

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

Organisation: Herro Solicitors
Name: Mr Anthony Herro
Position: Principal Solicitor
Date received: 20/12/2011

HERRO SOLICITORS

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

19 December 2011

The Hon. David Clarke MLC (Chair)
The Hon. Peter Primrose MLC (Deputy Chair)
The Hon. Scot MacDonald MLC
The Hon. Sarah Mitchell MLC
The Hon. Shaoquett Moselmane MLC
Mr David Shoebridge MLC

Dear Committee Members,

Opportunities to Consolidate Tribunals in NSW

I am a Solicitor who specialising in retail and commercial leases. Nearly all retail lease disputes are heard in the Administrative Decisions Tribunal.

I wish to make the following submission to the Standing Committee:

1. Importance of relevant understanding of retail leases.

1. Retail lease disputes are determined by the Retail Leases Division of the Administrative Decisions Tribunal.
2. I submit that in any consolidation of the Tribunals, it is important that there is maintained a specialist panel of Tribunal Members who preside over retail lease disputes. It is very important for Tribunal Members to have a broad understanding of the retail lease environment for the proper administration of justice and to fulfil the intentions of the legislature in passing the *Retail Leases Act*.
3. The proper administration of justice requires that Tribunal Members have a real understanding of the specific issues in relation to retail lease disputes. The whole premise of the *Retail Leases Act* is to provide a cost effective dispute resolution regime, being in mind that there can be significant difference in the financial resources, experience and bargaining positions of the respective parties.
4. Compulsory mediation is a very important part of the dispute resolution process for retail lease disputes, with 81% of retail lease disputes resolving at mediation or shortly thereafter. This is an exemplary result.

5. In retail lease disputes, often there is a significant power imbalance between the parties. It is imperative that for the proper administration of justice, and in particular the administration of retail lease disputes pursuant to the *Retail Leases Act 1994*, that in adjudicating on retail lease disputes, Tribunal Members have a knowledge of the market place and the vulnerability of a litigant in such disputes.
6. It is imperative that in any consolidation of Tribunals, that retail lease disputes continue to be determined by Tribunal Members who have specialist knowledge in this area.

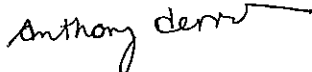
2. Jurisdictional limit.

In my respectful opinion, a jurisdictional limit of \$400,000.00 is wholly inadequate. Most leases are for a term of 5 to 10 years and would result in payments by the tenant of approximately \$750,000.00 to \$1.5 million dollars if one includes a Fitout of around \$200,000.00 to \$300,000.00. It is inappropriate in such circumstances for there to be a jurisdictional limit of \$400,000.00. I submit that, at least, the jurisdictional limit should be \$750,000.00.

If I can be of any other assistance to the Committee, please do not hesitate to contact me.

Yours sincerely

HERRO SOLICITORS



Anthony Herro
Principal Solicitor