

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

Organisation: Industrial Relations Society of NSW
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Industrial Relations Society of NSW

Submission to the Inquiry into Opportunities to Consolidate Tribunals in NSW

1. The Industrial Relations Society of NSW takes this opportunity to make a submission to the Inquiry being conducted by the Legislative Council's Standing Committee on Law and Justice into opportunities to consolidate tribunals in NSW.

The Industrial Relations Society of NSW

2. The Industrial Relations Society of NSW (the Society), formed in 1958, was the first organisation of its type to be formed in Australia. Its objectives are to organise and foster discussion, research, education and publication within the field of Industrial Relations. It has been highly successful in bringing together representatives of trade unions, employers and Government, the legal profession and academics - all of whom have contributed to the promotion of better Industrial Relations.
3. The Society is the premier organisation representing industrial relations practitioners in this State. It currently has over 700 members, being lawyers, consultants, union officials, employer representatives, academics, those studying industrial relations and government employees.
4. The Executive of the Society is made up of representatives of each of those groups¹.

¹ Two members of the Executive of the Society are Members of the Industrial Relations Commission. They had no involvement in the decision to make this submission nor in its drafting).

IRS believes it is important to retain the skills of the Judges of the IRC to deal with industrial disputes

5. The Industrial Relations Commission of NSW has existed in various forms for over 100 years.
6. Its primary function is the conciliation and arbitration of industrial disputes. In that regard it has served this State well, preventing wide-scale industrial disputation in respect of the industries for which it has responsibility.
7. As a consequence of changes to Commonwealth legislation, the Industrial Relations Commission lost its jurisdiction in respect of private sector employment. However it retains a significant and important jurisdiction, namely State public sector employees and employees in Local Government. They constitute, it is said, around 15% of the employees in NSW. They include important service providers such as nurses, fire-fighters, police, teachers and local council employees.
8. If such groups of workers were involved in major disputes they could quickly affect the people of NSW. It is important that there remains an effective body to deal with such disputes quickly and appropriately.
9. The Government Issues Paper titled 'Review of Tribunals in NSW' (the Issues Paper) correctly identified that the Commissioners are currently fully occupied and it is expected that will not change.
10. In respect of Judges, it is expected that they will continue to be fully occupied during 2012, while OHS prosecution matters are completed. From the end of 2012 it is expected (presuming no unexpected resignations) that there will be spare Judicial capacity.
11. The Judges are highly skilled conciliation and arbitration practitioners. Major industrial disputes come before the Judges. In the view of the Society, it would not be appropriate to bring about changes that would lead to those Judges no longer being available to deal with such cases. To take that approach would lead to a real risk that major industrial disputes in the future are not able to be dealt with effectively in the manner that they have in the past.

Potential to expand the jurisdiction of the IRC

12. If the Judges skills are not to be lost (eg by transfer to the Supreme Court) and they are to be properly utilised, then there would need to be additions to the jurisdiction they exercise. There are three obvious additional areas of jurisdiction:
 - a. EEO matters;
 - b. Professional disciplinary matters
 - c. Contract of employment claims
13. A majority of the Equal Opportunity matters dealt with by the Equal Opportunity Division of the ADT are in respect of employment. The Equal Opportunity Division would be strengthened by the capacity for judges holding office in a court equivalent to Supreme Court level being part of a bench dealing with such claims, either at first instance or on appeal. Judges of the Industrial Relations Commission have extensive experience in dealing with discrimination and unfair treatment in an employment context that could readily translate to non-employment discrimination matters.
14. The Industrial Relations Commission currently has expertise in respect of disciplinary matters, including in respect of professionals, which it has developed in the context of unfair dismissal jurisdiction. Further, it is noted that Justice Haylen, a Judge of the Industrial Court, heads the Legal Services Division of the ADT which has responsibility for disciplinary matters in respect of solicitors. There is an obvious potential to join together professional disciplinary tribunal matters with the jurisdiction of the Industrial Relations Commission and Industrial Court.
15. As Judges with the status of Supreme Court Judges, the Judges of the Industrial Relations Commission have the capacity to hear and determine cases involving breaches of contracts of employment that are otherwise currently heard before the District Court or the Supreme Court. There could be a monetary limit on the award of compensation that could be made so as to preserve to the Supreme Court matters above that monetary limit.
16. The Industrial Relations Commission/Industrial Court has an existing infrastructure, both by way of available court rooms and registry staff which could

readily accommodate professional disciplinary, equal opportunity work and/or breach of contract claims.

The potential for a new comprehensive tribunal

17. The Society recognises that the State Government may see some benefit in there being an overarching umbrella administrative tribunal that incorporates some existing tribunals because of potential cost savings in respect of registry functions and the like. The extent of those savings is a matter that would need to be carefully considered, given that there would continue to be, in effect, separate bodies within such an umbrella organisation, located in separate places with their own staff in each location. It might be that some of those efficiencies could be achieved by sharing a common registry or 'point of contact' without the need for a 'super-tribunal'.
18. Regardless of what options are preferred in that regard, the Society believes it is important that there remains a body that is either stand-alone or an identified Division of a 'super-tribunal' that retains as far as possible the current structure of the IRC, and that includes the current Judges of the IRC who have the specialised conciliation and arbitration skills to carry out the important role of conciliation and arbitration of industrial disputes. If there were to be a tribunal that incorporated the current role of the Industrial Relations Commission, such that there was no longer a Commission in Court Session, steps would need to be taken to maintain the status of the Judges of the Commission. That could be done by appointing them Judges of the Supreme Court but having them seconded to the tribunal.

Graham Evans
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Industrial Relations Society of NSW

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