



24 November 2011

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

Dear Director

**The Australian College of Community Association Lawyers' submission to the NSW Parliamentary enquiry into the consolidation of Tribunals**

The Australian College of Community Association Lawyers ("ACCAL") supports in principle the proposed merger of the jurisdiction of the strata and community titles mediation and dispute resolution roles of the Consumer Trader and Tenancy Tribunal ("CTTT") into a single NSW Tribunal.

Approximately 1.8 million people live and work in 729,438 strata and community scheme premises in NSW. That is almost 1 person in every 3 living in NSW. Underpinning the success of these schemes has been a dispute resolution system that is timely, efficient, effective and low cost. It must also be consistent in the quality and outcome of its results.

ACCAL understands the perceived benefits to the people of NSW inherent in such a proposal including workload allocation flexibility, consolidation of like functions and consolidation of expertise.

Strata and Community title disputes and living are a complex and growing area of law. Decisions by adjudicators and Tribunal members have far reaching implications often having implications for the use and enjoyment of property worth millions of dollars. A Tribunal having access to a greater number of potential decision makers is not, of itself, beneficial to the administration of justice. Decisions within the CTTT have been erratic and many have not been legally sound. An informal specialist division within the CTTT (at formal hearing level only) conducted by senior members has improved decision-making but at the adjudication level decisions are of mixed quality. This requirement for specialist judicial officers was recognised (and recommended) by the Strata Titles Act Review Committee as long ago as 1993.

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Both VCAT and QCAT have been vested with powers to make monetary determinations in their strata and community scheme jurisdictions. If the new Tribunal is similarly vested there is a greater onus to deliver a standard of decision making at least equivalent to that of the Local Court (and NSW citizens should be entitled to expect nothing less).

ACCAL is concerned that the perceived benefits of a consolidated Tribunal must not be achieved at the expense of the following:

1. Members of the CTTT dealing with strata and community scheme disputes must have a detailed knowledge of 5 Acts of Parliament<sup>1</sup> comprising approximately 723 sections and 35 detailed schedules. Without that knowledge (and appropriate training and performance management of members) consistency of decisions in key areas of strata and community schemes law relating to disputes will not be achieved. This, in turn, results in uncertainty for those living and working in these schemes and their advisers and a consequent increase in the number of disputes that go to hearing because of the absence of that certainty and a body of consistent legal outcomes.
2. Members of the public may appear before the Tribunal unrepresented. Accordingly, Tribunal members do not always have the benefit of legal analysis or submissions made by solicitors (many specialising in this area of the law). Any new Tribunal must retain the current level of user friendliness experienced in the CTTT so as not to make appearance before it more daunting to unrepresented parties. Further, if the Tribunal is to provide a timely, efficient, effective and low cost dispute resolution procedure (a world first system introduced by NSW with the concepts of a Strata Titles Commissioner and Strata Titles Board in the 1973 NSW strata titles legislation), Tribunal members hearing those cases must have detailed and practical knowledge of the legislation and its application. Strata and community title law is not an area for generalist judges, judicial officers or members.
3. The responsibility for the Tribunal should rest with the Attorney General. The purpose of a Tribunal is the resolution of disputes by mediation or determination by a judicial officer. For reasons of public transparency and good public policy (and avoidance of conflicts of interest or bias), it is not appropriate that such a Tribunal should be administered by any Minister responsible for policy making in one of the jurisdictional areas allocated to the Tribunal for resolution of disputes governed by the legislation for which the same Minister is responsible. The Tribunal should have the benefits of judicial training and education (and the rigour of complaints procedures) afforded to other Courts administered by the Attorney General's department.

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<sup>1</sup> *Strata Schemes (Freehold Development) Act, 1973; Strata Schemes (Leasehold Development) Act, 1986; Strata Scheme Management Act, 1996; Community Land Development Act, 1989; Community Land Management Act, 1989*

These are important issues affecting the everyday living and working environments of millions of NSW citizens. It is vital that they have (and believe in) a complaints and dispute resolution body which gives them timely, efficient, effective and low cost access to justice without sacrificing the consistency and quality of outcomes they deserve. If the opportunity arises, I would like to appear before the Committee on behalf of ACCAL.



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