

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

Organisation: Retirement Village Residents Association Inc.

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RETIREMENT VILLAGE RESIDENTS ASSOCIATION INC

SUBMISSION TO THE INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

The Retirement Village Residents Association (RVRA) are interested in making a submission to the Inquiry into Opportunities to Consolidate Tribunals in NSW and specifically to those relating to the Consumer, Trader and Tenancy Tribunal (CTTT) sections.

We make particular reference to the sections quoted below from the Terms of Reference:

- “(c) the jurisdiction and operation of the Consumer Trader and Tenancy Tribunal, with particular regard to:
 - i. its effectiveness in providing a fast, informal, flexible process for resolving consumer disputes;*
 - ii. the appropriateness of matters within its jurisdiction, having regard to the quantum and type of claim and the CTTT's procedures;*
 - iii. the rights of appeal available from CTTT decisions.*
- (d) any consequential changes which might arise.”*

The RVRA has been involved in a number of CTTT cases over recent years and has found that the CTTT experience for the elderly residents in Retirement Villages is not an easy or very satisfactory process often resulting in confusion and frustraion.

We have written at length to the Minister(s) for Fair Trading and to the CTTT Chairperson, Ms Kay Ransome, on these matters. The submission sent jointly from the retirement industry peak associations, e.g.: the Retirement Village Residents Association (RVRA), the Retirement Village Association (RVA) and the Aged and Community Services of NSW (ACS), to Ms Ransome is attached for your Committee's information.

The RVRA does not agree with the comment in your Terms of Reference that the CTTT *“is providing a fast, informal, flexible process for resolving consumer disputes”* and summarise our concerns below:

(c) i - Timing. – The RVRA have been involved in several cases where the CTTT decision has not been delivered until after a period of six to twelve months has elapsed, causing great distress to the residents in those retirement communities involved in the particular complaint. In some cases information had been lost and so the cases have had to be reconvened; in other cases the hold ups were caused by illness of a CTTT Member or the changes of the Tribunal Member. These issues have caused great hardship and anxiety, often to the detriment of the health of the older persons involved. In other cases, one side (predominantly the operators) have been able to hold up proceedings by failing to meet the CTTT established deadline and not producing the material ordered by the Tribunal. This does not appear to have any penalty attached but significantly reduces the time frame for the residents to consider the material and for them to develop any consequent response. (Refer instances in attached paper)

(c) I - Informality and Flexibility - In the Retirement Village section, there is a record of some operators engaging legal practitioners (who are not employees of the operators). This calls into serious question your claim that the CTTT is “informal and flexible”. The RVRA experience has frequently been that the legal practitioners have been formal, rigid, pedantic, even intimidatory, with no desire to negotiate or mediate. As the majority of retirement village residents cannot afford to also engage a legal practitioner this places them at the disadvantage of not only having to confront or oppose the operator group, who are frequently large corporations with all the attendant resources and facilities, but also the legal practitioners with their additional specific knowledge and experience in managing tribunal submissions and hearings.

The use of legal practitioners makes the situation much more confrontational, formal and potentially expensive for the retirement village residents with an increase in nervousness and apprehension. Residents are often forced into this situation with no advance warning or other option after the complaint has been lodged which, in the opinion of the RVRA, causes an unfair and unequal situation.

These circumstances have the potential of dissuading the retirement village residents from pursuing their rights under the consumer protection legislation. It also increases the possibility of elder financial abuse because of a reluctance to pursue financial queries and mismanagement regarding operators.

(c) ii – Quantum and Type of Claim - The CTTT Tribunal Members presently make decisions about the

appropriateness of the retirement village matters brought before it. There seems to be little an applicant can do if a Member does not want to consider one aspect being brought. Even if it is a consumer protection issue. For example, in a recent CTTT hearing involving a Residents Committee the Tribunal Member was not interested in examining the contracts despite there being a variety of different rates charged for identical premises and despite the highest rate being 94% higher than the lowest rate. [Specific details and reference number available if required]. Additionally, some CTTT Members try to dissuade applicants from going ahead with the complaint by suggestion that residents withdraw their cases with the warning, "You will end up in the High Court". (Refer attached paper)

(c) iii – The Right to Appeal - While we believe the right of appeal should exist, the current situation regarding an appeal to a CTTT decision, results in the residents being named as the defendants, with all the resultant costs, although the decision that is being appealed was the decision of the Tribunal. This seems to be a very flawed system, which results in double jeopardy for the residents and makes it almost impossible for residents to achieve a positive outcome when they do not have anything like the financial and other resources of large operator groups.

(d) – Consequential Changes - We consider that the consequential changes which might arise with the consolidation of Tribunals has the potential to further impact negatively on issues of concern for residents in retirement villages. The attached submission to the CTTT details the RVRA preferences.

REVIEW OF TRIBUNALS IN NSW

OPTIONS FOR CONSIDERATION - OPTION 3

The RVRA has carefully considered the advantages set out in your Options 3 and are unable to identify any specific advantages for our members in your detailed 'advantages' but can identify several disadvantages.

Those of us involved in the CTTT system on behalf of residents would like to see all the Tribunal Members who deal with our cases be or become well versed in the Retirement Villages Act and Regulation, which is very complex. The first disadvantage listed in the Issues paper of "losing a specialized response to an identified community need" obviously applies to the retirement village industry. The industry is very complex with various types of villages; such as self care strata title;

loan/license; loan/lease; assisted living and community title. There are also large and small 'for profit' operators and 'not for profit' operators with a huge range of acumen, expertise and a wide range of

standards. The industry doesn't appear to have any obligation to register the village (despite the legislation) and it doesn't appear there is any accreditation standard so anything goes. There is an equally wide range of resident income, knowledge and ability to understand the legislation.

Because of the increase in the cases pertaining to retirement villages in the past year the same Tribunal Members who deal with these cases have developed some expertise in this Act. This has been lacking in the past, with residents reporting that the Member has said at the outset of the hearing that he has no knowledge about the Retirement Villages Act.

ADDITIONAL SPECIFIC ISSUES FOR CONSIDERATION



1. On Page 6 of your Terms of Reference you detail some statistics for the 2009-2010 financial year. The RVRA would like you to note that the current method of counting cases within the retirement village industry in comparison to the residential parks industry is divergent and skews the results. For example, if there are 500 people in a residential park a complaint is recorded as having been made by 500 residents and in fact there have been instances where a town hall has been hired as the hearing room in such an instance. Whereas in the retirement village industry an issue from a particular village is recorded as a single complainant even if there are one thousand apartments in the village. This is inequitable and misleading and is not a true reflection of the facts.

2. It seems the CTTT does not itself take any action to ensure compliance with the Orders issued by the various Tribunal Members. The onus therefore falls on the resident(s) who may be forced into this monitoring or regulatory role if they want the Orders enforced. A specific example [plus reference number] is available if required but it is a grossly unfair position for the resident(s) to be placed in and is another double jeopardy situation.

CONCLUSION

Your suggested consolidation of the Tribunals has the potential for the progress being made in this area to be lost whereas the RVRA want greater recognition of the complexities of the industry and a strengthening of the specialisation.

The RVRA believes the following issues need to be high on the priority list of considerations:

-  The lack of residents legal training and experience in preparing Tribunal submissions;
-  The lack of resources and facilities available to the residents. The complaint is most frequently prepared by a retiree with a laptop;

- ✚ The ability of older people to quickly pick up new concepts or to understand the legislation;
- ✚ The small but extremely difficult circumstances where operators have attempted to intimidate and/or harass residents into not complaining, and what redress can exist;
- ✚ The financial circumstances of the residents in the specific village;
- ✚ Collection of statistics in an equitable manner between the divisions;
- ✚ Introduction of a proactive system to monitor CTTT orders.

The RVRA is keen to participate in any public hearings held in connection with Inquiry into Opportunities to Consolidate Tribunals in NSW whenever they are held and trust we will invited to participate in due course.

Jan Pritchett , RVRA President

Malcolm McKenzie, RVRA Secretary

Judith Daley, RVRA Vice – President

Attachment: Submission to Chairperson, CTTT, from Industry peak associations of
RVRA, RVA & ACS.