

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

**Organisation:** Housing NSW, Department of Family and Community Services  
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**Family &  
Community Services**  
Housing NSW

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The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
Sydney NSW 2000

24 November 2011

Dear Director,

I am pleased to be writing to you about the 'Inquiry into Opportunities to Consolidate Tribunals in NSW' and enclose a submission from Housing NSW.

The submission relates to the Consumer, Trader and Tenancy Tribunal. It identifies challenges posed for Housing NSW by the current arrangements as well as features of these arrangements that our organisation believes should be retained in a future.

If you would like further information about this submission please contact  
Director, Client Service Operations on telephone or

Yours sincerely

Paul Vevers  
**A/Chief Executive**

# **The Legislative Council Standing Committee on Law and Justice**

## **Inquiry into Opportunities to Consolidate Tribunals in NSW**

### **Submission by Housing NSW, Department of Family and Community Services**

Housing NSW, Department of Family and Community Services manages social housing tenancies on behalf of the Land and Housing Corporation and the Aboriginal Housing Office. Housing NSW is the largest manager of social housing in Australia and is responsible for around 120,000 tenancies, all in NSW. Housing NSW tenants are typically low income households often with complex life circumstances.

Housing NSW is a frequent user of the Consumer Trader and Tenancy Tribunal (CTTT) in relation to its jurisdiction over the Residential Tenancies Act 2010. In 2010/11 Housing NSW lodged 2829 applications with the CTTT including 5 applications for rehearing.

This submission is solely concerned with the Terms of Reference relating to the CTTT.

#### **1. Innovation**

Housing NSW has maintained a positive relationship with the administrative arm of the CTTT and over the past decade has participated in pilots of various service delivery initiatives which have later been made available to all users of the CTTT. For example, Housing NSW assisted the CTTT to pilot its on-line lodgement system and more recently its E-Connect application process. In Housing NSW's experience, the administrative arm of the CTTT is innovative and strives for both administrative efficiency and provision of good customer service.

Housing NSW supports retention of innovations such as electronic application lodgement and the E-Connect process in the future Tribunal concerned with tenancy matters.

## **2. Effectiveness of the CTTT in providing a fast, informal, flexible process for resolving consumer dispute**

In Housing NSW's experience the CTTT provides a fast and informal process for resolution of less complex tenancy matters. In general, less complex matters are listed expeditiously, hearings are conducted relatively informally and the conciliation process that precedes a hearing is used effectively.

Housing NSW has experienced difficulties with timely access to the CTTT in some rural locations where the CTTT does not sit frequently. In some locations the staff time required to travel to and from the CTTT is significant. Also, Housing NSW tenants in some remote rural locations experience difficulty travelling to CTTT hearings unless assisted by Housing NSW. Housing NSW is aware that the CTTT is trying to address these issues through strategies such as the use of telephone hearings and exploring the future use of video link technology.

On some occasions Housing NSW has experienced difficulty with more complex matters progressing slowly following the initial hearing date. Although this has not occurred a large number of times, it has created difficulties for Housing NSW when the safety of staff or other tenants has been at issue.

Housing NSW supports a continued focus on developing robust alternatives to face to face hearings in the future Tribunal concerned with tenancy matters.

## **3. Quality and consistency of CTTT decisions.**

CTTT decisions do not form precedent and decisions of one CTTT Member do not bind another. While this situation does allow the CTTT to operate as an informal and accessible forum, if not managed effectively it can also create a situation of uncertainty where different interpretations of the legislation and different standards of evidence can be enforced by

individual Members. Although CTTT decisions are not precedent forming, CTTT has an obligation to ensure consistency in decision making.

It could be argued that Housing NSW, like other users of the CTTT, has a right of appeal to higher courts if it is dissatisfied with a CTTT decision where there is an error of law or a denial procedural fairness. In reality, the small size of the awards and Housing NSW's obligations as a model litigant mean there is little utility, particularly from a cost benefit analysis, in appealing CTTT decisions. This leads to a lack of judicial oversight of CTTT members making social housing decisions.

The CTTT is not bound by the rules of evidence and does not have the formality of a court. However, it is apparent that this informality can lead to inconsistent decision making and a failure to accord fairness to both parties, particularly the landlord. It appears to Housing NSW that on occasions its advocates are not given the same opportunity to put their case as tenants.

In three recent examples, the CTTT found a breach of the lease and awarded substantial compensation to the applicant tenants without providing Housing NSW the opportunity to cross-examine witnesses.

While these matters have been appealed to the Supreme Court, Housing NSW will very rarely appeal a CTTT decision. Housing NSW has appealed four CTTT cases in the last four years and three of these have been in recent months, relating to the same hearing.

Housing NSW is of the view that an amalgamation of Tribunals, with judicial members in a coordinating role, will assist with the provision of quality and consistent decisions:

Housing NSW supports measures to increase the knowledge and training of CTTT members in any Tribunal amalgamation proposal.

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In addition, the bifurcated appeal mechanisms in the CTTT Act make appeals from the CTTT costly and extremely inefficient. Section 65 of the CTTT Act provides for appeals on procedural fairness points to the Supreme Court while questions of law go to the District Court under s67. Tenants often have appeals encompassing both procedural fairness and questions of law, which results in separate appeals to both the District Court and the Supreme Court. A recent example is the Court of Appeal matter of *New South Wales Land & Housing Corporation v Brennan* in which there was an appeal of a District Court judgment in a CTTT appeal and an appeal of the same CTTT decision to the Supreme Court.

Housing NSW supports revision of mechanisms for appeals to higher courts from the Tribunal concerned with tenancy matters including resolution of this time consuming and expensive anomaly.

#### **4. Current monetary jurisdiction of the CTTT**

In Housing NSW's view, the CTTT current jurisdiction of \$15,000 is reasonable, although an increase to \$20,000 would be supported.

Housing NSW supports a mechanism for regular review or indexation of the jurisdictional limit so that it remains current and appropriate.

#### **5. Social housing landlords and the CTTT**

Social housing landlords such as Housing NSW balance the requirements of efficient and legal tenancy management and delivery of government policy requirements.

Housing NSW's rights and obligations as a landlord are set out in the Residential Tenancies Act for which the CTTT is the dispute resolution forum. Aside from a few exceptions these are the same rights and obligations that apply to other landlords in NSW.

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The manner in which Housing NSW implements these rights and obligations is directed by Government policy and the requirements of the Housing Act, 2001.

Over time, Housing NSW has formed the view that individual CTTT members may not always understand this distinction. There have been situations where it has appeared to Housing NSW that a CTTT Member has sought to interpret or apply Government policy in order to resolve a tenancy dispute involving Housing NSW, instead of the *Residential Tenancies Act*.

Housing NSW supported the establishment of a Social Housing Division within the CTTT, believing that this would assist the CTTT to develop a greater understanding of the role that government policy plays in the delivery of social housing. In retrospect the Social Housing Division may not have been successful in this regard. The separate Social Housing Division has had the effect of the CTTT imposing a greater onus on Housing NSW in addition to those of an ordinary landlord.

Housing NSW supports measures being taken to ensure the future Tribunal understands its jurisdiction with regard to both the *Residential Tenancies Act, 2010* and the interpretation of Government policy.