

**Submission
No 77**

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

Organisation: Redfern Legal Centre

Date received: 2/12/2011

Redfern Legal Centre



2 December 2011

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

Dear Sir/Madam

Please find attached our policy submission in response to the Inquiry into Opportunities to Consolidate Tribunals in NSW

We would welcome the opportunity to appear before the Parliamentary Committee to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Jacqui Swinburne
Acting Chief Executive Officer

Redfern Legal Centre



SUBMISSION:

SUBMISSION IN REPOSE TO THE INQUIRY INTO OPPORTUNITIES TO
CONSOLIDATE TRIBUNALS IN NSW

DATE: 2 DECEMBER 2011

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in NSW Tribunals

RLC's tenancy service (Inner Sydney Tenants Advice and Advocacy Service) frequently represents tenants in the Residential Tenancy Division of the Consumer, Trader and Tenancy Tribunal.

RLC's general legal service has assisted or represented clients in the General Division and the Equal Opportunity Division of the Administrative Decisions Tribunal; the General Division of the Consumer, Trader and Tenancy Tribunal; and the Guardianship Tribunal.

3. RLC's view in summary

RLC welcomes the opportunity to make a submission to this inquiry.

Redfern Legal Centre does not have a firm view as to whether all or some of the existing tribunals and commissions would benefit from amalgamation. We are not advocating for or against any of the options put forward in the Discussion Paper. However, we do have views on the principles that should apply to any tribunal, amalgamated or not. We submit that any Tribunal, large or small, should be: fair, quick, inexpensive, accessible, flexible, and specialised.

4. RLC's recommendations

- 1.** We recommend that if the government decides to create a comprehensive multi-jurisdictional tribunal specialist tribunal members with appropriate qualifications and experience are appointed to deal with matters in their relevant division.
- 2.** We recommend that any amalgamated tribunal have an Appeal Panel or Appeal Tribunal.
- 3.** We recommend that if the Consumer, Trader and Tenancy Tribunal remains as a stand alone tribunal, an Appeal panel should be introduced.
- 4.** We recommend that if there are restrictions on legal representation in some or all of the divisions in an amalgamated tribunal, leave for legal representation should be

given to disadvantaged and vulnerable parties and/or whereh the matter is legally complex.

5. We recommend that any amalgamated or reformed tribunal have legislated assistance requirements similar to those in sections 29 and 30 of the *Queensland Civil and Administrative Tribunal Act 2009*.
6. We recommend that if the government decides to create a comprehensive multi-jurisdictional tribunal like the Queensland or Victorian Civil and Administrative Tribunals, accessibility of the tribunal will be improved if it has registries and conducts hearings in outer suburban areas and regional towns as well as in Sydney.

5. Submission

Tribunals should enhance access to the legal system and the resolution of disputes for all members of the community. The essential characteristics of an effective tribunal are fairness, speed, low cost, accessibility, flexibility and specialisation.

Existing tribunals already have some common rules and procedures to achieve these characteristics, such as relatively simple applications forms, low applications fees, no strict requirement to comply with rules of evidence, and parties bearing their own costs whatever the outcome. However, we believe that there are additional features that could be included in any amalgamated tribunal in NSW, and these are discussed below:

5.1 High quality and consistent decision-making - specialisation

Consistency in decision-making is a very important aspect of fairness. Tribunal members are likely to produce more consistent decisions if they have a strong knowledge of the area of law, and have adequate training and professional supervision.

If the government decides to create a comprehensive multi-jurisdictional tribunal like the Queensland or Victorian Civil and Administrative Tribunals, we submit that it is essential the people with specialist skills and experience deal with matters in the different divisions.

This is consistent with the tribunal remaining accessible to unrepresented parties as those parties will generally have less skill themselves in putting forward the relevant law as required in adversarial court procedure.

We recommend that if the government decides to create a comprehensive multi-jurisdictional tribunal specialist tribunal members with appropriate qualifications and experience are appointed to deal with matters in their relevant division.

5.2 Appeals

Many tribunals have severe restrictions on appeals. In some cases appeals are only to a higher court on a question of law. In practice this means that no appeal is possible, particularly for disadvantaged members of the community like our clients. However we

also submit that although tribunals are not bound by precedent, having fewer restrictions on appeals will ultimately lead to better quality and more consistent decision making by a tribunal.

We acknowledge that removing *all* restrictions on appeals can undermine the principles of speed and low cost. However, we submit that any expanded or amalgamated Tribunal should have an accessible appeal process. While parties to disputes in the Victorian Civil and Administrative Tribunal (VCAT) can only appeal to the Victorian Supreme Court on a matter of law, a recent review of VCAT has identified restricted appeals as a deficiency, and recommended that an Appeal Tribunal be established. The report reasons that:

“There are three main reasons to have an appeal tribunal:

- to give parties a more accessible and affordable right of appeal
- to increase the consistency, predictability and quality of tribunal decision-making
- to encourage the tribunal to build a bank of jurisprudence”¹

The Queensland Civil and Administrative Tribunal has an Appeal Tribunal that hears appeals from the decisions of non-judicial members. (Judicial members are Supreme or District Court judges.) Appeals can be on a question of law or of fact, although leave to appeal is required in some matters.

The NSW Administrative Decisions Tribunal currently has an Appeal Panel.

We recommend that any amalgamated tribunal have an Appeal Panel or Appeal Tribunal.

We recommend that if the Consumer, Trader and Tenancy Tribunal remains as a stand alone tribunal, an Appeal panel should be introduced.

5.3 Legal Representation

It is common for tribunals to have restrictions on legal representation, and to require leave for a party to be represented. We believe that it is an essential aspect of fairness that people who would have difficulty advocating for themselves (because of lack of education, low literacy, a disability, or because their first language is not English) have a right to be legally represented before a tribunal. This is particularly the case where the other party, while not represented by a lawyer, is represented by a professional person experienced in tribunal appearances, such as a real estate agents, or industrial advocates.

We have considered the question of whether legal representation should be a matter of right in any proceedings. However we are swayed by arguments that the tribunal needs to remain geared primarily to unrepresented parties. We accept therefore that it is desirable that there remains a requirement for leave in many matters with considerations for granting leave to include the complexity of the matter; disadvantage, knowledge and power imbalance of the parties; and/or capacity of the party.

¹ President’s Review of VCAT Report 2009 p57

We recommend that if there are restrictions on legal representation in some or all of the divisions in an amalgamated tribunal, leave for legal representation should be given to disadvantaged and vulnerable parties and/or where the matter is legally complex.

5.4 Accessibility

Equal access to tribunals should have a focus on substantive and not just formal equality. This requires tribunals to take active steps to ensure that all people can effectively bring their case before the Tribunal. This is particularly the case for those people who are disadvantaged, and self represented parties.

The *Queensland Civil and Administrative Tribunal Act 2009* requires that Tribunal to take all reasonable steps to ensure each party to a proceeding understands the practices and procedures of the tribunal, the nature and assertions made in the proceedings and their legal implications, and any decision of the tribunal. Section 29 also requires the tribunal to have regard to the party's age, any disability, and cultural, religious and socio-economic background. Section 30 states that "The principal registrar must give parties and potential parties reasonable help to ensure their understanding of the tribunal's practices and procedures, including, for example, reasonable help to complete forms required under this Act or the rules."

The recent review of VCAT noted that:

"The 1998 Act requires the tribunal to act fairly and makes it subject to the rules of natural justice. It does not deal with the problems encountered by the tribunal in making sure that parties understand the issues in the case and the tribunal's practices and procedures. The legislation needs to be strengthened in this regard.

An important part of the solution to this problem is to include in the statute of the tribunal the expectations of the parliament (on behalf of the community). I recommend the amendment of the legislation to require the tribunal to ensure that all parties (including self-represented parties) understand the issues in the proceedings, and the practices and procedures of the tribunal, and give due assistance to parties who need it."²

We recommend that any amalgamated or reformed tribunal have legislated assistance requirements similar to those in sections 29 and 30 of the *Queensland Civil and Administrative Tribunal Act 2009*.

We recommend that if the government decides to create a comprehensive multi-jurisdictional tribunal like the Queensland or Victorian Civil and Administrative Tribunals, accessibility of the tribunal will be improved if it has registries and conducts hearings in outer suburban areas and regional towns as well as in Sydney.

² President's Review of VCAT Report 2009 p75