

**Submission
No 67**

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE
TRIBUNALS IN NSW**

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Submission

Executive Summary

- Consolidation of Tribunals should be supported in principle, but only after a proper process of analysis to determine which tribunal should be subject to consolidation. An inquiry reporting by February 2012 is not a proper process to achieve a large scale amalgamation.

- The most immediate issue flagged by the Government is the future of the NSW Industrial Relations Commission (IRC). The IRC should be retained as a specialist tribunal and court and have added to it appropriate allied jurisdiction including: -
 - Employment-related discrimination matters that are currently with the Anti-Discrimination Board (for conciliation) and the ADT (Equal Employment Division) for any contested hearing

 - Professional disciplinary matters (other than the regulation of doctors and nurses) currently in a range of tribunals; and

 - Conferring on the Industrial Relations Court parallel jurisdiction in common law employment contract matters

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This inquiry has been established following a referral by the Attorney General, and Ministers Pearce and Roberts. In fact the Attorney General's answers at a recent Estimates hearing including supplementary answers make clear that the prime move in the exercise was the Department of Finance and Services.

The implication from this and from the Government comments is that this referral is primarily related to the future of the IRC. This of course follows the removal of the IRC's discretion in wage

determinations, a reduction in the number of staff, judges and Commissioners in the IRC; and the transfer of a substantial number of occupational health and safety matters from the IRC to other courts, chiefly the District Court.

In this context it is interesting to note the reliance in the Minister's referral letter and in the Issues Paper upon the 2002 Report by the Parliamentary Committee on the Office of the Ombudsman and Police Integrity Commission. I was the Chair of that Committee at that time. Two points should be made: -

- There was no suggestion in the Report of subsuming the IRC into any other Tribunal. Indeed any such proposal would have been treated with incredulity by the Committee

- The Report endorsed the concept of consolidation but recommended a sensible and careful strategy to achieve it by referral to the Law Reform Commission. This would have ensured that proper assessments could have been made of which tribunals should or should not be consolidated and in what manner.

The Committee Report provides little support for what seems to be the Government's current approach.

Consolidation of Tribunals can result in a number of benefits. Primarily it can increase accessibility to justice. It can have financial benefits to Government by way of reducing costs but, this should be seen as an additional benefit rather than as a primary motive for consolidation.

A common set of rules, forms and procedures will make it more likely that more people can access more tribunals. It reduces the possibility that some tribunals become insular and exclusive and limited to select practitioners and applicants.

There is of course the possible danger that consolidation can dilute specialist knowledge of tribunal members by over reliance on generalist members. This can be mitigated against by the design and structure of tribunals and by having a proper assessment of which tribunals should be consolidated.

For example small businesses are regular users of parts of the ADT and CTTT. They rely upon skilled and experienced tribunal members before whom parties appear in order to get fair outcomes. There could be adverse effects upon small businesses and the quality of justice they receive if tribunal mergers are thoughtlessly pursued without proper assessments. Similar comments could be made about consumers and the Fair Trading area.

As to the IRC, I propose the following:-

A specialist industrial tribunal and court should be retained. This would mean retaining the IRC and adding to it appropriate allied jurisdiction:-

- Employment-related discrimination matters that are currently with the Anti-Discrimination Board (for conciliation) and the ADT (Equal Employment Division) for any contested hearing
- Professional disciplinary matters (other than the regulation of doctors and nurses) currently in a range of tribunals; and
- Conferring on the Industrial Relations Court parallel jurisdiction on common law employment contract matters

This would result in one specialist employment jurisdiction in NSW.

In a supplementary answer to a question in Estimates hearings the Attorney General indicated that 51% of the discrimination matters at the ADT are employment related as at 31/11/1011.

The IRC already has a disciplinary jurisdiction for the public sector and for police.

IRC Members currently sit in the ADT (Legal Services Division) dealing with professional disciplinary matters to do with the legal profession.

Adding functions of the sort outlined above would thus be dealing with areas in which the IRC has expertise already.

One proposal in the Issues Paper was to transfer IRC judges and jurisdiction to the Supreme Court. I apprehend that this course would not find favour with the Supreme Court. The proposal above is a much better alternative than that raised in the Issues Paper.

This proposal would also have the added benefit of securing the Chapter Six jurisdiction (of the Industrial Relations Act 1996). This deals with minimum rates of payment and other industrial remedies for truck owner drivers and taxi drivers.

Whilst there might be some merit in combining the tribunals regulatory doctors and nurses into a wider disciplinary jurisdiction it should not proceed without wide consultation and careful analysis. Maintaining the highest standard of clinical care and public safety is critical.

The structure of Tribunals in this State and the future of the IRC should not be decided upon the basis of ideology, but upon careful and rational analysis that increases accessibility to justice.