

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

Name: Mr Stephen Jones

Date received: 23/11/2011

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000
Fax: (02) 9230 2981

RECEIVED

23 NOV 2011

LEGISLATIVE
COUNCIL

Submission re: Opportunities to consolidate tribunals in NSW

My submission will focus on the Consumer Trader and Tenancy Tribunal (CTTT) strata division. I will briefly mention that when the CTTT was created the Strata Schemes Board (SSB) was consumed by a greater body and the term 'Super Tribunal' was bandied about in relation to CTTT. That so-called Super Tribunal, the CTTT, has been seen to be far from 'super' in its work relating to strata matters.

Over recent years I have had the misfortune to be involved with numerous Strata Schemes cases which are the jurisdiction of the CTTT strata division. My personal experience is that the CTTT strata division is as dysfunctional as some of the strata schemes over which it presides. I have found that CTTT strata division operates at a deplorable level and that it is, at times, impossible to engage the organization with questions relating to its operation and procedures. I have found that, at times, even Senior CTTT Members, some who serve as Strata Schemes adjudicators, can have a very poor understanding of the Strata Schemes Management Act (SSMA) and if an adjudicator's performance is poor it is virtually impossible to have a poor performance reviewed under the terms of Schedule 3 of the CTTT Act. The CTTT complaints and feedback mechanism is a futile exercise. I have found CTTT difficult to get procedural information from and I have a deep disrespect for the organization given the way it operates at a bureaucratic level (the internal culture). At times it is like dealing with the KGB and at other times there is a clear "boys club" mentality on

show.

There is very little in the Strata Schemes Management Act (SSMA) which is an absolute obligation for an Owners Corporation (OC) because CTTT are not the 'strata police': there are no 'strata police'. This is itself a problem as there is little or no corrective mechanism when the SSMA is not followed; many owners find this a startling reality when it is discovered. I am convinced that roughly 95% of the SSMA need not be strictly adhered to and this position comes from my experiences with CTTT.

If an OC is failing to meet with the requirements of the SSMA then CTTT often will not intervene unless there is 'serious dysfunction'; even then CTTT are somewhat squeamish about using the provisions found in the SSMA to deal with "rogue" OC's. There is also the other side of the coin where CTTT allow individuals or agents to make a mockery of the SSMA or a specific by-law of a strata plan.

Decisions coming out of CTTT lack consistency and often lack common sense. In my personal experiences I have found that CTTT's decisions have not resolved any of the many issues in many Strata Plans (SPs) including my own SP. In my experience I have found that others, independently, share my poor opinion of CTTT.

For example; *"Legal advice is that we go to the CTTT which will take 8 – 10 weeks.*

I have years of experience to demonstrate how useless they are."

CARE & SHARE

Taken from: <http://www.flat-chat.com.au/forum/another-day-in-paradise/sad-end-the-whole-story/#p990>

The flat-chat.com.au website is littered with people expressing this type of opinion.

The lack of intervention by CTTT in many matters, not necessarily ordered management cases, where there is a public expectation that a matter warrants intervention, only undermines the integrity of the SSMA, promotes informal management practices and free spirited decision making in SPs.

Strata agents, Executive Committees (ECs) and self-management groups become aware of the failures of the CTTT strata division and use the lack of action from CTTT to manipulate and influence management styles and individual issues that can arise in strata living. Not only is CTTT frustrating to those who are knowledgably about the SSMA but CTTT also provide a “safety net” for those who wish to flaunt strata legislation because of the knowledge that CTTT are somewhat timid and ineffective when it comes to enforcing basic legislative requirements.

The underlying point of the above is that CTTT do not enforce the Strata Schemes Management Act even though strata matters are their jurisdiction and there is a general public perception that legislative failures by OC's are matters CTTT should be dealing with. The failures of CTTT in strata matters have tarnished the reputation of strata title to a degree.

These comments are not exclusively about ‘dysfunctional management’. CTTT's failures can relate to something as simple as an OC regularly not meeting with a

timeframe specified by the Act and CTTT declining to put into place a preventative order to see the indiscretion is not repeated.

CTTT are somewhat 'endorsing' legislative non-compliance and to a degree promoting future non-compliance which sends the message to the greater strata community that the SSMA, generally, need not be complied with. The SSMA is supposed to be a plain English Act but it reads more like a collection of suggestions rather than actual legislation if CTTT's record is the indicator. It is apparent that nobody genuinely enforces the SSMA yet it is the jurisdiction of CTTT.

"The legislation has always envisaged that generally, strata schemes would be managed by ordinary lot owners for their own benefit. Even with the involvement of professional strata managers, achieving managerial perfection is not easy. Mistakes are made. The important thing is that they are recognized and not repeated."

J Bordon: Nulama Village P/L v Owners Strata Plan 61788 (Strata & Community Schemes) [2006] NSWCTTT 550 (25 September 2006)

Recognition of mistakes and working towards ensuring that mistakes are not repeated is something that CTTT does not carry out within itself as an organization. CTTT are a case of do as I say, not as I do.

The idea that SPs are 'little kingdoms' where the will of the masses (the majority of those who do participating) dominates a scheme has become common with owners. This flawed perception has led to a belief that individual strata plans are autonomous beyond the SSMA, a pseudo 4th tier of government.

“Owners corporations are meant to be small democracies.” G Durie, Strata Schemes Adjudicator, SCS 11/20738 and 11/28540.

Some CTTT outcomes completely compromise the SSMA so as to protect “harmless” indiscretions by an over zealous Executive Committee (EC) member or the EC/OC. It seems as if CTTT compromise the SSMA day in day out to allow, what is seen by CTTT, as innocuous indiscretions.

There is no recourse against failures by CTTT if an OC subsequently falls foul of the law after CTTT declined to put orders in place that could have most likely prevented a problem. The lack of accountability of CTTT is completely inadequate.

The issues in strata living go well beyond management issues and the ‘little kingdom’ mindset that plagues many strata plans. I will not go into the impact of the ‘people factor’ but it is a significant factor that CTTT also seem unable, or unwilling, to address.

CTTT Act

3 Objects of Act

The objects of this Act are as follows:

- (a) to establish a Consumer, Trader and Tenancy Tribunal to determine disputes in relation to matters over which it has jurisdiction,
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings to be determined in an informal, expeditious and inexpensive manner,

(d) to ensure the quality and consistency of the Tribunal's decision-making.

I would without any reservation state that the CTTT strata division has failed these objectives, particularly part (d), and I would go on to say that anyone who believes otherwise is wearing blinkers or has an interest to protect. There is one SCS case where, now Deputy Chair, Member Balding references and notes the contradictory decisions in two (might have been three) similar CTTT matters to the case she is dealing with.

Given strata matters are less than 3% of the case load of CTTT it is no wonder that expertise in strata matters is limited and professional development in strata matters is secondary to professional development in the more commonly used divisions within CTTT. Given the scale of strata living and the projections that strata title will become the dominant title in the future then it is clear to many in the strata industry that the CTTT strata division is a serious problem that needs addressing.

As long as decisions in the CTTT jurisdiction do not form precedent for other decisions in the same jurisdiction then any particular case outcome is worthless except to the parties in the particular case. This type of "empty" decision making only erodes consumer confidence in CTTT and makes the pseudo jurisdiction (CTTT) completely unreliable and unpredictable. Such inconsistencies do little for public confidence in strata title.

When one looks at the appeal rates for strata matters relative to the figures in other CTTT divisions in the 2009-10 CTTT annual report it is clear that either there is

something wrong with the CTTT strata division decisions or there is something very wrong with strata owners because strata owners seem to be incredibly more incline to appeal. Perhaps the applicants (the strata owners) feel if they go back to CTTT enough times sooner or later they will get the desired outcome.

Majority of strata owners (90+ %) would rather leave a matter unresolved than enter into the dispute resolution mechanism of the SSMA. CTTT has had a role in this level of disconnection from the system. The time frames to deal with matters, both during and after mediation, are excessive and lead to a high level of disengagement from the very people the mechanism is designed to serve. The concept of dispute resolution by written submission is problematic; it favours some and disadvantages others. The legislation covering strata disputes allows an applicant or respondent to procrastinate and stall the steps in the dispute resolution mechanism to the point the whole process becomes a farce. This is as much a consequence of the legislation as it is the manner in which the legislation is interpreted and operated by those in OFT and CTTT.

The lack of inquisitorial investigation by adjudicators and CTTT Members in strata matters is diabolical as it leads to the situation of an adjudicator / CTTT Member having little choice but to choose who to believe; hence the reputation of CTTT being a lottery or chocolate wheel is well deserved. All too often CTTT accept submissions from OC's that make false claims about working towards an outcome or acting in the best interests of the owners when such claims are nothing short of "rubbish" that is easily written to negate a genuine application. CTTT tend to give weight to material submitted under the banner of an OC, material that can easily be the misrepresentations of the very people or individual who is / are the real problem. This

is just one flaw in the dispute resolution by written submission process. This type of dispute resolution environment disadvantages anyone who has ethics or morals as those who are “less reliable” are in a position to try to win favour by lies and deception with full awareness that there is generally no consequences if they are discovered being disreputable. I have watched people openly and knowingly lie to CTTT Members – the oath at Tribunal matters is a shackle for those with ethics. The idea that CTTT is supposed to be an informal, accessible and cheap resolution mechanism is just not how CTTT operates. I have spent numerous hours reading just about every CTTT strata division case on the internet. Some of the outcomes read like they are from a High Court case and others seem to be scant and vague.

The figures found in CTTT’s annual reports are in no way representative of the level of “dispute” or dysfunction in NSW strata schemes. CTTT’s strata division is recognized by the broader strata community as being more of a problem than a solution so CTTT has a limited engagement from disgruntled owners and OC’s. If “strata police” did exist then I believe without any doubt that they would receive more than 1700 calls per year. (1700 being approximately the number of applications lodged with CTTT for SCS matters in 2009-10)

The CTTT strata division is a disgrace and I state this from interaction with others who have dealt with the organisation and from my own personal experience. I have found that CTTT is not a pro-active organisation that deals in preventative measure nor is it the type of organisation that overly promotes compliance with the SSMA. CTTT seem to only wish to address harsh disadvantage and significant loss. CTTT does not step up and address general dysfunction and repeated non-compliance

issues. Admittedly there are times the legislation does not help CTTT but the legislation is no excuse for CTTT's poor performance.

The culture within CTTT does not promote a positive public image for strata living. The inconsistent decisions coming out of CTTT do not promote a positive public image for strata living. Consumer confidence in strata living is in decline and CTTT has had a role in that decline as has the NSW legislature by their failure to be progressive with legislative reform in the area of strata living.

I would recommend every member of the standing committee spend some considerable time looking at web sites such as the Owners Corporation Network and Flat-Chat to see that those who have had experience with CTTT strata division generally, and often, come away bewildered by the uselessness of the organisation.

"The legislation has always envisaged that generally, strata schemes would be managed by ordinary lot owners for their own benefit."

J Bordon: *Nulama Village P/L v Owners Strata Plan 61788* (Strata & Community Schemes) [2006] NSWCTTT 550 (25 September 2006)

Strata living deals with multi-million dollar infrastructure and significant budgets, the days of there being an expectation of strata plans, particularly large strata plans, being managed by lay people should be over. It seems CTTT are operating on a basis applicable to time period those in strata living have moved on from.

I am all too aware of those who, after experiencing strata living, now have a “never buy strata” mantra, I am all too aware of those who head for the “exit turnstile” in a SP because issues are not confronted, or cannot be resolved or because there is an entrenched “culture” within an SP that would not exist if the SSMA was worth the paper it is written on.

I have over 12 years experience in strata, I live in an SP that is a model of how not to run a strata plan. No strata plan I have ever been involved with as a self-management trainer has ever had a procedural or management matter go to CTTT. The moral is that those who want to operate within the parameters of the SSMA can easily do so if they choose to, those who don’t choose to cannot be made to and CTTT is pivotal in the latter’s ongoing poor management and dysfunctional existence primarily due to CTTT’s ineffective nature.

The CTTT strata division needs to be removed from CTTT. A new type of dispute resolution mechanism needs to be considered and implemented. The CTTT strata division needs to be a specialist area, the CTTT strata bureaucracy needs to be more transparent, much of the older “dead wood” needs to be removed from CTTT strata division and the strata division needs to get in touch with the broader strata community.

I can not speak poorly enough of CTTT’s strata division. The idea that an even larger, new, “Super Tribunal” will be effective in resolving strata compliance issues and disputes is dubious given the failures of the current, not so super, Tribunal (CTTT). The idea of including CTTT in an even greater Super Tribunal has certain merit from

the perspective of creating a one stop shop but it will not improve the standard of work that comes out of the CTTT strata division.

I am more than happy to supply the standing committee with more information on any of the comments I have made. I am happy to expand with reference to numerous cases and example after example of CTTT's continuing failure to see the legislation, the SSMA, has meaning and is consistently applied.

Stephen Jones

REDWORX

Strata Self-Management Services