

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

Name: Mr John Cooper

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Partially Confidential

SUBMISSION RE:

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

An examination of the Retirement Village Legislation (*For relevant parts see Attachment No1*) shows that the Consumer Trader and Tenancy Tribunal (CTTT) is basically the only avenue for Residents and Operators of Retirement Villages to use in trying to resolve disputes. Matters can of course be taken directly to the District or Supreme Court.

Feedback and experience from retirement village residents is that the CTTT can be:

- 1) **Intimidating:** Although designed to be informal, the process can be intimidating, particular for elderly Residents who possibly have never been involved in legal proceedings before.
- 2) **Fear of Appeals to a Higher Court Authority:** There has been unwillingness from some Tribunal Members to proceed with the hearings and the suggestion that residents withdraw their cases with the warning, "You may end up in the High Court".
- 3) **Appeal Process:** Whilst an appeal process is available for the parties who take part in a Tribunal hearing, warnings or attempts to discourage parties from proceeding in matters are cautioning that further legal action can prove frustrating and frightening for both parties involved.

At one village budget meeting the Residents were advised by the Operators Representative that if the budget was rejected, the matter would be taken to the Tribunal and if the Residents were successful they would "want to have deep pockets" as the matter would be appealed to a higher authority.

The above is not an isolated incidence. It has been the a common practice amongst some operators to advise Residents that if the proposed budget is rejected the matter will go to Tribunal.

- 4) **CTTT Applications** are promulgated as an inexpensive way of achieving a solution to a dispute without the necessity of a legal practitioner. There has been an increase in the use of legal practitioners, even for Directional Hearings, regardless of who initiates the action in the CTTT.

This can be intimidating for Residents when they are not aware of legal representation before the Directional Hearing. It is noted that parties can apply to be represented in writing before the matter is heard or can apply at first hearing.

- 5) **Delay in Decisions:** There has been an increase in the delay in receiving decisions from Tribunal Members on cases involving Retirement Villages. In one case known to the industry bodies, the final hearing was held on 5 November 2010, with a decision not received until the last week of April in 2011. (see *CTTT Application No* Another example is where a village which had gone to mediation without success in October 2010, and was to be referred to a final hearing was left in limbo. After letters were mailed to the CTTT with no outcome, the Chairman of the Residents Committee rang CTTT in March 2011, and was told "it fell off the computer". This has now (October 2011) been resolved. Given that budgets for this village, which has a financial year 1st July to 30th June are to be approved by no later than 31 May, it makes it increasingly difficult for operators to properly prepare budgets, when budgets from the previous year are still to be determined.

- 6) **Inconsistency of Decisions:** Sections of the Consumer Trader and Tenancy Tribunal Act (2001) advises that there should be consistency in the Tribunal, however there is no

precedent set by a decision made in the Tribunal. This has made matters proceeding to the Tribunal somewhat of a "lottery".

(See CTTT Application Nos

The written Applications and Responses in both cases were identical with the same operator involved, however different Senior Tribunal Members determined the outcome.)

- 7) **The Appeal System:** An appeal process is fundamental in the Australian Legal System, however the threat of huge legal costs being forced on Residents when they are not the appellants after an operator has lost a decision CTTT case is an unequitable outcome. Residents are either self funded retirees or receiving a pension, giving limited amount of financial ability to fund cases they have been successful in when appealed to a higher court.

The threat of paying for the legal costs by the unsuccessful for appeal matters has been used as intimidation of Residents with many cases where the Residents have been threatened that if they win in the CTTT they will be taken to court and will need "deep pockets".

- 8) **Variations in time frame required from Application to Written Decision:** The following chart shows the time line for six different cases studies which are attached as No2 A to F.

	Case A	Case B	Case C	Case D	Case E	Case F
File Application Number						
Date of Application	28 Jun 10	Sep 10	17 Aug 10	30 Jun 10	15 Jun 10	23 Jun 10
Date of Directional Hearing	18 Aug 10	17 Dec 10	23 Aug 10	30 Aug 10	17 Aug 10	8 Sep 10

Mediation	1st Session 15 Mar 11	---	matter heard on the papers	---	---	---
Second Directional Hearing	27 Apr 11	16 May 11		---	---	---
Mediation	4th Session 5 Jul 11	---		---	---	---
Date of first Full Hearing	---	23 Mar 11		5 Nov 10	8 Nov 10	17 Dec 10
Date of second Full Hearing	---	---		---	---	16 Mar 11
Date written Decision available	5 Jul 11	12 Sep 11	2 Nov 10	20 Apr 11	13 Dec 10	9 Aug 11
Days Application to Decision	373 Days	365 Days ?	77 Days	295 days	181 Days	422 Days

For a recent in-depth study into the CTTT by the Retirement Village Residents Association, see the "RVRA CTTT Guide" at www.rvra.org.au/html/CTTT.html.

From my experience as the President of a Retirement Village Residents Committee for six years and as a member of the Management Committee of the Retirement Village Residents

Association for three years, two as Vice President it is my opinion that the present CTTT organisation needs reform. However, I am concerned that a consolidation of the CTTT with other Tribunal type organisations would further disadvantage residents living in retirement villages.

John Cooper, 17th November 2011