

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

Name: Name suppressed

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Partially Confidential

ISSUES AND SUGGESTIONS FOR REFORM OF THE CTTT

First, I wish to suggest to the Committee Members that they seek details from both the Minister and the CTTT of any submissions and suggestions already lodged with them in recent years by victims of the lack of proper process at the CTTT. I can assure the Committee that this will be a rich source of information detailing the utter failure and dysfunction of the CTTT.

Second, I request that the Committee's review encompass the following issues in regard to the CTTT :

1. Length of time and costs involved in dealing with matters are excessive
2. Matters still remain outstanding and unresolved despite years of applications
3. No real concern for the public – the process appears to be all about the convenience of the Tribunal and its members and staff
4. Lengthy process in order to obtain a hearing –even up to 18 months from the date of the original application
5. Hearings run for only a limited time once the matter is finally heard
6. Applications and submissions do not appear to be read by a member prior to a hearing
7. Members are very selective in the evidence they choose to recognize at the hearing and refer to in their reasons for decision
8. Members do not refer accurately to the reasons for decisions made in previous hearings and often make inaccurate generalizations about previous hearings
9. Expert evidence is taken into account erratically by Members with the result that expensive third party reports may be ignored entirely for no reason
10. Members are unwilling to investigate inconsistencies in submissions and evidence at hearings and to compare with different evidence provided by the same witnesses at previous hearings
11. Members are unwilling to reprimand witnesses for providing false, misleading or inconsistent evidence
12. Members are unwilling to use their power to conduct their own investigations which would rapidly resolve many issues, e.g. as to whether common property repairs carried out
13. The Tribunal is unwilling to accept that errors may have been made in earlier decisions and to take steps to correct those errors – this appears to be about protecting the Tribunal rather than protecting the members of the public who have sought the protection and support of the Tribunal
14. The Tribunal members often issue very imprecise orders with the consequence that Applicant's must return to the Tribunal in order to obtain clarification of the orders or commence a whole new Application process with resultant delay and cost for all parties. There should be a set time limit by which time repairs are made, for example, controllers of an Owners' Corporation can repair items

- immediately which effect themselves but can ignore works for another lot owner thereby creating significant expense and delay for that lot owner
15. The Tribunal is unwilling to enforce orders or issue penalties for a failure to comply with orders and, in any event, it appears that the Tribunal has insufficient powers to enforce orders even if it were willing to do so. The consequence is that the orders of the Tribunal can be ignored with impunity
 16. The Tribunal is unwilling to enforce summonses despite charging for issuing them
 17. Appeals to the District Court are able to be made only on errors of law, not errors of fact. Tribunal Members appear well practiced at writing reasons for a decision which appear to fulfil the requirements as set down in the SSMA so that there may appear to be no error of law. However, the decision actually made by the Member may have been based upon serious errors of fact, which are unable to be appealed.
 18. Overall problem of a lack of inconsistency in the processes of the Tribunal and its members and staff
 19. Overall lack of concern for the impact of the Tribunal's processes and decisions upon the lives of members of the public
 20. There is a real need for more training and accountability of members
 21. There needs to be a focus on the appointment of qualified and competent members
 22. People need a genuine, expert and fair forum in which to resolve their problems
 23. The Tribunal seems to reward liars, rogues and defaulters, yet it punishes honest people
 24. The Tribunal is supposed to be independent. It is supposed to be accessible, efficient and inexpensive to use, and it should deliver decisions that are fair and consistent. In fact, the Tribunal is failing to meet any of those objectives under the Act.
 25. The Tribunal's processes are rarely efficient, cost effective or fair to the parties.
 26. Members' qualifications need to be commensurate to the complexity of the matters before them. – and members should be allocated matters concerning their area of expertise
 27. The Tribunal has an obligation to parties engaged in a dispute to have sufficient strength and credibility that its orders and subpoenas will be taken seriously.
 28. The Tribunal is supposed to deliver swift decisions on relatively minor matters; and the longer the gap between the decision and the writing of the reasons, the greater the scope for getting things wrong. It frustrates and angers the parties and gives the impression of sloppiness and lack of professionalism.
 29. Timing for appeals to the District Court relies on the fact that Tribunal members deliver their decisions within 28 days. However, because tribunal members are not meeting that deadline they are sometimes not delivered within 28 days or even months the right to appeal to the Supreme Court is expiring.
 30. Members do not spend enough time reviewing supporting materials and lack the expertise to handle more complex cases,
 31. The experience of dealing with the Tribunal has been absolutely disastrous both financially and psychologically.

32. The compelling of witnesses is a complex issue and requires the imposition of careful measures. The importance of the CTTT summons is often not fully understood by recipients particularly those who are third parties. Information in the summons could be enhanced to show the importance of the request made in the summons and the need for strict compliance. Despite the CTTT being a Tribunal and not a court, the information should express the significance of the matters in the CTTT. A penalty provision could assist the process and provide an additional incentive for persons to comply.
33. The power to subpoena witnesses is essential to the credibility of Consumer, Trader and Tenancy Tribunal subpoenas and orders.
34. The Consumer, Trader and Tenancy Tribunal also appears to have failed to use its powers to hold any party in contempt. Such powers are essential to ensure that the Consumer, Trader and Tenancy Tribunal is taken more seriously by parties.
35. There should be more accountability to apply pressure on the Tribunal to manage its affairs properly so that the decisions it delivers do not force people unnecessarily to the District Court
36. Appropriate resources need to be provided to the CTTT to ensure that it is capable of performing its task effectively. Too often too few resources are provided to those Tribunals which have most contact with the general population. The problems which are before these Tribunals impact directly and personally upon many people's lives. They may appear small issues to bureaucrats but they are important issues to individuals

FURTHER POINTS FOR DISCUSSION

1. Lack of coordination between and across divisional sections in the Dept of Fair Trading
 - a. CTTT - has no knowledge in FTAC areas – in my experience, the CTTT exhibited little interest in a Building Warranty Insurance claim made by an Owners' Corporation as it appeared to have no understanding of it – or generally of insurance matters
 - b. FTAC – distributes public funds to an Owners' Corporation but has no power to investigate whether an Owners' Corporation has received proper approval for its actions and has no knowledge of the requirements of the SSMA and other related legislation, so it refers an owner to the CTTT to resolve a matter, but the CTTT has no knowledge of FTAC issues
 - c. OFT - has knowledge but appears to have no power to act in either of the above areas unless a strata managing agent is involved and then only to the extent of the Property, Stock and Business Agents Act, not the SSMA
 - d. Where does a consumer go whose problems go across all areas and the OC is self-managed by a dominant clique who do not obey the law?
2. Inability of internal review processes to address an issue which goes across several divisions of the DFT
 - a. OFT unable to address errors in regard to strata law made by an agent who is taking instruction from an OC which is not obeying strata law
 - b. Who reviews the internal processes of the CTTT? OFT says not their area. Ombudsman says not their area.
 - c. CTTT investigates itself?
 - d. Who reviews FTAC issues relating to a self-managed strata block? FTAC? CTTT? OFT?
3. Lack of public confidence in the processes of the DFT.
 - a. Many people are unhappy with the CTTT
 - b. It is a matter aired on talk-back radio
 - c. Members of Parliament have spoken about constituency issues