

Environment and Public Affairs Committee

From: Freeman, Janine
Sent: Tuesday, 3 May 2016 11:00 PM
To: Environment and Public Affairs Committee
Subject: FW: Petition on SAT

Further to your letter to the Hon Adele Farina MLC Member for South West Region in relation to Petition No 119.

I have been advised Ms Farina does not intend to make a submission but has invited me to do so.

The State Appeals Tribunal replaced the dispute resolution process of the Building Disputes Tribunal and while that has improved the integrity of the processes, the aim of making it more user friendly, less legalistic, low cost and timely have been questioned by a number of constituents in the Mirrabooka area.

One of these is Mr Peter Wrobel and I have attached his comments with respect to Petition No 119 for your consideration.

Of particular concern is the role of the building sessional- non legal members of the tribunal and how their position on the SAT can be assured to be without conflict of interest if they are working in the building industry and determining disputes concurrently. The Committee may wish to enquire as to the education of these members to avoid allegations of impropriety about engagement as an independent expert by a party in one matter and then subsequently adjudicating on the same parties dispute in another matter.

Another concern is the resourcing of the SAT and the emphasis on meeting milestones and target statistics with an eye to efficiency undermines the procedural justice afforded to (or appearing to be afforded to) the parties. The Committee may wish to enquire as to whether the community has a view that the SAT is more concerned with processing numbers than in resolving claims.

Tribunals which provide mediation rely on the skills of the members to resolve the dispute without lengthy arguments, to the benefit of all parties. However, if one party feels that the process was less a mediation and more a compulsion to accept a resolution due to the threat of cost this undermines the founding principles of the SAT. The Committee may wish to enquire of the community their perception of the effectiveness of SAT in resolving their disputes and whether client satisfaction surveys are undertaken.

Certainly, if Tribunal members encourage parties to enter into Deeds of Settlement as part of the resolution, it is imperative that the party without legal knowledge be fully aware of the implications of such a deed and the need for this to be enforced in the courts, not SAT. This is in contrast to a Consent Order of the SAT, where a party can return to the Tribunal for assistance with enforcing the agreement. The Committee may wish to enquire as to the practice

of Deeds of Settlement and whether this disadvantages complainants and they would be better served by a consent order that could be enforced by SAT.

The principles of SAT is to enable self-litigants access to having their dispute determined without prohibitive legal costs. While it is understandable that legally trained Tribunal members may find self-litigants unprepared for the formality of the process, to burden them with legalities and technicalities undermines the Tribunal and leads to personal criticisms of the Members, undermining their credibility and their decision for the self-litigant. The committee may wish to examine whether the SAT would be benefited by a duty lawyer to gain greater clarity for self-litigants and greater efficiencies for the jurisdiction. In the alternative the Equal Opportunity Commissioner can take matters to the SAT on the complainants behalf, a capacity of the Building Commission to do so for a complainant may expedite matters in hearings.

I thank you for consideration of my emailed submission and Mr Wrobel's submission attached.

Yours sincerely,

Janine Freeman MLA

Member for Mirrabooka.