

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

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

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Dear Madam/Sir,

I write regarding the inquiry into 'Opportunities to consolidate the tribunals in NSW'.

I refer to Terms of Reference (2)(c)(i).

The Consumer, Trader and Tenancies Tribunal in pursuing its objective to provide a 'fast, informal, flexible process for resolving consumer disputes' has from time-to-time compromised its ability to deliver justice to tenants in New South Wales.

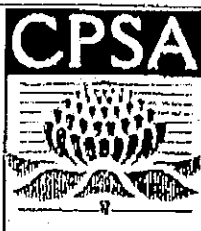
One case in recent years that highlights this point is documented in the article 'Rough justice from Consumer, Trader and Tenancies Tribunal' (*Around the House*, no. 81, June 2010, pp.7-8). A copy of this article is attached.

I ask that you take into account the issues raised by this article when considering your final recommendations.

Yours faithfully



(Dr) Robert Mowbray  
Social Worker and Tenant Advocate



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# Rough justice from the Consumer, Trader and Tenancy Tribunal

Robert Mowbray, Tenant Advocate, Older Persons Tenants Service

The role of the Consumer, Trader and Tenancy Tribunal is to resolve disputes between tenants, landlords, traders and consumers in a timely and effective manner. Section 3(b) of the *Consumer, Trader and Tenancy Tribunal Act 2001* states that an objective of the Act is 'to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair' [my emphasis].

Suzanne Thurlow was a tenant of Housing NSW at Macquarie Fields, south-western Sydney. On 11 September 2008 the tribunal made orders by consent for termination and vacant possession following an alleged breach of her residential tenancy agreement. However, Ms Thurlow applied for a rehearing and her application

was refused. On 8 April 2009 Justice Hall in the Common Law Division of the Supreme Court of New South Wales declared that the orders made on 11 September 2008 were void because of 'a denial of procedural fairness'. Housing NSW appealed this decision to the NSW Court of Appeal.

On 10 February 2010 the Court of Appeal dismissed the appeal (see *NSW Land and Housing Corporation v Thurlow* [2010] NSWCA 11). In his part of the judgment (paragraphs 14 to 19), Justice Young stated:

It is a very serious matter for a person to be threatened with the loss of his or her home. The legislation, the *Residential Tenancies Act 1987*, treats it as a serious matter. Section 64(2)



of that Act requires the Tribunal to be 'satisfied' that the tenancy should be terminated. It would be rare for a Tribunal to be satisfied by the mere production of an order consented to by an unrepresented person with no familiarity with legal matters, unless the Tribunal could see that that person had had independent legal advice, or the Tribunal itself considered the case and determined that it was proper to make an order terminating the tenancy. That did not happen in the instant case. Indeed, looking at the facts as presented to us, which may or may not be established in due course, any tenancy lawyer who was properly acquainted with those facts would see that the applicant had problems in establishing a breach of the lease. In the circumstances it is rather surprising that some delegate of the Chairman of the Tribunal denied an applicant a rehearing where the indicia of injustice were so very strong. ...

In delivering the above comments Justice Young cautioned the tribunal: 'I hope that the basic problems which the present case has revealed are not repeated.' Well Justice Young, they were repeated just 12 weeks later!

Older Persons Tenants Service came into the picture two days before an order for possession against an elderly tenant was to take effect and lodged a rehearing application on her behalf. But to no avail.

In a nutshell, Betty is 71 years of age. She was born overseas. She had lived in her house in the southern suburbs of Sydney for 13 years. Her landlord wanted to demolish the house and redevelop the site. He issued her with an invalid no-grounds

termination notice. Betty began to panic and went to a Fair Trading Centre where she was given poor information. Based on this information, Betty lodged a misconceived application at the tribunal seeking an extension of time in relation to the termination notice. No application was made by the landlord for termination.

Consent orders were made by the tribunal based on Betty's application for more time, allowing her own application to become the instrument by which a possession order was to take effect just one day after the termination notice said she should be out. Her rehearing application was declined by the tribunal on grounds of there being 'no substantial injustice'. The sheriff enforced the warrant of possession around noon the very next day ... just three days after the termination notice said to be out. In the end an elderly lady became homeless.

Yes. Betty could have gone to a higher court. But time was against her and this can be a very expensive process. Besides, Betty is a very vulnerable person. She presents as articulate and this is how the tribunal may have seen her. However, it soon became apparent to Older Persons Tenants Service that she can become confused, misled, easily pressured ... and gullible. On the same day that the sheriff evicted her, she was still handing over money to the landlord: money the landlord was not entitled to.

The tribunal appears oblivious to the counsel of Justice Young. If this case is any indication, the Consumer, Trader and Tenancy Tribunal may have lost the plot when it comes to delivering even a semblance of justice.