deals with the performance of their duties of office;

- members will participate in a performance appraisal scheme;
- members will be accountable for their productivity and performance;
- the Chairperson will establish a code of conduct for members;
- the Chairperson has the powers to direct members to comply with the performance agreement or code of conduct.

Performance management of members was an issue considered by the statutory review of the Act. The statutory review reported that submissions had identified the importance of member performance agreements and the Code of Conduct. The statutory review noted that the Code of Conduct is publicly available on the Tribunal's website but recommended that the recognition of this practice in the legislation may be beneficial.

The statutory review also recommended that, in order to further enhance public confidence in the skills and expertise of members, the legislation should provide that the Tribunal make available on its website a statement that all members are subject to a performance agreement which is reviewed annually.

The statutory review further recommended that an additional provision should be added to section 12 (role of Chairperson) to give the Chairperson a specific role in the performance management of all members and to provide for the Chair to delegate this function in certain circumstances to the Deputy Chair (Determinations) or senior members.

### **8.2.2 Code of Conduct**

There is a Code of Conduct for Members of the Consumer, Trader and Tenancy Tribunal and there is a Performance Assessment and Review process for members. The Code of Conduct seeks to provide guidance to members in the performance of their statutory functions as Members of the Tribunal, assist members in identifying and resolving situations which may present ethical conflicts, and set out the standards of behaviour expected of each member of the Tribunal. The Code of Conduct covers the following areas:

- Compliance with the Tribunal's Objective;
- Fairness;
- Integrity;
- Impartiality;
- Expertise;
- Timeliness;
- Post Service Conduct;
- Compliance with the Code.

The Code of Conduct provides a reference for member training and education as well as for the operations of the Peer Review Panel (proposed by the statutory review to be renamed the Review Panel). The role of the Review Panel is discussed in Section 9 of this report.

### **8.2.3 Member Performance Assessment and Review**

In order to deal with the large number of members appointed to the Tribunal, a standard set of performance criteria has been developed for members and senior members. These are incorporated in a Member Performance Assessment and Review Scheme established by the Chairperson. The objectives of the scheme are to:

- Meet the statutory obligations imposed under the Consumer, Trader and Tenancy Tribunal Act 2001 Schedule 3 for members to enter into and comply with a performance agreement;
- Define the performance expectations the Tribunal has of its members;
- Ensure visibility of member performance as measured against key performance indicators;
- Assist members in their professional development by providing the opportunity to identify specific training and development needs;
- Assist in the identification of any systemic issues in the operation of the Tribunal that may impede member performance;
- Assist in the decision to reappoint members should members choose to seek reappointment.

Five skills domains have been identified including:

- conduct of hearings;
- professional knowledge;
- orders and reasons;
- conciliation;
- efficiency.

Criteria for measurement of each skills domain have been developed taking into account the role, key accountabilities, and required skills and knowledge, as set out in the position description for the roles of Senior Member and Member.

There are two stages to the process:

1. Each member completes a self assessment using the Proficiency Feed back form.
2. The Chairperson reviews the self assessments together with an interview of each member.

The Chairperson also seeks the views of the Deputy Chairperson (Determinations)

All performance assessment information is confidential and stored in a secure area. Only the Chairperson has access to the records except that members may view their records at any time.

Details of the objectives and the criteria for each of the Skills Domain in the Member Performance Assessment and Review Scheme are set out in Appendix B.

#### **8.2.4 Ongoing monitoring of members' performance**

In addition to the formal assessment process the Chairperson and Deputy Chairperson (Determinations) monitor the performance of members throughout the year through a variety of means including:

- complaints against members;
- referral of cases from Registry;
- rehearings;
- Supreme Court appeals;
- reading written reasons for decisions;
- monitoring adjournments and delays; and
- listening to tape recordings of proceedings.

## Findings and Recommendations

The operations review found that the Code of Conduct for Members and the Performance Assessment and Review Scheme reflect the objects of the Act. They are also consistent with the Administrative Review Council key competencies for tribunal members and those of the UK Judicial Studies Board whilst being tailored to the specific features of the CTTT, particularly its broad jurisdictional coverage and its focus on conciliation and settlement of disputes in an informal and cost effective manner.

At present the Chairperson handles the performance management process for all Tribunal members in addition to her many other roles and responsibilities. Given the large number of full-time and part-time members, it is not possible for the Chairperson to devote the time required to effectively manage the performance of each and every Tribunal member. The operations review therefore supports the recommendations of the statutory review that the Deputy Chairperson (Determinations) and Senior members have an enhanced role in the performance management process. The operations review also proposes that the Deputy Chairperson (Registry and Administration) also have a role in the performance assessment and review process for members, through the provision of performance data and reports to the Chairperson. The Chairperson should confer with both Deputy chairpersons in making finalising the annual appraisals of members.

The operations review recommends that

- **The Deputy Chairperson (Determinations) and Deputy Chairperson (Registry and Administration) be responsible for assisting the Chairperson in the implementation of performance management of Tribunal members. The Deputy Chairperson (Determinations) should oversight the performance management process in relation to senior members and senior members should be assigned responsibility for the performance management of a number of members. The Deputy Chairperson (Administration and Registry) should be responsible for the provision of relevant data and information to inform the process.**
- **The Chairperson be provided with half yearly reports from the Deputy Chairperson (Determinations) and Deputy Chairperson (Registry and Administration) on the operation of the Member Performance Assessment and Review Scheme including advice on any implications for the training and development of members.**
- **The Chairperson compile an annual report on the implementation of the Member Performance Assessment and Review Scheme for referral to the Review Panel and the Minister. The report should include confirmation that all members have a performance agreement and have had an annual performance appraisal, identification of issues raised in the process including training and development issues and systemic issues which might impede members' performance together with an outline of actions proposed to be taken by the Chairperson to address the issues.**
- **In addition to the current methods used to review member performance, members should be provided with quarterly reports on the operations of the Tribunal including data which benchmarks their performance in relation to matters such as: resolution of disputes; successful conciliation of matters; adjournments; rehearings; appeals; timeliness in preparation of decisions and provision of reasons for decisions; against comparable statewide data or other relevant benchmarks.**

- **Consistent with the recommendations of the statutory review, information about the performance management and training of members should be published on the CTTT website and in a printed facts sheet.**

## **9. ROLE AND FUNCTION OF THE REVIEW PANEL**

### ***9.1 Legislative Provisions***

In addition to the requirements under the Act for members to have a Code of Conduct and performance agreement, there is reference in the Act to a Peer Review Panel. The Panel currently comprises three persons, the two Deputy Chairpersons and an independent person appointed by the Minister.

The panel has the functions of reviewing matters relating to members that are referred to it by the Chairperson, the Director-General or the Minister and providing advice to the Chairperson, Director-General or Minister on the matters that are referred to it. These might include:

- education issues in relation to members;
- any training needs for members;
- the investigation of complaints and the taking of disciplinary action against members.

The Act also provides that the Panel may recommend to the Minister that a member who is the subject of a review by the Panel should, or should not, continue to hold office as a member.

Submissions to the statutory review raised a number of concerns about the use, function and independence of the Peer Review Panel including comments that:

- The Peer Review Panel should be utilised and should be activated when complaints are received;
- There should be a more independent process for dealing with the complaints about members;
- The Peer Review Panel should not be in-house.

Some submissions to the statutory review suggested that complaints regarding members should be referred to an independent body such as the Judicial Commission. Others commented that the Judicial Commission was not the appropriate forum for complaints regarding members as the Tribunal is not part of the judiciary.

The statutory review commented that, given that the Peer Review Panel is understood to have only been used once since its inception, there is little information to gauge its effectiveness. However, the review concluded that it is appropriate for the role, use and make-up of the Peer Review Panel to be further examined as part of an operational review. Such a review could examine whether there should be a broader range of issues that can be referred to the Panel. In particular, the statutory review concluded that the Review Panel could be given a greater role in examining the training and skills required by members.

In the short term, to give confidence to the community of the genuine independence of the Peer Review Panel, the statutory review recommended that the legislation be amended to alter its membership so that the majority of its members are independent non-Tribunal Members. Rather than the Panel comprising two Deputy Chairpersons of the Tribunal and an independent person appointed by the Minister, the statutory review proposed that it should consist of the

Deputy Chairperson (Determinations) and two independent appointments made by the Minister. To reflect its new make-up, the statutory review recommended that the Peer Review Panel should be renamed simply as a 'Review Panel'.

The statutory review further recommended that it should be made clear that the Panel is a 'standing' Review Panel as there appears to be some uncertainty as to whether a new Panel is required to be established for each separate issue it deals with.

## ***9.2 Operation of the Review Panel***

To date two matters have been referred to the Review Panel. One matter was referred by the former Minister and recommendations were made to the Minister. Another matter was referred by the Chairperson and recommendations made to the Chairperson.

The Review Panel has developed procedures and guidelines to assist its deliberations. The procedures envisage that similar procedures will apply in relation to a referral from the Chairperson, Minister or Director-General about an individual member or in respect of general matters about member training or performance.

In addition to the issues raised in the statutory review of the legislation, the operations review identified that the role of the Review Panel in relation to the Complaints Handling Processes of the Tribunal, the performance management responsibilities of the Chairperson, and the education and training of members, need to be clarified.

It is possible to interpret the role of the Review Panel narrowly, with responsibility confined to:

- reviewing matters relating to individual member performance referred to it by the Minister, Director General or Chairperson;
- advising the Chairperson on any issues relating to the training and education of the individual member or members in general that have arisen from the review of the individual matter; and
- advising on whether any disciplinary action should be taken in relation to the individual member.

On the other hand it is possible to interpret the role more broadly to include responsibility for reviewing individual matters relating to a member's performance as well as broader issues relating to member education and training.

If the narrower interpretation is taken, the Panel would meet only when a matter is referred to it and follow the procedures outlined in the Procedural Guidelines for the Peer Review Panel developed in December 2004. The Panel would assess the merits of the particular case, advise on any education or training issues relating to an individual member or members in general, and in very serious cases advise as to whether the person should or should not continue to be a member.

If the second and broader interpretation is accepted, the Panel would operate as a standing committee. Not only would the Panel be convened to review referrals from the Minister, Chairperson or Director-General in relation to individual matters which arise from time to time, but it would also meet quarterly to deal with the broader issue of complaints, member performance, education and training.

The composition of the Review Panel and its procedural guidelines would require amendment to reflect this broader role. All three members of the Review Panel should be independent and should reflect a broad base of skills including law, education, business and industry and

administration. This is important in ensuring the independence of the Review Panel from the Tribunal's complaints handling and performance assessment and review processes. As the Chairperson and Deputy chairpersons are involved in the administration of these processes, it is not appropriate that any one or more of these members of the Tribunal be members of the Review Panel.

The Procedural Guidelines of the Review Panel also need to be expanded to reflect the broader charter.

The Chairperson should be required to refer any serious matter relating to an individual member's conduct or performance, which might arise at any time, through the Complaints Handling Process or the performance assessment and review process, to the Review Panel for review and advice as to whether the member should continue to remain a member of the Tribunal.

Similarly the Minister and Director-General should continue to have the power to refer matters relating to individual member performance as well as more general matters relating to member education to the Review Panel.

To inform the Review Panel in its deliberations in relation to the broader issue of member education and training, the Chairperson should provide a quarterly report to the Panel on the Complaints Handling Process (discussed in Section 11 of the Report) in relation to members including an analysis of issues and trends, comments on the effectiveness of the process, implications for the education, training and development of members, and action taken or planned to be taken to address the issues raised.

The Chairperson should also provide the Panel with an annual report on the Assessment and Review Process for senior members and members (discussed in Section 8 of this report) including confirmation that all members have a performance agreement and have undertaken an annual performance appraisal, an analysis of the issues raised by the process in relation to member performance and education and training, and action proposed to be taken.

Further, the Chairperson should provide an annual report to the Review Panel on the Education and Training Plan for Members (discussed in Section 10 of the report) with particular reference to how it supports the strategic and operational priorities of the Tribunal and how it addresses issues arising from the Complaints Handling Process and performance assessment and review process.

The Review Panel's Charter would include dealing with:

- Serious matters concerning an individual member's performance identified by the Chairperson through the Complaints Handling Process;
- Serious matters relating to an individual member's performance identified by the Chairperson through the performance assessment and review process;
- Referrals by the Minister or Director-General in relation to individual member performance;
- Referrals by the Minister or Director-General in relation to the broader issue of member education and training;
- The Chairperson's quarterly reports on the Complaints Handling Process;
- The Chairperson's annual report on the Performance Assessment and Review Scheme;
- The proposed Education and Training Plan and Annual Training and Development Program for members; and
- The Chairperson's annual report on member education and training.

The Panel would review these various referrals and report its findings and recommendations to the Chairperson and Minister.

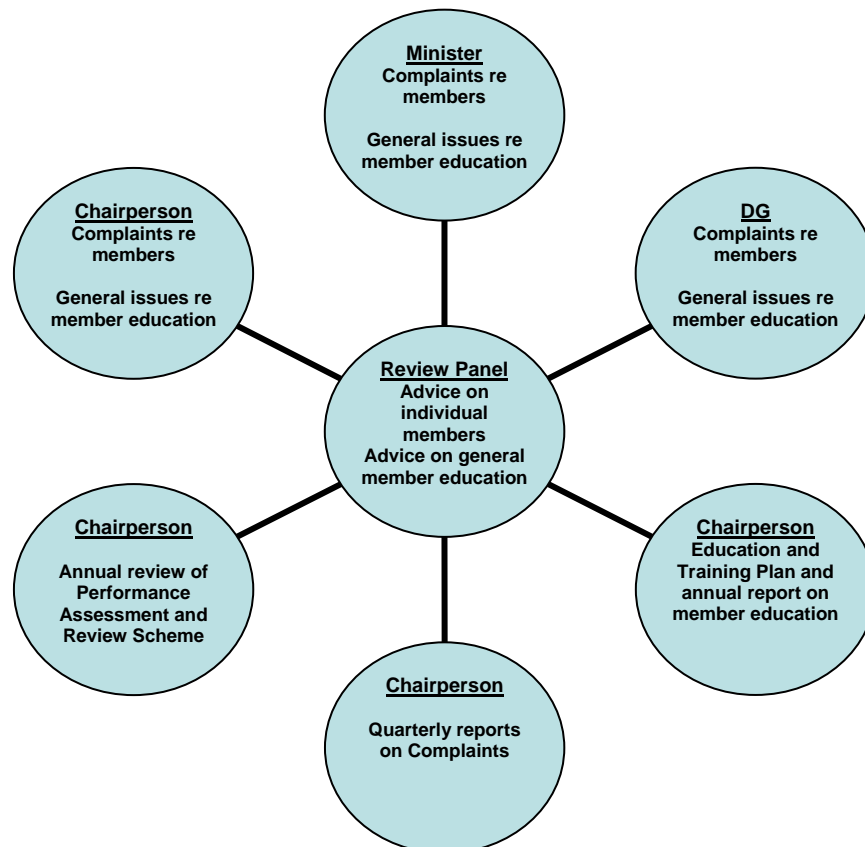
In relation to matters involving individual members, the Panel would advise on whether the member should continue as a member or on any other matter related to the member's performance, such as an appropriate education program for the member. The Review Panel might also identify if there are any broader implications for member performance and education in general and advise accordingly.

In relation to the reports on the Complaints Handling Process, the Member Performance and Assessment and Review Process and the Education and Development Program for members, the Review Panel would consider the reports and provide independent advice to the Chairperson and Minister on issues arising from the processes and implications for future directions.

This would serve to provide an independent overview of the processes for complaints handling, performance assessment and review, and the training and development of members, while reinforcing the responsibility and accountability of the Chairperson for the effective and efficient operation of the Tribunal, for member performance, training and development and complaints handling.

It would also satisfy concerns that the panel is not being used effectively and that the Complaints Handling Processes in relation to members are not sufficiently independent.

The linkages between the Complaints Handling Process, performance Assessment and Review Process, Peer Review Panel and Education and Training of Members is represented diagrammatically as follows:



## Findings and Recommendations

The Review Panel to date has had a limited role in relation to the conduct and performance of members, having dealt with only two matters since its establishment. There are opportunities to clarify and strengthen the role of the Review Panel in relation to member conduct, performance and education.

It is recommended that:

- **The composition of the Review Panel be amended to include three independent persons, appointed by the Minister, with a diverse range of backgrounds including law, education, business and industry and administration, one of whom be appointed as Chair of the Review Panel.**
- **The Review Panel be a standing committee which meets at least quarterly to deal with:**
  - **Serious matters concerning an individual member's performance identified through the Complaints Handling Process ;**
  - **Serious matters relating to an individual member's performance identified during the Performance Assessment and Review Process;**
  - **Referrals by the Minister, Director-General or Chairperson in relation to individual member performance;**
  - **Referrals by the Minister, Director-General, or Chairperson in relation to the broader issue of member education and training;**
  - **The Chairperson's quarterly reports on the Complaints Handling Process;**
  - **The Chairperson's annual report on the Performance Assessment and Review Scheme;**
  - **The proposed Education and Training Plan and Annual Training and Development Program for members; and**
  - **The Chairperson's annual report on member education and training.**
- **The Review Panel provide advice to the Chairperson and Minister in relation to:**
  - **Whether a member, who is the subject of a referral by the Chairperson, Minister or Director-General to the Review Panel, should, or should not, continue to be a member;**
  - **Any other matters relating to an individual member's performance which arise from its review of referred matters;**
  - **General matters relating to member performance and education which arise from its review of referred matters and review of the operation of the Performance and Assessment Review Scheme, the Complaints Handling Process, and the Tribunal's education and Training program for members.**

## 10. MEMBER EDUCATION AND TRAINING

The need for enhanced education and training of members was raised by a number of parties in the operations review. However the limitations and challenges of providing adequate training and education to such a large and diverse group within the available funds of the Tribunal were also raised. There was a strong theme in the consultations of the operations review that training and education of members should be a priority of the Tribunal and that funds should be identified through savings in other areas which can be redirected to this priority.

The Code of Conduct for Members of the Consumer Traders and Tenancy Tribunal provides that members should:

- undertake and participate in professional development and training programs aimed at enhancing knowledge and skills relevant to their duties;
- keep informed of developments in substantive and procedural matters within the jurisdiction of the Tribunal;
- be aware of the objectives of legislation applied by the Tribunal and the social context of proceedings;
- regularly review and evaluate their own performance and capacity as a member; and
- support and encourage the development of their colleagues.

The Performance Assessment and Review Process also places an emphasis on members having up to date knowledge and application of the law and legal principles relating to the Tribunal's jurisdiction including:

- awareness of relevant industry guidelines standards and codes of practice;
- knowledge and application of the principles of procedural fairness;
- knowledge of the rules of evidence and their application as appropriate in Tribunal proceedings;
- knowledge of the Chairperson's Directions;
- demonstrated ability to work effectively within the Tribunal's electronic environment; and
- participation in training programs provided by the Tribunal.

Members take these responsibilities seriously and spend much of their personal time in updating their technical and professional knowledge. They also share information with their colleagues through a dedicated intranet site called MemberNet.

Member Training and development is provided in a number of ways, through:

- induction of new members;
- an annual conference of members;
- updates on legal and procedural issues, precedents and impacts of significant decisions made in other jurisdictions;
- Chairpersons Directions;
- opportunities to attend appropriate training programs conducted by other organizations; and
- Information provided on MemberNet.

## **Findings and Recommendations**

There is no systematic and coordinated approach to training of members and training tends to happen in an ad hoc way. While the Chairperson, Deputy Chairperson (Determinations) and Senior Members have a key role in the training and education of members, there is no person clear line of responsibility or accountability for identifying training needs, establishing priorities and developing a range of strategies and programs to meet the diverse needs of full-time and part-time members throughout the State.

Training should include cultural awareness and understanding of parties with special needs.

While there is a substantial body of knowledge available to members it needs to be consolidated and organised in a comprehensive Practice Manual.

The operations review recommends that:

- **The Tribunal engage for an initial period of one year an expert to develop a comprehensive Education and Training Plan and an annual training and development program for members involving a range of strategies and activities to meet the common and individual needs of members.**
- **A reference group, comprising members and registry staff, be established to provide input into the development and implementation of the Education and Training Plan and annual training and development program.**
- **The Education and Training Plan and annual training and development program for members be informed by the annual review of the operation of the Performance Assessment and Review Scheme, quarterly reviews of the Complaints Handling Process, advice from the Review Panel, and an annual review of the Education and Training Plan and annual training and development program.**
- **The Education and Training Plan and for Members be forwarded to the Review Panel for consideration and advice.**
- **The Chairperson provide an annual report to the Review Panel on the implementation of the Education and Training Plan and recommendations for the next year.**
- **A formal and comprehensive induction program be developed for new members to ensure that they are equipped with the basic knowledge and skills to effectively carry out their roles as soon as possible after their appointment**
- **Training and induction programs include elements on cultural and social awareness assisted by the input of relevant interest groups.**
- **Relevant education and training programs be conducted jointly for registry staff and members to reinforce the interrelationship between the role of the Registry and members in streamlining the efficiency and effectiveness of the Tribunal's procedures and in dispute resolution processes such as conciliation;**
- **Where practicable and cost effective, training be carried out at the local level to enable a focus on the particular needs of members and Registry staff in different parts of the State.**
- **The role of the Deputy Chair (Determination), Deputy Chairperson (Administration and Registry) and senior members in mentoring and providing training and development for members be strengthened in their role statements and in the Performance Assessment and Review Process.**
- **The process for ensuring that members are kept up to date on developments in the law or legal precedents be formalised and coordinated by the Education and information Unit of the Tribunal.**
- **A comprehensive Practice Manual be developed for members.**

## 11. COMPLAINTS HANDLING PROCEDURES

Complaints handling procedures were raised in submissions to the statutory review. They included comments that complaints are not answered, and that procedures for dealing with complaints against members are not widely known or understood. Submissions to the statutory review also suggested that there should be a more independent process for dealing with the complaints about members and the administration of the CTTT, the Chairperson should oversee the process, and that a directions paper should be published outlining complaints procedures.

Complaints handling procedures were not commonly raised in contributions to the operations review. Most parties expressed satisfaction in being able to raise concerns with the Tribunal and have their complaints dealt with. However, the review has identified a number of issues and areas for improvement.

930 complaints were received in the period July 2005 to June 2006. The majority of these (59%) related to dissatisfaction with the Tribunal's decision. 6.5% of complaints related to concerns about the conduct of proceedings and a further 6.5 % to delays in receiving reasons for decisions. Member performance represented 5% of complaints. Complaints about conciliation accounted for 0.8% of complaints and those relating to bias represented 0.8% of complaints.

The Tribunal has a performance standard of responding to all complaints within 21 days or 28 days if the matter is referred to a member for action. Figures for September 2006 show that of the 46 complaints received, the majority related to home building matters (17), general matters (11) and residential tenancy matters (11).

The time taken to finalise the complaints ranged from 1 day to 35 days as shown in the following table:

| No days to Finalise | Number of Complaints | Types of complaints   |
|---------------------|----------------------|---|
| 1 to 5              | 6                    | 1 General 1 Motor vehicle, 1 Home Building, 2 Residential Tenancy, 1 Strata and Community Services                      |
| 6 to 10             | 9                    | 2 General 1 Motor vehicle, 3 Home Building, 2 Residential Tenancy, 1 Strata and Community Services                      |
| 11 to 15            | 17                   | 6 General, 5 Home Building, 4 Residential Tenancy, 1 Residential Parks, 1 Commercial                                    |
| 16 to 20            | 6                    | 1 General, 5 Home Building,   |
| 21 to 25            | 2                    | 1 Home Building, 1 Residential Tenancy  |
| 26 to 30            | 2                    | 1 Home Building, 1 Residential Tenancy  |
| 31 to 35            | 2                    | 1 General 1 Motor vehicle, 1 Home Building, 1 Residential Tenancy   |
| TOTAL               | 46                   | 11 General 3 Motor vehicle, 17 Home Building, 11 Rental Tenancy, 1 Residential Parks, 2 Strata and 1 Community Services |

The Tribunal's Complaints Handling Procedures are documented in the Correspondence Procedures. The Tribunal has also prepared a draft Fact Sheet on Review and Complaints although this has not yet been published. The website contains information on appeals and reviews under the Frequently Asked Questions and Answers location on the website. The Website also provides an opportunity for members of the public to provide feedback on-line on their experiences with the CTT including the opportunity to make complaints.

Complaints are registered and basic details recorded in the Case Management System. The nature of the complaint is recorded using a code to identify the issue e.g. dissatisfaction with decision, conduct of hearings. Although there is provision to record information about the nature of the complaint, this is optional and the review found that it is rarely used. This limits the capacity of the system to provide valuable information on the types of issues raised by complainants and how they might inform the continuous improvement process.

Complaints are assessed and referred to the relevant person in the organisation for investigation and action. The procedures document the possible actions which might flow from the resolution of the complaint including referral to the Peer Review Panel or disciplinary action in the case of Registry staff.

Although there is some monitoring and reporting in relation to complaints, this could be improved. The Tribunal prepares monthly reports of complaints received and is able to provide data on the time taken to complete matters but there is no tracking of matters to show progress and no analysis of issues to identify trends and to assist in the continuous improvement process. There is also no mechanism for informing the Tribunal's staff of the matters raised, the action taken, implications for policy and operational improvements. Such feedback would assist in encouraging a climate of customer service and continuous improvement within the organisation. It would also assist in informing senior management about training implications for members and other staff.

*Australian Standard: Customer Satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004,MOD)* provides guidance on best practice of complaints handling procedures. It is understood that this standard is being considered for implementation in the OFT.

The Standard suggests that an effective and efficient complaints-handling process should:

- provide a complainant with access to an open and responsive complaints-handling process;
- enhance the ability of the organisation to resolve complaints in a consistent, systematic and responsive manner, to the satisfaction of the complainant and the organisation;
- enhance the ability of an organisation to identify trends, eliminate causes of complaints and improve the organisation's operations;
- help an organisation create a customer-focused approach to resolving complaints and encourage personnel to improve their skills in working with customers;
- provide a basis for continual review and analysis of the complaints-handling process, the resolution of complaints, and process improvements made

The Standard emphasises the importance of:

- top management involvement and commitment through adequate resourcing, including staff training;
- analysing and evaluating complaints in order to improve the product and customer service quality;
- auditing of the complaints-handling process; and

- reviewing the effectiveness and efficiency of the complaints-handling process.

The standard outlines a number of guiding principles for Complaints Handling Processes including:

*Visibility:* Information about how and where to complain should be well publicised to customers, personnel and other interested parties.

*Accessibility:* A complaints-handling process should be easily accessible to all complainants including the provision of readily accessible information about the process, and flexibility in the methods of making complaints particularly for people with special needs.

*Responsiveness:* Complaints should be acknowledged to the complainant immediately, complaints should be addressed promptly in accordance with their urgency, and complainants should be treated courteously and be kept informed of the progress of their complaint through the complaints-handling process.

*Objectivity:* Each complaint should be addressed in an equitable, objective and unbiased manner through the complaints-handling process.

*Charges:* Access to the complaints-handling process should be free of charge to the complainant.

*Confidentiality:* Personally identifiable information concerning the complainant should be available where needed, but only for the purposes of addressing the complaint within the organisation and should be actively protected from disclosure, unless the customer or complainant expressly consents to its disclosure.

*Customer-focused approach:* The organisation should adopt a customer-focused approach, should be open to feedback including complaints, and should show commitment to resolving complaints by its actions.

*Accountability:* The organisation should ensure that accountability for and reporting on the actions and decisions of the organisation with respect to complaints handling is clearly established.

*Continual improvement:* The continual improvement of the complaints-handling process and the quality of products should be a permanent objective of the organisation.

## Findings and Recommendations

While the Tribunal's complaints handling procedures go some way to meeting best practice standards, they could be improved particularly in relation to communication and information about the process, tracking of complaints, training of staff, feedback to complainants and staff, and use of information from the Complaints Handling Process to identify trends and to inform continuous improvement in the Tribunal.

It is recommended that:

- **The Tribunal's Complaints Handling Procedures be reviewed and revised to align with the key principles of *Australian Standard: Customer Satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004,MOD)***
- **The Tribunal's Complaints Handling Procedures be published on the internet and in printed form, including information about the links between complaints**

handling, member performance assessment and review and the role of the Review Panel.

- The monthly reports on complaints be improved to include an analysis of matters raised and by whom, identification of any apparent trends in the types of complaints and the implications for continuous improvement and progress in resolving complaints.
- The Chairperson prepare quarterly reports on the Complaints Handling Process, with particular reference to complaints in relation to members, for referral to the Minister and Review Panel. The reports should identify the types of complaints received, any patterns or trends, action taken and implications for member training and education.

## **12. ROLE OF THE REGISTRY**

The Registry provides an important role in supporting the Tribunal in meeting its statutory objectives. A number of matters relating to the role and operations of the Registry were raised during the operations review. These included:

- The distinction between the role of the Deputy Chairperson (Registry and Administration) and the Registrar;
- The need for clear and concise procedures for Registry staff including provisions to escalate matters to a more senior level when urgent action is required;
- Opportunities for the Registrar and Deputy Registrars to undertake some of the more routine functions currently handled by members;
- The need for a closer working relationship between the Registry and members; and
- The structure of the Registry and Administration of the Tribunal.

Similar issues had been raised during a structural review of the Tribunal in 2004 and the statutory review in early 2006.

### ***12.1 Roles of the Deputy Chairperson (Registry and Administration) and the Registrar***

In relation to the roles of the Deputy Chairperson (Registry and Administration) and the Registrar, the statutory review discussed the roles set out in the Consumer, Trader and Tenancy Act and noted that the Registrar is largely responsible at an operational level for the day-to-day running of Registries throughout the State. By contrast, the focus of the Deputy Chairperson (Registry and Administration) is at a strategic level in terms of overall planning and the development of case management practices and procedures designed to provide a quality service to users of the Tribunal.

The statutory review concluded that in practice there may be a lack of clarity as to the different functions of the Deputy Chairperson (Registry and Administration) and the Registrar, and that there may be some overlapping of the roles. A more in-depth examination and review of the Registrar, Registry and Deputy Chairperson (Registry and Administration) at an operational level was recommended.

The operations review sees a clear distinction between the role of the Registrar and the Deputy Chairperson (Registry and Administration). The role of the Registrar is to provide leadership and guidance to Registry staff in listing matters, preparing matters for hearing, providing conciliation services, issuing of summons and other matters to support members in their resolution of matters. The Registrar is also responsible for the deployment of suitably qualified registry staff throughout the State, and for the performance management and training and development of Registry staff.

The Registrar has responsibility for ensuring that Registry staff are equipped with the information and tools needed to perform their roles and that staff are involved in and have an opportunity to contribute to the continuous improvement of the registry's performance.

While the Deputy Chairperson (Registry and Administration) oversees the Registrar in performing these functions, the Deputy Chairperson (Registry and Administration) also has a key role in shaping the strategic directions of the Tribunal to ensure that it is able to meet emerging needs. This involves working with the Chairperson, Deputy Chairperson (Determinations), Senior Members and members in relation to the identification of best practice, continuous improvement, performance management, information technology and management information, monitoring and reporting, communications and education, and resourcing.

## **12.2 Registry Procedures**

Clear and consolidated procedures are needed in relation to all aspects of the Registry's functions, including procedures in relation to the escalation of matters where urgent and immediate action is required.

This was illustrated in a recent case where a warrant for the eviction of a tenant was served on the tenant before his application for a rehearing in the matter had been dealt with. The tenant, who had a disability, had been unable to attend the hearing because his transport to take him to the Tribunal hearing had not arrived. An order for termination of the tenancy was made *ex parte*. The tenant immediately lodged an application for a rehearing. However the Registry did not take action in sufficient time to stop the Sheriff from issuing a warrant for the tenant's eviction and removal of possessions, as the Registry had not been able to make contact with the Sheriff.

This caused great stress to the tenant and could have been avoided had there been procedures and delegations in place to enable the Registrar to put an immediate stay on the implementation of the Tribunal's determination, pending consideration of the application for a rehearing, in addition to procedures to escalate matters to a higher level when an individual officer in the Registry is unable to make immediate contact with the Sheriff to prevent implementation of the determination.

## **12.3 Role of the Registry in Dispute Resolution**

The statutory review noted the submission of the Tribunal which suggested that in certain situations, such as where staff could provide procedural directions or conciliation for minor disputes, it is desirable that a number of powers of the Tribunal be exercisable by the Registrar and Deputy Registrars of the Tribunal. Examples of powers include:

- Power to adjourn hearings;
- Power to withdraw an application, if requested by the applicant;

- The power to give procedural directions;
- To bring the parties to a settlement; and
- To make orders giving effect to a settlement.

The statutory review supported the suggestion by the Tribunal that the Chairperson should be given the power to authorise the Registrar and Deputy Registrar to exercise particular powers of the Tribunal and made a recommendation to this effect.

The operations review confirms that Registry staff could have a stronger role in a number of areas of the Tribunal's procedures including those identified in the statutory review. In particular the Registrar and Deputy Registrars could have a stronger role in preparing matters for hearing. Members complained that files were often inadequately prepared and that key information in applications was obviously wrong or incomplete. Registrars should have the authority to check material before it goes to members, to clarify any anomalies and to confer with applicants in order to change by consent of the applicant certain factual information on the application such as the name and address of the respondents.

The Registrars and Deputy Registrars could have a greater role in determining lists and in allocating members to lists, particularly where it involves the allocation of the full-time member based at the location to the list or even part-time members based at the location for half-day hearings. This could be done in consultation with the Deputy Chairperson (Determinations) as appropriate, such as in relation to more complex listing arrangements.

Deputy Registrars Case Management (DRCM) could also be given responsibility for strata adjudications to free up members time to handle more complex matters. The operations review was advised that five of the Deputy Registrars Case Management have appointments as Adjudicators under the strata legislation. While these officers were handling the majority of strata applications prior to mid 2005, they now handle these adjudications only rarely, the majority being done by members. As a large number of such matters relate to by-laws, pets and common property and do not typically involve complex factual or legal issues, there would be merit in delegating responsibility for strata adjudications to Deputy Registrars Case Management with the capacity for more complex matters to be referred to a member, Senior Member, Deputy Chairperson (Determinations) or Chairperson as appropriate.

Where possible, the opportunity for the Registrar and Deputy Registrars to assist in conciliating matters or in issuing orders where conciliation has been successful should also be explored as discussed in Section 5 of this report.

In addition to those matters suggested by the Tribunal in its submission to the statutory review, other areas where Deputy Registrars could contribute to the dispute resolution process include:

- Requests for extensions of time to comply with orders or directions made by a member, except where complex issues are raised;
- Telephone directions, except where the case involves complex and costly matters;
- Consent adjournments for hearings;
- Allowing legal representation if the application is made prior to hearing and the issue is not contested;
- Consent orders arising out of Group Lists;
- Department of Housing applications which are not contested; and
- Other appropriate determinations under delegation by the Chairperson.

The involvement of Deputy Registrars in these types of matters would allow members to deal with contested matters and reduce the number of adjournments due to the lack of available

hearing time. It would require legislative amendment as recommended in the Statutory Review.

## **Findings and Recommendations**

The operations review has identified opportunities to enhance the partnership between Tribunal members and the Registry in improving the efficiency and effectiveness of its dispute resolution procedures and in fostering a culture of continuous improvement.

Such opportunities include involvement of the Registrar and Deputy Registrars in dispute resolution processes, clarifying roles and responsibilities and lines of reporting of Registry staff, enhanced training of Registry staff and members in all matters of the Tribunal's operations, and the development of a consolidated Procedures Manual for Registry Staff and members.

It is recommended that

- **Deputy Registrars be delegated authority to put an immediate stay on actioning a determination of the Tribunal upon receipt of an application for a rehearing of the matter and consideration of that application, particularly when terminations of tenancies and possession of property are involved.**
- **A comprehensive Procedures Manual be developed for Registry Staff and members, and made available on the intranet.**
- **Joint training be provided for Registry staff and members on the Tribunal's procedures, including procedures for escalating matters which require urgent and immediate action.**
- **Policies and procedures be developed proscribing the types of matters which can be delegated to the Registrar and Deputy Registrars to assist in the dispute resolution processes of the Tribunal, and the parameters of such delegation.**
- **The Tribunal monitor the implementation of the policy and its impact on the efficient and effective operation of the Tribunal.**
- **Roles and responsibilities of Registry staff be clarified and made available throughout the Tribunal to facilitate communication within the Tribunal and the prompt resolution of matters.**

## **13. USE OF TECHNOLOGY, E-DELIVERY AND TELE/VIDEO CONFERENCING**

Technology is critical to the Tribunal's operations and its capacity to meet the objectives of the Consumer, Trader and Tenancy Act 2001. Technology underpins case management, communications, information management, education and training of members and staff, and monitoring and reporting. In recent years the Tribunal has made significant progress in providing electronic service delivery to applicants and is progressively trialing new technologies to improve further the Tribunal's operations.

The CTTT has a website which serves a number of functions including:

- Providing information on the Tribunal and its processes including Chairperson's Directions, information bulletins, flow charts and access to decisions of the Tribunal via a link to AusLII;
- Enabling applicants to lodge applications electronically and to track the progress of applications; and
- Providing an opportunity for people to provide feedback to the Tribunal on their experience with the Tribunal and to make complaints.

In 2005/2006 there were 121,291 visits to the website, a 53% increase on the previous year.

Interest groups reported favourably on the website and suggested that they would like to see more information available electronically.

In addition the Tribunal has produced a range of facts sheets on various aspects of the Tribunal's operations and a video; including a version in languages other than English to assist people in accessing the Tribunal.

Teleconferencing is used to provide access to applicants and respondents in some remote locations and video conferencing is proposed to be trialed as a possible future means of enhancing access to the Tribunal in some circumstances.

Members use technology in hearings to gain access to relevant references and to generate orders electronically using templates developed by the Tribunal. While members have indicated that these on-line facilities could be improved in terms of being tailored to particular Divisions and made easier to complete, nonetheless the take up rate of members using these facilities is increasing. Statistics provided by the Tribunal show that in Registries in the metropolitan area, up to 80% of orders are being produced in Tribunal hearing using the electronic inCourt system. The number and percentage of orders made electronically using inCourt drops away quite significantly in country locations as the inCourt facility is not available in some venues.

The CTTT has developed a business case to provide members with laptops to allow the generation of orders electronically and facilities to allow the digital recording of proceedings regardless of location. This was recommended by the statutory review to assist with the transparency of Tribunal proceedings and to ensure that an accurate record is available for any future complaints or subsequent actions.

The CTTT has developed and maintains two intranet sites for use by Tribunal members and Registry staff. The sites allow members and staff to access a variety of information to assist with decision making and with day to day administration of the Tribunal. Some staff queried the need for separate Intranet sites for members and Registry staff and suggested that a shared Intranet site providing access for both members and registry staff would assist in promoting a better understanding of the roles of members and Registry, and foster a culture of partnership, cooperation and continuous improvement in the Tribunal. The Chairperson, however, is concerned to ensure that members have their own site and are able to share information among themselves in a secure environment.

The Review believes that a single site would assist in breaking down some of the barriers between members and Registry staff which were identified to the Review and might also be

less costly to maintain and service. Provision could be made for a secure part of the site to allow members to exchange information with one another.

There is capacity for members and staff to request technology changes and to make suggestions for improvements. These are considered by a Small Systems Review Committee which considers the requests and determine priorities. There is also a reference group comprising members and staff which meets quarterly to discuss information technology needs and priorities. While these initiatives are applauded, they are not well known by members. Information on the initiatives could be publicised regularly so that staff are aware of the Tribunal's plans to enhance technology, and the priorities and timeframes for doing so.

While the CTTT has had a rudimentary Case Management System for some time, in 2006 the CTTT awarded a tender to develop a new Case Management System for the CTTT. Not only will the system provide enhanced facilities for the management of cases throughout the Tribunal, but it will provide better information on the Tribunal's operations and a much needed enhanced monitoring and reporting capacity.

There are no recognised written policies in regard to reporting at the CTTT. In general the Business Development Unit creates reports and makes them available while the Information and Education Unit generates analyses and distributes reports.

There is a pressing need to specify the management reports required to effectively monitor and report on all aspects of the Tribunal's operations. The reports should be linked to the strategic plan and priorities of the Tribunal and meet member and Registry staff needs. They should also meet the needs of the Chairperson and Deputy Chairpersons in monitoring and evaluating the Tribunal's performance across a range of areas and in providing timely, accurate and informative reports to the Minister.

A reporting policy for the Tribunal is required to specify matters such as the:

- management information available in the form of computer based reports;
- means of gaining access to management information and standard reports;
- process for requesting and approving new reports, ad hoc reports and modifications to existing reports;
- who, how and when reports may be used;
- roles and responsibilities in relation to the management of information and reporting.

## **Findings and Recommendations**

There has been an increasing application of technology across all aspects of the Tribunal's operations. Technology initiatives introduced by the Tribunal in recent years have significantly improved the efficiency and effectiveness of the Tribunal's operations, and have improved access to the services of the Tribunal. The introduction of further planned technology enhancements will significantly improve the Tribunal's capacity to obtain and analyse critical data on its operations and to monitor, evaluate and report on its performance.

The Chairperson needs to be provided with more comprehensive reports on the progress of matters through the Tribunal, including any patterns, trends or exceptional situations. There should be a capacity to drill down to determine why, for example, a particular matter has had so many adjournments, or why reasons for decision are taking so long.

Better information on the number of matters resolved by consent through conciliation, *ex parte* matters and adjournments will assist the Chairperson in the efficient and effective operation of the Tribunal. Improved data on the cost of matters and a breakdown of costs for various stages of the process are critical to the continuous improvement of the Tribunal's operations. Such data will enable some of the assumptions underlying the procedures to be tested and will assist in evaluating alternatives. It will also assist in driving improvements and in reducing costs through minimising the number of adjournments and rehearings. This is important in the context of the Tribunal's limited budget, the growth in the number of applications and the competing priorities for use of the funds for matters such as member training.

It is recommended that:

- **The Tribunal develop a monitoring and reporting framework including policies and procedures for access to and use of management information and reports.**
- **A key focus of the development of the new Case Management System be on the capture of data and the provision of detailed reports to the Chairperson on all aspects of the Tribunal's operations, including costs for various stages of the Tribunal's dispute resolution processes.**
- **InCourt templates be tailored to particular Divisions and simplified in consultation with members.**

## **14. INFORMATION AVAILABLE ON THE TRIBUNAL'S OPERATIONS**

Section 28(4) of the Act provides that the Tribunal, "...is to take such measures as are reasonably practicable to ensure that the parties in any proceedings understand:

- a) the nature of the assertions in the proceedings and the legal implications of those assertions; and
- b) the procedure of the Tribunal and any decision or ruling made by the Tribunal that relates to the proceedings.

The statutory review noted that a number of submissions suggested that it would be helpful if there was greater information supplied to applicants to explain the hearing process at its commencement. The operations review also noted the importance of information in ensuring that applicants and respondents are adequately prepared for hearings, including conciliation, and that they are in a position to have their matter dealt with at the first hearing wherever possible. The operations review observed numerous examples where matters could not be settled on the day of the hearing because the parties attending were unprepared, did not have adequate documentation or were not authorised to settle the matter, e.g. agents not having the authority of the landlord to settle a tenancy dispute.

The Tribunal regularly conducts information sessions on the Tribunal and its procedures around NSW. It has also produced a video "Get It Sorted" that provides information on making an application and appearing before the Tribunal. More recently a video "Talking Heads" has been released which outlines the Tribunal's processes in languages other than English.

The Tribunal has established consultative forums in each of its Divisions. These allow representative groups the opportunity to provide feedback on Tribunal processes. Interest

Groups commented favourably on the consultative forums but noted that it is important to ensure that matters raised at the forums are actioned.

The Tribunal's website provides a wide range of information on the Tribunal's operations including: access to relevant legislation and decisions of the Tribunal; explanations of various stages of the process; information on how to make an application; and an outline of what happens in a hearing. The Tribunal has also developed a number of facts sheets and is currently working on the production of a "Ten Top Tips" pamphlet designed to assist unrepresented clients considering lodging an application and in preparing for and effectively participating in the conciliation and hearing processes of the Tribunal.

## **Findings and Recommendations**

While there is much material on the operations of the Tribunal and more is being prepared, there are gaps in the available material. In particular there is an urgent need to complete Chairpersons Directions in relation to all aspects of the Tribunal's dispute resolution processes and for these to be published.

Further, the information material prepared by the Tribunal is not consolidated or organised in a way that provides quick and easy access. The material needs to be completed and consolidated according to the types of matters and Divisions so that interested persons can readily access general information on the Tribunal as well as information that is relevant to their particular matter. Such information should also be available on the Office of Fair Trading's website.

Consideration should also be given to making video material produced by the Tribunal available on the website as well as incorporating a facility for people seeking information on the Tribunal's procedures to click on a flow chart for information in text or video form on that particular part of the process.

The review has identified the need for a dedicated Communications and Education Unit within the Tribunal. The function should be responsible for:

- developing a comprehensive communications plan including a broad range of strategies and initiatives to widely disseminate information and messages about the Tribunal; and
- overseeing its implementation and monitoring the effectiveness of the plan in assisting in preparing parties for their hearing at the tribunal and in ultimately reducing the number of adjournments and thereby costs.

The function should also have responsibility for completing the suite of Facts Sheets and other information to assist parties in preparing for the Tribunal hearing. This should include Facts Sheets on issues which commonly arise such as damage to carpets, cleaning, and damage to concrete driveways. This would assist in alerting parties to the need to obtain any necessary material including photos before the hearing date and in a form which assists the Tribunal in conciliating or determining the matter.

The work of the Communications and Education Unit should also include a review of forms and notices of hearings to ensure that:

- application forms and notices of hearings are appropriate to particular Divisions and matters;
- communications from the Tribunal in respect of orders and decisions are clear and concise and include appropriate information about rights of appeal and rehearings.

It is recommended that:

- **Consideration be given to making video material produced by the Tribunal available on the website as well as incorporating a facility for people seeking information on the Tribunal's procedures to click on a flow chart for information in text or video form on that particular part of the process.**
- **The information provided to parties prior to the hearing be tailored to the particular Division and the matter in question. Facts sheets on specific issues relevant to the matter should also be attached.**
- **A comprehensive communication plan which maps out the strategic and other communication priorities for the year ahead be developed in consultation with members, Registry staff and clients.**
- **A Communication and Education Unit be established, separate from the Correspondence Unit, reporting to the Deputy Chairperson (Registry and Administration) to develop and implement the communication plan and monitor its effectiveness.**
- **A Communication and Education Reference Group be established comprising members and Registry staff to assist in reviewing forms and communications in relation to Tribunal processes and decisions.**

## **15. SHAPING THE STRATEGIC DIRECTIONS OF THE CTTT**

Strategic leadership and management are critical to the future directions of the Tribunal. A strategic focus and framework for the future directions of the Tribunal are required to lead and guide the planned reforms and to provide the basis for the Tribunal to move to a new integrated performance-based culture with a focus on client service and the achievement of quality outcomes consistent with the objectives of the legislation.

The strategic framework should be underpinned by a clear set of values and expectations of staff, both members and Registry staff, including cooperation, partnership, respect, responsiveness, innovation, service and continuous improvement.

A comprehensive strategic plan, which sets out the Tribunal's objectives and strategies over the next three to five years, is essential to ensure that the Tribunal continues to meet its objectives, that it is able to deal with the range of matters handled across the eight Divisions within budgetary parameters, and that it continues to provide quality services to its broad range of clients.

The development of the strategic plan should be driven by the Chairperson and two Deputy Chairpersons and involve members and Registry staff as well as other interest groups. The plan should:

- take into account anticipated changes in markets and the volume and nature of matters coming before the Tribunal in future years, possible legislative changes which might impact on the Tribunal and changes generally in the operation and functioning of Tribunals;
- provide a shared understanding of the future directions of the Tribunal for members, Registry staff and clients;

- foster a culture of continuous improvement within the Tribunal;
- provide a framework for the systematic review of policies and operations informed by data, research and evaluation;
- link the training and development of staff to the strategic directions and priorities of the Tribunal;
- provide a clear outline of the Tribunal's objectives and strategies, including milestones, responsibilities and performance measures;

Monitoring and reporting regimes should be aligned with the strategic plan and the Chairperson and Deputy Chairpersons should be provided with regular detailed reports on the development and implementation of the plan.

Concurrent with the operations review, the Deputy Chairperson (Registry and Administration) has been reviewing the organisation structure of the Registry and administration of the Tribunal. The Deputy Chairperson (Registry and Administration) has identified the need for a Continuous Improvement Unit in the Tribunal. The Unit should have responsibility for reviewing policies, procedures and practices, monitoring performance, analysing data and identifying trends, developing a comprehensive and integrated reporting regime and providing advice to the Chairperson and senior management team on a broad range of issues and areas for improvement. The Unit could include the Business Development Unit and Correspondence Unit to ensure a coordinated use of data to support the continuous improvement process. The operations review agrees that such a Unit is essential in facilitating change and in taking the organisation to the next stage.

## Findings

A strategic focus and framework for the future directions of the Tribunal are required to lead and guide the planned reforms and to provide the basis for the Tribunal to move to a new integrated performance-based culture with a focus on client service and the achievement of quality outcomes consistent with the objectives of the legislation.

The Tribunal should have a clear strategic plan which is known and understood by members and Registry staff. While the development and implementation of the plan should be driven by the Chairperson, members and Registry staff should be encouraged to contribute to the plan.

The need for a Continuous Improvement Unit within the Registry and Administration has been identified in a separate but concurrent review of the organisation structure of Registry and Administration. The operations review supports the establishment of a Continuous Improvement function within the Tribunal in order to assist the organisation in moving to its next performance-based and client-focused phase.

### It is recommended that:

- **A Strategic Plan and priorities be developed for the Tribunal involving members, Registry staff and interest groups.**
- **A Continuous Improvement Unit, reporting to the Deputy Chairperson (Registry and Administration) be established with responsibility for:**
  - reviewing policies, procedures and practices;

- **monitoring performance;**
- **analysing data and identifying trends;**
- **developing a comprehensive and integrated monitoring and reporting regime linked to the Strategic Plan; and**
- **providing advice to the Chairperson and senior management team on a broad range of issues and areas for improvement.**

## **16. IMPLEMENTATION**

The recommendations of the operations review cover a broad range of areas of the Tribunal and include planning, structural changes, technology applications, development of revised systems, procedures and monitoring and reporting regimes. Implementation of the recommendations will require strong leadership, coordination and project management.

**It is recommended that:**

- **A Project Plan be developed for the implementation of the recommendations of this report. The project plan would include a number of separate projects in relation to specific matters such as the development of a Strategic Plan**
- **A Project Officer be appointed to oversight the development and implementation of a project plan to coordinate and manage the implementation of the recommendations of this report.**

# **APPENDIX A - CONSOLIDATED LIST OF RECOMMENDATIONS**

## **Electronic Lodgement of Applications**

1. The CTTT review the computerised Case Management System to ensure that it has the capacity to manage the increasing number of electronic lodgements of applications across all Divisions and to provide for high volume lodgements from the Department of Housing.
2. The CTTT promote the use of the electronic lodgement facility on its website, in communications and publications, through the Office of Fair Trading (OFT) and relevant interest groups and associations.
3. The CTTT monitor and report on the usage of the electronic lodgement facility including identifying patterns and trends in usage and policy implications such as the issue of access for disadvantaged groups or people in remote locations.

## **Maximising the Use of Hearing Time to Resolve Matters**

4. In the city or large metropolitan centres, members be allocated across lists in order to assist in conciliation of matters, hearing of *ex parte* matters and matters which are not resolved by conciliation.
5. The Tribunal trial the use of Deputy Registrars to issue consent orders following successful conciliation of matters.
6. A Chairperson's Directions be published clarifying the circumstances in which members can conciliate and determine matters, that training be provided for members and Registry on this topic, and that the matter be placed on the agenda for discussion with interest groups at the numerous consultative forums conducted by the Tribunal.
7. The Tribunal undertake six monthly reviews of listing parameters and procedures, informed by data from the Case Management System, input from members, Registry and the Business Development Manager, and feedback from consultative forums, in order to optimise the number of matters listed per hearing time and to maximise the use of hearing times in resolving matters fairly and expeditiously in accordance with the objectives of the Act.
8. The Tribunal expand the use of teleconferencing and videoconferencing for Tribunal hearings, particularly for direction hearings and less complex matters in remote locations

## **Proportionality**

9. The Chairperson's Directions on proportionality be finalised and publicised.
10. The Chairperson establish working groups comprising members and Registry staff to examine review procedures and practices in each Division in order to identify ways in which the procedures can be streamlined and tailored to the particular requirements of each Division and in accordance with the principle of proportionality. This work should be informed by an analysis of data and case studies, input from members and Registry staff and consultation with relevant interest groups.

11. Training be provided for members and Registry staff on the issue of proportionality including the opportunity to discuss the principle and its application in meeting the objectives of the Tribunal as well as case studies relating to the principle.
12. The Chairperson, Deputy Chairpersons and senior members develop protocols to monitor the progress of cases and to provide guidance to members in applying the principle of proportionality to matters.
13. The Chairperson delegate to the Registrar and Deputy Registrars functions of a more routine matter which are currently being handled by members in order to allow members' time to be allocated to more complex matters.
14. The CTTT explore opportunities, within the available budget, to increase the number of conciliators available to assist in proceedings.

### **Conciliation**

15. The CTTT clarify the role of conciliators, including members and Registry conciliators, and develop standards of conduct for those involved in the conciliation process. This work should be informed by best practice outlined in the COAT Practice Manual for Tribunals and members and conciliators should be involved in the process.
16. The Tribunal provide training for members, conciliators and Registry staff on the Tribunal's conciliation model and the role of conciliation in the Tribunal's dispute resolution processes. Training should also focus on the knowledge, skills and conduct of conciliators and include discussion of relevant case studies.
17. The Tribunal include information facts sheet on the conciliation process, specifically tailored to the Division and type of matter, with all notices of hearings so that parties are well prepared for the process and have any necessary documents and other material when they arrive at the hearing.
18. The Chairperson issue a Chairperson's Directions clarifying the circumstances in which members can both conciliate and determine the same matter, and that this topic be placed on the agenda of consultative forums.

### **Adjournments**

19. The Tribunal improve the data, monitoring and reporting on cases to enable cases with a large number of adjournments to be identified at an early stage, the reasons for adjournment to be assessed, and action taken to expedite the finalisation of the matters.
20. The Tribunal develop information specifying what parties need to bring to the Tribunal hearings in order to ensure that parties are properly prepared and ready to proceed at the first hearing. The information should be specific to the Division and type of matter in question and be available in multiple languages for parties whose language is other than English. The material should accompany all notices of hearings.

### **Quality and Timeliness of Decisions**

- 21. The monthly report on outstanding reserved decisions and requests for reasons, which is provided to the Chairperson to enable her to ensure that they are completed within the statutory timeframes and in accordance with the Tribunal's guarantee of service, be enhanced by including reasons for the delay and by analysing the data to identify the number of matters outstanding by the length of time, the nature of the matters, the members handling the matters and any factors which might be contributing to the delay.**
- 22. Senior members, the Deputy Chairperson (Determinations) and the Chairperson develop protocols to regularly monitor written decisions to ensure quality of decisions within the principle of proportionality.**
- 23. Ongoing training be provided to members to assist them in preparing clear and concise reasons for decisions in accordance with the legislative timeframes and format.**

### **Number and Location of Members**

- 24. The recommendations of the 2004 structural review concerning the number and allocation of full-time and part-time members to the metropolitan and county locations be implemented as quickly as possible through the current recruitment process for Tribunal members.**
- 25. The process for the allocation of members be reviewed annually, and before each new recruitment intake, taking into account comprehensive data on Tribunal listings and hearings including the number of matters resolved by conciliation, *ex parte* matters, the time and cost of matters in each Division, and the number of hearings conducted by teleconference and video conference.**

### **Performance Management**

- 26. The Deputy Chairperson (Determinations) and Deputy Chairperson (Registry and Administration) be responsible for assisting the Chairperson in the implementation of performance management of Tribunal members. The Deputy Chairperson (Determinations) should oversight the performance management process in relation to senior members and senior members should be assigned responsibility for the performance management of a number of members. The Deputy Chairperson (Administration and Registry) should be responsible for the provision of relevant data and information to inform the process.**
- 27. The Chairperson be provided with half yearly reports from the Deputy Chairperson (Determinations) and Deputy Chairperson (Registry and Administration) on the operation of the Member Performance Assessment and Review Scheme including advice on any implications for the training and development of members.**
- 28. The Chairperson compile an annual report on the implementation of the Member Performance Assessment and Review Scheme for referral to the Review Panel and the Minister. The report should include confirmation that all members have a performance agreement and have had an annual performance appraisal, identification of issues raised in the process including training and development issues and systemic issues which might impede members'**

performance together with an outline of actions proposed to be taken by the Chairperson to address the issues.

29. In addition to the current methods used to review member performance, members should be provided with quarterly reports on the operations of the Tribunal including data which benchmarks their performance in relation to matters such as: resolution of disputes; successful conciliation of matters; adjournments; rehearings; appeals; timeliness in preparation of decisions and provision of reasons for decisions; against comparable statewide data or other relevant benchmarks.
30. Consistent with the recommendations of the statutory review, information about the performance management and training of members should be published on the CTTT website and in a printed facts sheet.

### **The Review Panel**

31. The composition of the Review Panel be amended to include three independent persons, appointed by the Minister, with a diverse range of backgrounds including law, education, business and industry and administration, one of whom be appointed as Chair of the Review Panel.
32. The Review Panel be a standing committee which meets at least quarterly to deal with:
- Serious matters concerning an individual member's performance identified through the Complaints Handling Process;
  - Serious matters relating to an individual member's performance identified during the Performance Assessment and Review Process;
  - Referrals by the Minister, Director-General or Chairperson in relation to individual member performance;
  - Referrals by the Minister, Director-General, or Chairperson in relation to the broader issue of member education and training;
  - The Chairperson's quarterly reports on the Complaints Handling Process;
  - The Chairperson's annual report on the Performance Assessment and Review Scheme;
  - The proposed Education and Training Plan and Annual Training and Development Program for members; and
  - The Chairperson's annual report on member education and training.
33. The Review Panel provide advice to the Chairperson and Minister in relation to:
- Whether a member, who is the subject of a referral by the Chairperson, Minister or Director-General to the Review Panel, should, or should not, continue to be a member;
  - Any other matters relating to an individual member's performance which arise from its review of referred matters;
  - General matters relating to member performance and education which arise from its review of referred matters and review of the operation of the Performance and Assessment Review Scheme, the Complaints Handling Process, and the Tribunal's education and Training program for members.

### **Education and Training**

34. The Tribunal engage for an initial period of one year an expert to develop a comprehensive Education and Training Plan and an annual training and

development program for members involving a range of strategies and activities to meet the common and individual needs of members.

35. A reference group, comprising members and registry staff, be established to provide input into the development and implementation of the Education and Training Plan and annual training and development program.
36. The Education and Training Plan and annual training and development program for members be informed by the annual review of the operation of the Performance Assessment and Review Scheme, quarterly reviews of the Complaints Handling Process, advice from the Review Panel, and an annual review of the Education and Training Plan and annual training and development program.
37. The Education and Training Plan and for Members be forwarded to the Review Panel for consideration and advice.
38. The Chairperson provide an annual report to the Review Panel on the implementation of the Education and Training Plan and recommendations for the next year.
39. A formal and comprehensive induction program be developed for new members to ensure that they are equipped with the basic knowledge and skills to effectively carry out their roles as soon as possible after their appointment
40. Training and induction programs include elements on cultural and social awareness assisted by the input of relevant interest groups.
41. Relevant education and training programs be conducted jointly for registry staff and members to reinforce the interrelationship between the role of the Registry and members in streamlining the efficiency and effectiveness of the Tribunal's procedures and in dispute resolution processes such as conciliation;
42. Where practicable and cost effective, training be carried out at the local level to enable a focus on the particular needs of members and Registry staff in different parts of the State.
43. The role of the Deputy Chair (Determination), Deputy Chairperson (Administration and Registry) and senior members in mentoring and providing training and development for members be strengthened in their role statements and in the Performance Assessment and Review Process.
44. The process for ensuring that members are kept up to date on developments in the law or legal precedents be formalised and coordinated by the Education and information Unit of the Tribunal.
45. A comprehensive Practice Manual be developed for members.

### Complaints

46. The Tribunal's Complaints Handling Procedures be reviewed and revised to align with the key principles of *Australian Standard: Customer Satisfaction - Guidelines for complaints handling in organizations (ISO 10002:2004,MOD)*
47. The Tribunal's Complaints Handling Procedures be published on the internet and in printed form, including information about the links between complaints

handling, member performance assessment and review and the role of the Review Panel.

48. The monthly reports on complaints be improved to include an analysis of matters raised and by whom, identification of any apparent trends in the types of complaints and the implications for continuous improvement and progress in resolving complaints.
49. The Chairperson prepare quarterly reports on the Complaints Handling Process, with particular reference to complaints in relation to members, for referral to the Minister and Review Panel. The reports should identify the types of complaints received, any patterns or trends, action taken and implications for member training and education.

### **Role of the Registry**

50. Deputy Registrars be delegated authority to put an immediate stay on actioning a determination of the Tribunal upon receipt of an application for a rehearing of the matter and consideration of that application, particularly when terminations of tenancies and possession of property are involved.
51. A comprehensive Procedures Manual be developed for Registry Staff and members, and made available on the intranet.
52. Joint training be provided for Registry staff and members on the Tribunal's procedures, including procedures for escalating matters which require urgent and immediate action.
53. Policies and procedures be developed proscribing the types of matters which can be delegated to the Registrar and Deputy Registrars to assist in the dispute resolution processes of the Tribunal, and the parameters of such delegation.
54. The Tribunal monitor the implementation of the policy and its impact on the efficient and effective operation of the Tribunal.
55. Roles and responsibilities of Registry staff be clarified and made available throughout the Tribunal to facilitate communication within the Tribunal and the prompt resolution of matters.

### **Monitoring and Reporting**

56. The Tribunal develop a monitoring and reporting framework including policies and procedures for access to and use of management information and reports.
57. A key focus of the development of the new Case Management System be on the capture of data and the provision of detailed reports to the Chairperson on all aspects of the Tribunal's operations, including costs for various stages of the Tribunal's dispute resolution processes.
58. InCourt templates be tailored to particular Divisions and simplified in consultation with members.

### **Information and Communication**

59. Consideration be given to making video material produced by the Tribunal available on the website as well as incorporating a facility for people seeking information on the Tribunal's procedures to click on a flow chart for information in text or video form on that particular part of the process.
60. The information provided to parties prior to the hearing be tailored to the particular Division and the matter in question. Facts sheets on specific issues relevant to the matter should also be attached.
61. A comprehensive communication plan which maps out the strategic and other communication priorities for the year ahead be developed in consultation with members, Registry staff and clients.
62. A Communication and Education Unit be established, separate from the Correspondence Unit, reporting to the Deputy Chairperson (Registry and Administration) to develop and implement the communication plan and monitor its effectiveness.
63. A Communication and Education Reference Group be established comprising members and Registry staff to assist in reviewing forms and communications in relation to Tribunal processes and decisions.

### **Strategic Framework**

64. A Strategic Plan and priorities be developed for the Tribunal involving members, Registry staff and interest groups.

### **Continuous Improvement**

65. A Continuous Improvement Unit, reporting to the Deputy Chairperson (Registry and Administration) be established with responsibility for:
  - o reviewing policies, procedures and practices;
  - o monitoring performance;
  - o analysing data and identifying trends;
  - o developing a comprehensive and integrated monitoring and reporting regime linked to the Strategic Plan; and
  - o providing advice to the Chairperson and senior management team on a broad range of issues and areas for improvement.

### **Implementation**

66. A Project Plan be developed for the implementation of the recommendations of this report. The project plan would include a number of separate projects in relation to specific matters such as the development of a Strategic Plan
67. A Project Officer be appointed to oversight the development and implementation of a project plan to coordinate and manage the implementation of the recommendations of this report.

# APPENDIX B - MEMBER PERFORMANCE ASSESSMENT AND REVIEW PROCESS

## SKILL DOMAIN: CONDUCT OF HEARINGS

Personal and interpersonal skills and attributes

### **Objective**

To maintain the highest professional standards and to ensure that all communications with the parties representatives, witnesses and the Tribunal are open transparent and effective

### **Criteria**

- Parties are provided with a clear explanation of the hearing process including onus of proof conciliation and the nature of *ex parte* proceedings
- parties are treated with respect and courtesy
- any special needs if the parties are taken into account including language and cultural background, literacy and disability and sensitively handled and interpreters are used effectively
- effective listening skills are demonstrated
- participation of the parties is achieved through appropriate questioning to elicit relevant evidence
- effective control of the proceedings is demonstrated
- effective interpersonal skills are applied in all dealings with the parties, their representatives, witnesses and Tribunal staff including clarity in all instructions given
- act in accordance with the standards set out in the Code of Conduct for Members
- *Assist the Chairperson and Deputy Chairperson (Determinations) in providing leadership to the Members of the Tribunal*

## SKILL DOMAIN: PROFESSIONAL KNOWLEDGE

Demonstrated knowledge and application of the law and legal principles

### **Objective**

To conduct proceedings *including the more complex matters before the Tribunal and those where the amount in dispute exceeds \$25,000*, according to the law and legal principles with due regard to the principles of procedural fairness equity good conscience and the substantive merits of the case.

### **Criteria**

- up to date knowledge and application of the law and the legal principles relating to the Tribunal's jurisdiction
- awareness of relevant industry guidelines, standards and codes of practice
- knowledge and application of the principles of procedural fairness
- knowledge of the rules of evidence and their relevance as appropriate in Tribunal proceedings

- knowledge and application of the Chairpersons directions
- demonstrated ability to work effectively within the Tribunal's electronic environment
- participation in training courses provided by the Tribunal

## **SKILL DOMAIN: ORDERS AND REASONS**

Analytical and written skills

### ***Objective***

To ensure fair and consistent orders and reasons by using analytical skills and sound judgement to reach defensible decisions based on relevant and logically probative information

### ***Criteria***

- all orders are made in accordance with the limitations on the Tribunal's jurisdiction
- evidence is analysed in an independent neutral and rigorous way
- accurate analysis interpretation and application of the relevant law
- demonstrated ability to quickly research legal issues and make timely decisions
- analytical skills and sound judgement are demonstrated in reasons and orders
- Reasons given orally or in writing are succinct clear logical and in plain English
- written reasons are in conformity with the Tribunal's template

## **SKILL DOMAIN: CONCILIATION**

Demonstrated commitment to the role of the Tribunal and its statutory obligations in respect of conciliation

### ***Objective***

Maintain impartiality and independence in applying dispute resolution skills to bring the parties to a settlement of their dispute that is acceptable to all of them

### ***Criteria***

- sufficient explanation to the parties of the conciliation process and possible outcomes
- demonstrated ability in facilitating the parties to negotiate an agreed settlement of their dispute
- Conciliation conducted so as not to compromise procedural fairness
- demonstrated application of a range of effective dispute resolution strategies

## **SKILL DOMAIN: EFFICIENCY**

Delivery of fair cost effective and timely dispute resolution

### ***Objective***

Utilise appropriate case management strategies to effect prompt disposal of cases while ensuring a fair process for all parties

**Criteria**

- proceedings are conducted in the most efficient manner consistent with the needs of the matter
- all adjourned matters are given appropriate procedural directions sufficient to progress the matter
- all file documentation is completed and legible
- reserved decisions are delivered within 30 working days of the hearing or the date that written submissions are received by the member or such further time approved by the Chairperson or Deputy Chairperson (Determinations)
- prompt attention is given to all applications for adjournment rehearing or withdrawal referred by registry