



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### JILL McNAMARA (McGRATH) v CONSUMER TRADER AND TENANCY TRIBUNAL AND ROADS AND TRAFFIC AUTHORITY

The Roads and Traffic Authority is not entitled to the statutory rights and immunities of the Crown in all its functions, and could not escape the operation of New South Wales legislation covering landlords and tenants, the High Court of Australia held today.

The RTA attempted to evict Mrs McNamara from the house she has rented in the Sydney suburb of Croydon Park since 1981, first from the Commissioner of Main Roads and then from the RTA. In October 2000, the RTA sought to obtain vacant possession of the house and served on Mrs McNamara a 60-day termination notice. When she failed to comply, the RTA applied to the Consumer Trader and Tenancy Tribunal for an order terminating the agreement and an order for possession of the premises. Mrs McNamara alleged the tribunal lacked jurisdiction as the *Landlord and Tenant (Amendment) Act* applied and the later *Residential Tenancies Act* did not. The *Residential Tenancies Act* was one of the Acts under which the tribunal had jurisdiction but the Act did not apply to properties that were “prescribed premises” under the *Landlord and Tenant Act*.

In April 2002, the tribunal determined that it did have jurisdiction as the RTA had the benefit of an exemption in section 5 of the *Landlord and Tenant Act* which provided that this Act shall not bind the Crown or the Housing Commission. This meant Mrs McNamara could not resist the RTA’s application for vacant possession by relying on the house being “prescribed premises”. She filed a summons in the NSW Supreme Court which was dismissed by Justice John Dunford who referred to section 46(2)(b) in the *Transport Administration Act* which provided that the RTA is a statutory body representing the Crown. The Court of Appeal refused leave to appeal. Mrs McNamara then appealed to the High Court.

The High Court, by a 5-1 majority, allowed the appeal and held that the RTA was bound by the *Landlord and Tenant Act*. The Court ordered that the matter be remitted to the tribunal to be determined according to law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*