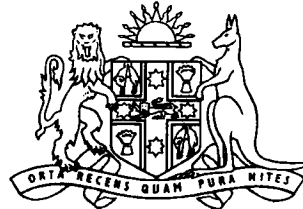


[Act 2001 No 82]



New South Wales

Consumer, Trader and Tenancy Tribunal Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to establish a Consumer, Trader and Tenancy Tribunal that replaces the existing Fair Trading Tribunal and Residential Tribunal. The combined jurisdiction of the replaced Tribunals is to be conferred on the Consumer, Trader and Tenancy Tribunal.

The new Tribunal will essentially have the same structure and procedures as the Tribunals that it replaces, but with some modifications and improvements. In particular, the Bill contains a number of new provisions designed to enhance the quality and consistency of the Tribunal's decision-making (eg Tribunal members will be required to enter into performance agreements and to comply with a code of conduct and with the procedural directions of the Tribunal's Chairperson). The Bill also provides a mechanism for reviewing members' performances.

* Amended in committee—see table at end of volume.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 specifies the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Establishment of Tribunal

Division 1 Establishment and membership

Clause 5 establishes the Consumer, Trader and Tenancy Tribunal and provides that it may exercise the functions that are conferred or imposed in it.

Clause 6 provides that the Tribunal is to be constituted by a Chairperson, 2 Deputy Chairpersons, senior members and other members. One of the Deputy Chairpersons will be a public servant who is not to hear and determine matters but who is responsible for the financial management of the Tribunal.

Clause 7 provides for the appointment of the members of the Tribunal by the Governor. A member may be appointed on a full-time or part-time basis.

Clause 8 provides for the qualifications of the members.

Clause 9 gives effect to Schedule 3 to the proposed Act which contains provisions relating to performance management and review. Under those provisions, each member (other than the non-sitting Deputy Chairperson) will be required to enter into a performance agreement and to comply with a code of conduct. Those provisions also establish a Peer Review Panel to review certain matters relating to the members.

Division 2 Organisation and functions

Clause 10 enables the Tribunal to exercise its functions in specialist Divisions as specified in Schedule 1 to the proposed Act and also provides for simultaneous sittings of the Tribunal and its Divisions.

Clause 11 provides that, for purposes of any proceedings, the Tribunal may be constituted by up to 3 members. The proposed section also enables the Chairperson to determine the constitution of the Tribunal for the purposes of different classes of matters before it.

Clause 12 specifies the functions of the Chairperson who is responsible for the effective and efficient operation of the Tribunal and the management of its work. The Chairperson also has the specific function of giving procedural directions to the members of the Tribunal (ie directions relating to the practice and procedure to be followed in, and to the actual conduct of, Tribunal proceedings). The Chairperson may also give directions in connection with a range of matters concerning the business of the Tribunal.

Clause 13 provides for the functions of the Deputy Chairperson (Registry and Administration) who is a non-sitting member of the Tribunal responsible for the effective, efficient and equitable management of the staff and resources of the Tribunal. The Deputy Chairperson will also have the same functions of the Registrar of the Tribunal.

Clause 14 provides that members of the Tribunal generally have the functions assigned to them under the proposed Act. The proposed section makes it clear that the members must comply with any procedural directions given by the Chairperson.

Division 3 Assessors

Clause 15 provides for the appointment of assessors with specialist knowledge in any of the areas over which the Tribunal exercises jurisdiction.

Clause 16 provides for assessors to make inquiries into, and report on, matters connected with pending proceedings in the Tribunal.

Clause 17 enables assessors to provide other advice and assistance to the Tribunal.

Clause 18 provides that any costs payable to an assessor who assists the Tribunal in proceedings are to be paid by the Tribunal unless the regulations provide for such costs to be paid by the parties in the proceedings.

Division 4 Registrar and staff

Clause 19 provides for the employment (under Part 2 of the *Public Sector Management Act 1988*) of a Registrar, Deputy Registrars and staff to assist the Tribunal in the exercise of its functions.

Clause 20 describes the functions of the Registrar and Deputy Registrars. The Registrar, in particular, is responsible for assisting in managing the business and affairs of the Tribunal.

Part 3 Jurisdiction of Tribunal

Clause 21 states the general jurisdiction of the Tribunal.

Clause 22 provides for determining the proper forum when a court or another tribunal has concurrent jurisdiction with the Tribunal in a particular matter. A person bringing a claim or seeking to have the Tribunal review the decision of any person or body may generally choose whichever forum the person prefers (the proper forum being determined by where the proceedings are first commenced).

Clause 23 provides for the transfer of proceedings from the Tribunal to a court that has jurisdiction in the matter or from a court to the Tribunal so long as it has jurisdiction.

Part 4 Procedure of Tribunal

Clause 24 deals with the general procedure for bringing matters before the Tribunal and for notice to be given of applications.

Clause 25 for notice of the hearing of a matter to be given to the parties in the proceedings.

Clause 26 provides for the conduct of certain proceedings, including the service of notices, in relation to parties with a joint liability.

Clause 27 determines the presiding member in proceedings when the Tribunal is constituted by 2 or 3 members.

Clause 28 describes the general features of Tribunal proceedings. The Tribunal is not bound by the rules of evidence and is to conduct its business with minimum formality. It has a duty to assist the understanding of the parties in the proceedings

as to the significance of any aspect of the proceedings and to deal with matters as quickly as practicable. The proposed section confers various powers on the Tribunal in connection with its proceedings.

Clause 29 enables a member to give procedural directions in relation to particular proceedings. Any such directions are subject to the general procedural directions that the Chairperson is required to give.

Clause 30 enables the Tribunal to take certain action in relation to proceedings in which a party is being unreasonably disadvantaged by the conduct of another party.

Clause 31 allows the Tribunal to request a report or other assistance from any other person or body in relation to any proceedings.

Clause 32 enables the Tribunal to allow errors or omissions in pleadings or other documents filed in connection with proceedings to be corrected and to cure irregularities in connection with the commencement or conduct of proceedings.

Clause 33 provides that Tribunal hearings are generally to be in public, but confers discretion on the Tribunal to order a private or partly private hearing and empowers it to make orders for the suppression of names and facts involved in the proceedings.

Clause 34 enables the Tribunal in certain cases to dispense with a hearing of any matter and to decide the matter by a review of documentary evidence.

Clause 35 requires the Tribunal to ensure that the parties in proceedings have a reasonable opportunity to present their cases and to make submissions to the Tribunal.

Clause 36 deals with representation of parties. The general rule is that the parties in proceedings must present their own cases, but in some cases the Tribunal may make an order permitting a party to be represented by someone else. The Tribunal may also appoint a person to represent a party who belongs to a special class of person as specified in the proposed section (eg an incapacitated person).

Clause 37 provides for the use of interpreters to assist the Tribunal.

Clause 38 allows the Tribunal to take evidence by telephone, audio visual link or any other means of communication.

Clause 39 allows the Tribunal to call evidence of its own motion, to administer oaths and examine and summon witnesses.

Clause 40 empowers the Registrar to issue summonses to compel the attendance of witnesses or the production of documentary or other evidence.

Clause 41 allows the apprehension by warrant of witnesses who fail to obey a summons.

Clause 42 specifies what constitutes contempt of the Tribunal.

Clause 43 provides for the enforcement of certain orders of the Tribunal by enabling the Tribunal to allow a person in whose favour an order is made to renew proceedings if the order is not complied with.

Clause 44 provides legal practitioners and other persons appearing or testifying before the Tribunal with the same protections and immunities as when they appear or testify before the Supreme Court.

Clause 45 determines the decision of the Tribunal, when constituted by more than one member, on a matter where opinion is divided.

Clause 46 allows the Tribunal to reserve its decision in relation to any proceedings.

Clause 47 confers a general power on the Tribunal, in making any order it is otherwise empowered to make, to attach conditions to the order.

Clause 48 allows the Tribunal to give effect to agreements between the parties for the settlement of proceedings.

Clause 49 requires the Tribunal to give notice of its decision in a matter to the parties in the proceedings and also to give its reasons for its decision if requested to do so by either party.

Clause 50 enables the Tribunal to correct any error discovered in the text of a notice of its decision or statement of its reasons.

Clause 51 provides that an order made by the Tribunal for the payment of money is, when its particulars are certified by the Registrar and the certificate filed with a court of competent jurisdiction, enforceable as a judgment of that court.

Clause 52 creates an offence of wilfully contravening or failing to comply with an order of the Tribunal.

Clause 53 makes provision in relation to costs.

Part 5 Alternative dispute resolution

Division 1 Conciliation and preliminary measures

Clause 54 imposes a duty on the Tribunal to attempt to bring the parties to a dispute to a settlement without the need for further proceedings.

Clause 55 provides for the holding of preliminary conferences between the parties before the hearing of a matter before the Tribunal as a means of attempting to achieve early settlement.

Division 2 Mediation and neutral evaluation

Clause 56 defines certain expressions for the purposes of the proposed Division.

Clause 57 specifies the difference between *mediation* and *neutral evaluation*. In a mediation, the mediator presides over a negotiation process in which the parties are encouraged to come to a resolution of their dispute. In a neutral evaluation, the evaluator attempts to simplify the issues, isolate the relevant principles that will determine the outcome of the dispute and evaluate each party's probability of success.

Clause 58 provides for the appointment of the persons who will conduct mediation sessions and neutral evaluation sessions.

Clause 59 allows the Tribunal to refer matters for mediation or neutral evaluation.

Clause 60 provides that the costs of mediation or neutral evaluation are to be borne by the Tribunal except to the extent provided by the regulations.

Clause 61 allows the Tribunal to make orders giving effect to any compromise arrived at in a mediation or neutral evaluation of a dispute.

Clause 62 extends to mediation sessions and neutral evaluations the same privilege with regard to defamation as exists in relation to legal proceedings.

Clause 63 restricts the disclosure, by a mediator or neutral evaluator, of information obtained in a mediation session or neutral evaluation.

Clause 64 provides that the proposed Division does not prevent the relevant parties from seeking other means of resolving their dispute.

Part 6 Appeals and rehearings

Clause 65 provides that there is no appeal from the Tribunal by proceedings in the nature of the prerogative writs or by proceedings in equity except to the extent that the Tribunal's jurisdiction is disputed.

Clause 66 provides a right of appeal to the Supreme Court on a matter of law in certain cases.

Clause 67 allows the Tribunal to refer any matter of law to the Supreme Court for determination.

Clause 68 provides for the rehearing of completed proceedings in certain cases where the Chairperson is satisfied that a substantial injustice has been suffered by the party applying for the rehearing. If significant new evidence is being relied on, the applicant must establish or provide the new evidence in support of the application. The Chairperson's decision to grant or refuse an application for a rehearing is an administrative decision that is not part of the Tribunal's proceedings in any way. The rehearing of a matter does not give rise to any further rehearing.

Clause 69 provides that an appeal or application for a rehearing does not stay the decision against which the appeal or application is brought unless the Chairperson or the Supreme Court hearing the appeal or determining the application otherwise orders.

Part 7 Miscellaneous

Clause 70 applies certain provisions of the *Evidence Act 1995* to the Tribunal in connection with the production of documents.

Clause 71 makes it an offence for a person, in Tribunal proceedings or in any application under the proposed Act, to provide any information or to make any statement that is false or misleading.

Clause 72 requires the Tribunal to provide information in certain circumstances.

Clause 73 makes it an offence for a person to disclose information obtained in exercising a function under the proposed Act.

Clause 74 provides that the proposed Act is to bind the Crown.

Clause 75 provides for a seal of the Tribunal, of which judicial notice may be taken.

Clause 76 provides for the authentication of documents of the Tribunal (otherwise than by its seal) by signature of any member or the Registrar.

Clause 77 provides that proof is not required in legal proceedings of certain matters relating to the Tribunal.

Clause 78 provides for the giving of notices and lodgment of documents for the purposes of the proposed Act.

Clause 79 provides for the return of documents used in evidence before the Tribunal.

Clause 80 provides for the payment of allowances and expenses to witnesses who are required to appear before the Tribunal.

Clause 81 enables the Tribunal to extend the period of time for the doing of anything under any Act in respect of which the Tribunal has jurisdiction.

Clause 82 provides that proceedings for an offence under the proposed Act or the regulations are to be taken before a Local Court.

Clause 83 protects Tribunal members and registry officers from being liable for acts and omissions in exercising their functions.

Clause 84 provides for an annual report to be submitted to Parliament concerning the work and activities of the Tribunal.

Clause 85 allows the Chairperson to report to the Minister or to the Director-General of the Department of Fair Trading concerning matters arising under the administration of the proposed Act or affecting the jurisdiction of the Tribunal or that the Chairperson considers to be in the public interest.

Clause 86 enables regulations to be made under the proposed Act.

Clause 87 provides for the form of documents to be used for the purposes of the proposed Act.

Clause 88 repeals the *Fair Trading Tribunal Act 1998*, the *Residential Tribunal Act 1998* and the regulations under those Acts.

Clause 89 gives effect to the Schedule containing savings, transitional and other provisions.

Clause 90 gives effect to the Schedule containing consequential amendments to Acts.

Clause 91 requires a review of the proposed Act to be undertaken after 3 years.

Schedules

Schedule 1 specifies the Divisions of the Tribunal and the jurisdiction of the Tribunal that is to be exercised in those Divisions.

Schedule 2 contains additional provisions relating to Tribunal members.

Schedule 3 contains provisions concerning performance management and review in relation to Tribunal members.

Schedule 4 contains additional provisions relating to assessors of the Tribunal.

Schedule 5 contains additional provisions relating to mediators and neutral evaluators.

Schedule 6 contains savings, transitional and other provisions. Provision is made for the Chairpersons of the existing Fair Trading and Residential Tribunals to cease holding office on the date of assent to the proposed Act. Provision is also made for the phasing-out of, and the eventual abolition of, those Tribunals.

Schedule 7 contains consequential amendments to certain Acts.