

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

Organisation: Motor Traders' Association NSW

Date received: 24/11/2011



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

Dear Committee Members

RE: Inquiry into Opportunities to Consolidate Tribunals in NSW

The Motor Traders Association NSW (MTA) is a Member based organisation. It represents businesses in the retail motor industry.

The MTA membership includes motor dealers, repairers and farm machinery dealers to name a few. The MTA provides a comprehensive service to its members including advice on trading matters; training and workplace relations advice and services.

The MTA provides this submission to the inquiry relating to the services of the Consumer Trader and Tenancy Tribunal. Given the unique circumstance relating to motor vehicle disputes and the industry in general the MTA would like the opportunity to appear before the committee to expand on this further.

The MTA is a Federally Registered Organisation and is also registered under the NSW Industrial Relations Act. The various options proposed in the issues paper regarding the Industrial Relations Commission will have minimal impact on MTA Members, as they operate under Federal Legislation. This submission is specific to the Consumer Trader and Tenancy Tribunal (CTTT)

Members of the MTA conduct millions of transactions annually in regards to the sale and repair of vehicles and the sale of parts for those vehicles. Despite the huge numbers of transactions, only 1,320 applications were made to the motor vehicle division by consumers in 2009-2010. (Annual report 2009/2010)

Motor vehicle disputes tend to be unique in that there are usually complex technical issues involved and the large cost that can result from the use of experts. This cost can be for one or both parties.

Some specific comments in regards to 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;

Generally speaking the CTTT provides an effective service in regards to motor vehicle disputes. This seems to be achieved better in the metropolitan areas where Tribunal Members are familiar with motor vehicle disputes and are reasonably able to interpret expert evidence.

Tribunal Members who conduct hearings in the rural areas tend to be less familiar with motor vehicle matters, and the decision can rest on which report "looks the best" rather than which report is more specific to the matter at hand.

Another difference between metro/ rural is the CTTT in a rural area may not have a mediator on hand and the parties are essentially sent out of the room to "sort it out". In the city registries there may be one mediator on hand between several matters and a lack of time prevents a full examination of the matter.

Mediation is very important and is, and must remain, a key action of the CTTT. But mediation must be properly resourced to allow mediators to look at the facts and spend time with the parties. Sometimes one party needs to be told the cold hard fact they have little chance of success or they are being totally unreasonable in their responses. – Mediators must have an ability to understand technical aspects and legal aspects and, assisting the parties to resolution.

In regards to costs in the motor vehicle division consumers and business can face are significant. This is in the form of expert reports. As an example a claim may be \$2,000 but a business may have to spend \$1,000 in obtaining an expert report. Win or lose this money is not recoverable. A broken bolt that requires a metallurgist report – the report will cost anywhere between \$700 and \$1000. Two or three broken parts increase this cost. Metallurgical reports usually require another expert also and this is \$500-\$1000.

It can even be more concerning when the trader is more knowledgeable than the so called "expert" for the other party, yet the expert report is almost always weighted heavier than the knowledge of the trader.

There are certainly due process and evidentiary issues that must be considered and in some cases these costs are unavoidable. In complex or "messy" matters better case management at an individual level would almost invariably lead to a better result for all concerned.

The Australian Consumer Law will be further implemented on 1 January 2012 and this will be combined with further educating consumers about remedies that may be available to them. This may impact on the number of applications that the Tribunal may be required to determine.

ii. the appropriateness of matters within its jurisdiction, having regard to the quantum and type of claim and the CTTT's procedures;

The types of claims the CTTT determines are generally acceptable. There should be an ability for a respondent to join another party to the proceedings should the need arise. An example is where a claim relates to a new car or a part warranty. At the moment it is the choice of the applicant or the Tribunal to nominate additional respondents.

This can result in a trader who is not strictly responsible defending a matter that is not of their doing. Currently the (Respondent) trader relies on the Tribunal Member to allow additional Respondents.

There should be scope for the CTTT to determine matters that arise in business to business transactions. This would require an expansion of the jurisdiction of the Tribunal but as the name suggests it is a "Trader" Tribunal.

iii. the rights of appeal available from CTTT decisions

Currently the only avenue of appeal is an application for rehearing (Section 68) and an appeal to the District Court on a question of law.

Members of the MTA are advised by MTA that the hearing is the one and only chance they have to defend the matter as Section 68 applications are only granted in exceptional circumstances and appeals to the District Court are expensive and almost always not worth pursuing on a cost basis alone.

It is not considered that there are any rights of appeal as the MTA has not been involved in any matter that has been granted a Section 68 re-hearing --no matter how "wrong" the decision is perceived to be.

The Annual Report for 2009-2010 shows 28 rehearing's were granted. There may be some benefit in examining what constituted those being granted.

Summary

1. It is the view of the MTA that there would be some real benefits achieved to both Government and the public by merging some or all Tribunals in NSW in some form with the Industrial Relations Commission.
2. If this occurs the MTA strongly believes that the CTTT should be a "division" or "entity" of the new body. This will allow the CTTT to manage claims relating to consumers and traders. As tenancy is a major part of the current Tribunal there may be a benefit to separating tenancy from "Consumer" and "Trader" claims.
3. The MTA also believes that the CTTT "Division" should retain its own Chairperson to provide directions relating to conduct of hearings etc.

4. That any changes should also focus on having Members with specific knowledge on motor vehicles conduct hearings as this will provide more consistency with the conduct of hearings, particularly in rural NSW.
5. That Mediation (ADR), should have greater resources to allow mediators to spend time to conduct mediation. Again, this is particularly important in rural NSW as it is common that no mediator professional is even available at hearings. Tribunal Members do attend to this in some instances but this is inconsistent in its operation and application.

Thank you for the opportunity to submit to the inquiry and if you require further information please don't hesitate to contact me.

Kind Regards

James McCall
CHIEF EXECUTIVE OFFICE