



New South Wales

# Consumer, Trader and Tenancy Tribunal Amendment Bill 2008

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Consumer, Trader and Tenancy Tribunal Act 2001*:

- (a) to include additional requirements as to the qualifications of members of the Consumer, Trader and Tenancy Tribunal (*the Tribunal*), and
- (b) to clarify that the powers of the Chairperson of the Tribunal (*the Chairperson*) extend to giving procedural directions with respect to classes of proceedings, and
- (c) to set out the circumstances in which the Registrar of the Tribunal (*the Registrar*) may exercise functions of a member of the Tribunal or of the Tribunal and to provide additional circumstances in which a Deputy Registrar may exercise functions of the Registrar, and
- (d) to remove a power to apprehend witnesses, and
- (e) to limit the period within which proceedings may be recommenced if an order of the Tribunal is not complied with, and
- (f) to clarify the status of reserved decisions, and

- (g) to increase the time (from 7 to 28 days) within which a statement of reasons for a decision must be given, and
- (h) to limit applications for a rehearing of completed proceedings if the amount claimed or disputed is more than the amount prescribed by the regulations and to provide that, if an application is refused, a further application may only be made if significant new evidence suggests a substantial injustice to one or more parties to the proceedings has occurred, and
- (i) to require sound recordings of proceedings of the Tribunal to be made and kept, and
- (j) to establish the Social Housing Division of the Tribunal, and
- (k) to provide that the remuneration of part-time members of the Tribunal is to be determined in the same manner as full-time members, and
- (l) to establish the Professional Practice and Review Committee to replace the Peer Review Panel and to provide for the membership, functions and procedures of that Committee, and
- (m) to replace and update certain references to the Director-General and clarify certain provisions.

## Outline of provisions

**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 on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Consumer, Trader and Tenancy Tribunal Act 2001* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

## Schedule 1 Amendments

**Schedule 1 [1]** inserts a definition of *Commissioner for Fair Trading* into the *Consumer, Trader and Tenancy Tribunal Act 2001* (*the Principal Act*) and updates the definition of *Director-General* in that Act.

**Schedule 1 [2]** provides that a person cannot be appointed as Chairperson or Deputy Chairperson (Determinations) of the Tribunal unless the person is an Australian lawyer.

**Schedule 1 [3]** provides that the Minister for Fair Trading (*the Minister*), in determining whether a person has qualifications and skills to be appointed as a member of the Tribunal, is to have regard to whether the person has ability or experience in alternative dispute resolution procedures.

**Schedule 1 [4]** clarifies that the Chairperson has power to give procedural directions to members of the Tribunal with respect to classes of proceedings.

**Schedule 1 [5]** replaces a number of references to the Director-General of the Department of Commerce with references to the Commissioner for Fair Trading within the Department of Commerce.

**Schedule 1 [6]** provides that the Registrar may exercise any prescribed function of a member of the Tribunal or of the Tribunal if the Registrar is authorised by the Chairperson to exercise that function.

**Schedule 1 [7]** provides that a Deputy Registrar of the Tribunal may exercise the functions of the Registrar as directed by the Chairperson.

**Schedule 1 [8]** omits a section that provided for the issuing of a warrant for the apprehension of a witness who had been summoned to attend before the Tribunal.

**Schedule 1 [9]** limits the period within which proceedings may be recommenced for failure to comply with an order. Any such proceedings must now be recommenced within 12 months after the end of the period specified by the Tribunal for compliance with the order.

**Schedule 1 [10]** clarifies that a reserved decision of the Tribunal is still a decision of the Tribunal and so other provisions of the Principal Act apply to such a decision in the same way as they apply to any other decision of the Tribunal.

**Schedule 1 [11]** extends, from 7 to 28 days, the period within which a statement of reasons for a decision of the Tribunal must be provided.

**Schedule 1 [12]** provides that if an application for a rehearing of completed proceedings has been refused, a second application for a rehearing may be made only if the application is made within the time prescribed by the regulations and if the Chairperson is satisfied that significant new evidence has arisen since the application was refused and that evidence suggests a substantial injustice to one or more parties to the proceedings has occurred.

**Schedule 1 [13]** provides that a person cannot make an application for a rehearing of completed proceedings under section 68 of the Principal Act if the amount claimed or disputed is more than the amount prescribed by the regulations.

**Schedule 1 [14]** provides that the Tribunal must ensure that, as far as is reasonably practicable, sound recordings of all proceedings of the Tribunal are made and kept.

**Schedule 1 [18]** establishes the Social Housing Division of the Tribunal. **Schedule 1 [15]–[17]** make consequential amendments.

**Schedule 1 [19] and [20]** provide for the determination of remuneration of part-time members of the Tribunal in the same manner as full-time members.

**Schedule 1 [23]** omits a provision establishing the Peer Review Panel, establishes instead the Professional Practice and Review Committee and sets out the procedures for the Committee. The Committee comprises the Commissioner for Fair Trading,

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the Chairperson, the Deputy Chairperson (Registry and Administration), the Deputy Chairperson (Determinations) and 2 persons appointed by the Minister. The Committee has the functions of reviewing and providing advice on matters that are referred to it by the Minister, the Commissioner for Fair Trading, the Chairperson or any other person prescribed by the regulations. Those matters may relate to the education, training or professional development of members, the performance or management of members, complaints against members and remedial or disciplinary action to be taken in relation to any such complaint, trends in complaints or performance and any other matter prescribed by the regulations. **Schedule 1 [21] and [22]** make consequential amendments.

**Schedule 1 [24]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [25]** makes a consequential amendment.

**Schedule 1 [26]** inserts a number of savings and transitional provisions into the Principal Act as a consequence of the amendments made by the proposed Act.

First print



New South Wales

# Consumer, Trader and Tenancy Tribunal Amendment Bill 2008

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New South Wales

# Consumer, Trader and Tenancy Tribunal Amendment Bill 2008

No. , 2008

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## A Bill for

An Act to amend the *Consumer, Trader and Tenancy Tribunal Act 2001* with respect to the constitution, jurisdiction, functions and procedure of the Consumer, Trader and Tenancy Tribunal and the functions, qualifications, education and review of members of that Tribunal; and for other purposes.

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|--|----------|
| <b>The Legislature of New South Wales enacts:</b>  | 1        |
| <b>1 Name of Act</b>   | 2        |
| This Act is the <i>Consumer, Trader and Tenancy Tribunal Amendment Act 2008</i> .  | 3<br>4   |
| <b>2 Commencement</b>  | 5        |
| This Act commences on a day or days to be appointed by proclamation.   | 6        |
| <b>3 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82</b>   | 7        |
| The <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> is amended as set out in Schedule 1.   | 8<br>9   |
| <b>4 Repeal of Act</b>   | 10       |
| (1) This Act is repealed on the day following the day on which all the provisions of this Act have commenced.  | 11<br>12 |
| (2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act. | 13<br>14 |



|                   |  |    |
|-------------------|--|----|
| <b>Schedule 1</b> | <b>Amendments</b>  | 1  |
|                   | (Section 3)  | 2  |
| <b>[1]</b>        | <b>Section 4 Definitions</b>   | 3  |
|                   | Omit the definition of <i>Director-General</i> from section 4 (1).   | 4  |
|                   | Insert in alphabetical order:  | 5  |
|                   | <i>Commissioner for Fair Trading</i> means the Commissioner for Fair Trading, Department of Commerce or if there is no such position in the Department—the Director-General. | 6  |
|                   |  | 7  |
|                   |  | 8  |
|                   | <i>Director-General</i> means the Director-General of the Department of Commerce.  | 9  |
|                   |  | 10 |
| <b>[2]</b>        | <b>Section 8 Qualifications of members</b>   | 11 |
|                   | Omit section 8 (1). Insert instead:  | 12 |
|                   | (1) A person is not eligible to be appointed as the Chairperson or the Deputy Chairperson (Determinations) unless the person is an Australian lawyer.                        | 13 |
|                   |  | 14 |
|                   |  | 15 |
| <b>[3]</b>        | <b>Section 8 (3) (d)</b>   | 16 |
|                   | Omit the paragraph. Insert instead:  | 17 |
|                   | (d) whether the person has ability or experience in alternative dispute resolution procedures.   | 18 |
|                   |  | 19 |
| <b>[4]</b>        | <b>Section 12 Functions of Chairperson</b>   | 20 |
|                   | Insert after section 12 (2) (c):   | 21 |
|                   | (c1) to give procedural directions with respect to a particular class or particular classes of proceedings,  | 22 |
|                   |  | 23 |
| <b>[5]</b>        | <b>Sections 13 (2), 31, 72 (1) and (3) and 85</b>  | 24 |
|                   | Omit “Director-General” wherever occurring.  | 25 |
|                   | Insert instead “Commissioner for Fair Trading”.  | 26 |
| <b>[6]</b>        | <b>Section 20 Functions of Registrar and Deputy Registrars</b>   | 27 |
|                   | Insert after section 20 (1) (a):   | 28 |
|                   | (a1) any function of a member or the Tribunal under this Act that is prescribed by the regulations and that the Chairperson authorises the Registrar to exercise,            | 29 |
|                   |  | 30 |
|                   |  | 31 |

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| <b>[7] Section 20 (2) (a)</b>   | 1                    |
| Insert “or the Chairperson” after “Registrar”.  | 2                    |
| <b>[8] Section 41 Witness may be apprehended</b>  | 3                    |
| Omit the section.   | 4                    |
| <b>[9] Section 43 Enforcement of certain Tribunal orders</b>  | 5                    |
| Insert “, within 12 months after the end of the period,” after “with the Tribunal” in section 43 (2).   | 6<br>7               |
| <b>[10] Section 46 Tribunal may reserve decision</b>  | 8                    |
| Omit “reserved decision of the Tribunal” from section 46 (2).   | 9                    |
| Insert instead “decision of the Tribunal that has been reserved”.   | 10                   |
| <b>[11] Section 49 Notice of decisions and reasons</b>  | 11                   |
| Omit “7 days” from section 49 (2). Insert instead “28 days”.  | 12                   |
| <b>[12] Section 68 Rehearings by Tribunal</b>   | 13                   |
| Insert after section 68 (9):  | 14                   |
| (9A) If an application is refused, a person may make a further application under this section, but only if the application is made within the time prescribed by the regulations and the Chairperson is satisfied that: | 15<br>16<br>17<br>18 |
| (a) significant new evidence has arisen since the application was refused, and  | 19<br>20             |
| (b) that evidence suggests a substantial injustice to one or more parties to the proceedings has occurred.  | 21<br>22             |
| <b>[13] Section 68 (13) (a)</b>   | 23                   |
| Omit “was more than \$25,000 (or such other amount as may be prescribed by the regulations)”.   | 24<br>25             |
| Insert instead “is more than the amount prescribed by the regulations”.   | 26                   |
| <b>[14] Section 80A</b>   | 27                   |
| Insert after section 80:  | 28                   |
| <b>80A Sound recording of hearings</b>  | 29                   |
| The Tribunal must ensure that, as far as is reasonably practicable, sound recordings of all proceedings of the Tribunal are made and kept for such period as may be prescribed by the regulations, or                   | 30<br>31<br>32       |

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|             | if no such period is prescribed, for a reasonable time after the end of the relevant proceedings.   | 1<br>2                           |
| <b>[15]</b> | <b>Schedule 1 Divisions of the Tribunal</b>   | 3                                |
|             | Omit “(b)–(h)” from clause 1 (a) (ii). Insert instead “(b)–(i)”.  | 4                                |
| <b>[16]</b> | <b>Schedule 1, clause 1 (h) (i)</b>   | 5                                |
|             | Insert “(other than matters that relate to social housing premises within the meaning of that Act)” after “ <i>Residential Tenancies Act 1987</i> ”.  | 6<br>7                           |
| <b>[17]</b> | <b>Schedule 1, clause 1 (h) (ii)</b>  | 8                                |
|             | Insert “or matters that relate to social housing premises within the meaning of the <i>Residential Tenancies Act 1987</i> ” after “parks”.  | 9<br>10                          |
| <b>[18]</b> | <b>Schedule 1, clause 1 (i)</b>   | 11                               |
|             | Insert after clause 1 (h):  | 12                               |
|             | (i) the <b><i>Social Housing Division</i></b> , in which the Tribunal’s jurisdiction is to be exercised in respect of matters arising under the <i>Residential Tenancies Act 1987</i> or the <i>Landlord and Tenant (Rental Bonds) Act 1977</i> (or both) that relate to social housing premises, within the meaning of the <i>Residential Tenancies Act 1987</i> . | 13<br>14<br>15<br>16<br>17<br>18 |
| <b>[19]</b> | <b>Schedule 2 Provisions relating to members</b>  | 19                               |
|             | Omit “appointed on a full-time basis is, while working on a full-time basis,” from clause 4 (1).  | 20<br>21                         |
|             | Insert instead “is”.  | 22                               |
| <b>[20]</b> | <b>Schedule 2, clause 4 (2)</b>   | 23                               |
|             | Omit the subclause.   | 24                               |
| <b>[21]</b> | <b>Schedule 2, clause 7 (2) (e)</b>   | 25                               |
|             | Omit “Peer Review Panel (as referred to in clause 2 of Schedule 3)”.  | 26                               |
|             | Insert instead “Professional Practice and Review Committee (as referred to in Part 2 of Schedule 3)”.   | 27<br>28                         |
| <b>[22]</b> | <b>Schedule 3 Performance management and review</b>   | 29                               |
|             | Insert before clause 1:   | 30                               |
|             | <b>Part 1 Performance agreements and code of conduct</b>  | 31<br>32                         |

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| <b>[23] Schedule 3, Part 2</b>   | 1  |
| Omit clause 2. Insert instead:   | 2  |
| <b>Part 2 Professional Practice and Review Committee</b>   | 3  |
|  | 4  |
| <b>2 Constitution of Committee</b>   | 5  |
| (1) A Professional Practice and Review Committee is established by this Act.   | 6  |
|  | 7  |
| (2) The Committee is to consist of the following:  | 8  |
| (a) the Commissioner for Fair Trading,   | 9  |
| (b) the Chairperson,   | 10 |
| (c) the Deputy Chairperson (Registry and Administration),  | 11 |
| (d) the Deputy Chairperson (Determinations),   | 12 |
| (e) 2 other persons appointed by the Minister who the Minister considers to have expertise in consumer protection, ethics, dispute resolution, education or public administration, one of whom is to be appointed as the Chair of the Committee by the Minister. | 13 |
|  | 14 |
|  | 15 |
|  | 16 |
|  | 17 |
| <b>3 Functions of Committee</b>  | 18 |
| (1) The functions of the Committee are to review and provide advice on matters that are referred to it by the Minister, the Commissioner for Fair Trading, the Chairperson or any other person prescribed by the regulations.                                    | 19 |
|  | 20 |
|  | 21 |
|  | 22 |
| (2) Such matters are to relate to one or more of the following:  | 23 |
| (a) the education, training or professional development of members,  | 24 |
|  | 25 |
| (b) the performance or management of members,  | 26 |
| (c) complaints against members and remedial or disciplinary action to be taken in relation to any such complaints,   | 27 |
|  | 28 |
| (d) trends in complaints or performance,   | 29 |
| (e) any other matter prescribed by the regulations.  | 30 |
| (3) The Committee may recommend to the Minister that a member who is the subject of a review by the Committee should, or should not, continue to hold office as a member.  | 31 |
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|  | 33 |

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| (4) One or more members of the Committee, if dissatisfied with an advice provided by the Committee in relation to a matter, may provide a minority advice on the matter to the person who referred the matter to the Committee.  | 1<br>2<br>3<br>4           |
| <b>4 Review of certain members of Committee</b>  | 5                          |
| (1) In any case where the Chairperson or the Deputy Chairperson (Determinations) is the member who is the subject of a review, the Minister is to convene the Committee in such manner as the Minister thinks appropriate.   | 6<br>7<br>8<br>9           |
| (2) The Deputy Chairperson (Registry and Administration) cannot be the subject of a review under this Part.  | 10<br>11                   |
| <b>5 General procedure</b>   | 12                         |
| The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.  | 13<br>14<br>15             |
| <b>6 Quorum</b>  | 16                         |
| The quorum for a meeting of the Committee is a majority of its members for the time being. However, that majority must include at least one of the members appointed under clause 2 (2) (e).   | 17<br>18<br>19             |
| <b>7 Presiding member</b>  | 20                         |
| (1) The Chair of the Committee (or in the absence of the Chair, a person elected by the members of the Committee who are present at a meeting of the Committee) is to preside at a meeting of the Committee.   | 21<br>22<br>23<br>24       |
| (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.  | 25<br>26                   |
| <b>8 Voting</b>  | 27                         |
| A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.  | 28<br>29<br>30             |
| <b>9 Transaction of business outside meetings or by telephone</b>  | 31                         |
| (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee. | 32<br>33<br>34<br>35<br>36 |

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| (2)         | The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. | 1<br>2<br>3<br>4<br>5 |
| (3)         | For the purposes of:  | 6                     |
| (a)         | the approval of a resolution under subclause (1), or  | 7                     |
| (b)         | a meeting held in accordance with subclause (2),  | 8                     |
|             | the Chair of the Committee and each member have the same voting rights as they have at an ordinary meeting of the Committee.  | 9<br>10<br>11         |
| (4)         | A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.   | 12<br>13<br>14        |
| (5)         | Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.   | 15<br>16<br>17        |
| <b>10</b>   | <b>Meetings</b>   | 18                    |
|             | The Committee is to meet at least 3 times in each year and is to meet at such other times as the Chair of the Committee thinks fit.   | 19<br>20              |
| <b>11</b>   | <b>Minutes</b>  | 21                    |
|             | A copy of the minutes for each meeting of the Committee is to be provided to the Minister as soon as reasonably practicable after the meeting.  | 22<br>23<br>24        |
| <b>12</b>   | <b>Annual report</b>  | 25                    |
|             | The annual report of the Tribunal under section 84 is to include a statement describing the functions and activities of the Committee.  | 26<br>27<br>28        |
| <b>[24]</b> | <b>Schedule 6 Savings, transitional and other provisions</b>  | 29                    |
|             | Omit clause 1 (1). Insert instead:  | 30                    |
| (1)         | The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:   | 31<br>32<br>33        |
|             | this Act  | 34                    |
|             | <i>Consumer, Trader and Tenancy Tribunal Amendment Act 2008</i>   | 35                    |

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|---|----------------------------|
| <b>[25] Schedule 6, clause 1 (2)</b>  | 1                          |
| Omit “to this Act”. Insert instead “to the Act concerned”.  | 2                          |
| <b>[26] Schedule 6, Part 3</b>  | 3                          |
| Insert after Part 2:  | 4                          |
| <b>Part 3 Provisions consequent on enactment of<br/>Consumer, Trader and Tenancy Tribunal<br/>Amendment Act 2008</b>  | 5<br>6<br>7                |
| <b>10 Definition</b>  | 8                          |
| In this Part:   | 9                          |
| <i>amending Act</i> means the <i>Consumer, Trader and Tenancy<br/>Tribunal Amendment Act 2008</i> .   | 10<br>11                   |
| <b>11 Enforcement of orders</b>   | 12                         |
| Section 43, as amended by the amending Act, extends to an order<br>made before that amendment and to any recommencement of<br>proceedings in relation to that order.  | 13<br>14<br>15             |
| <b>12 Reasons for decisions</b>   | 16                         |
| Section 49, as amended by the amending Act, extends to a notice<br>given under that section before the amendment.   | 17<br>18                   |
| <b>13 Rehearings by Tribunal</b>  | 19                         |
| Section 68 (13) (a), as amended by the amending Act, does not<br>apply to an application made before the amendment, and that<br>paragraph continues to apply to any such application as if the<br>amendment had not been made.  | 20<br>21<br>22<br>23       |
| <b>14 Social Housing Division</b>   | 24                         |
| Schedule 1, as amended by the amending Act, does not apply in<br>respect of a matter for which an application has been made to the<br>Tribunal under section 24 before those amendments, and that<br>Schedule continues to apply in respect of any such matter as if<br>those amendments had not been made. | 25<br>26<br>27<br>28<br>29 |
| <b>15 Remuneration of members</b>   | 30                         |
| Clause 4 of Schedule 2, as amended by the amending Act, applies<br>only in respect of remuneration for work performed after those<br>amendments.  | 31<br>32<br>33             |

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**16 Professional Practice and Review Committee**

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|  | 1                     |
| (1) A matter that was referred to the Peer Review Panel before the commencement of Part 2 of Schedule 3, and that has not been fully dealt with by that Panel is, on the commencement of that Part, taken to have been referred to the Professional Practice and Review Committee and is to be dealt with accordingly. | 2<br>3<br>4<br>5<br>6 |
| (2) A member of the Peer Review Panel is not entitled to be paid any compensation as a consequence of the substitution of clause 2 of Schedule 3 by the amending Act.  | 7<br>8<br>9           |