

Dear Forum Members,

The Department of Justice is conducting a review of the *Civil and Administrative Tribunal Act 2013*, which established the NSW Civil and Administrative Tribunal (NCAT), to find out how well it is working, and to look at reforms that could strengthen access to justice for people in NSW.

The Department invites interested individuals and organisations to give their feedback about the effectiveness of NCAT and to suggest ideas that promote increased access to justice.

Submissions can be made on any issue relating to the operation of NCAT, however questions to consider might include:

- Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?
- Is NCAT accessible and responsive to its users' needs?
- Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?
- Does NCAT resolve legal disputes quickly, cheaply and fairly?
- Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?
- Does NCAT need additional powers to be able to enforce its decisions?

For more information about the review and how to make a submission, visit the statutory reviews page:

https://www.justice.nsw.gov.au/justicepolicy/Pages/lpclrd/lpclrd_consultation/lpclrd_stat_reviews.aspx. Submission close on 10 July 2019.

NCAT was established by the NSW Government in 2014 to provide a simple, quick, and effective process for resolving disputes and reviewing administrative action. It has broad powers to deal with a wide range of civil disputes, including tenancy and strata, administrative review of government decisions, discrimination, guardianship, and professional disciplinary matters.

The following is a submission from LawAccess NSW regarding the Department's review of the *Civil and Administrative Tribunal Act 2013*.

LawAccess NSW assists customers over the phone that are at various stages of navigating the legal system, including dealing with matters that will go to, are in, or have been through NSW Civil and Administrative Tribunal (NCAT).

Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?

Our customers' general experience is that it is moderately easy to work out whether NCAT is the right body to resolve their legal issue once they have been able to identify their legal issue. The NCAT divisions provide some guidance on this.

In some cases it is difficult for our customers to be able to determine whether NCAT is the appropriate jurisdiction. For example, fencing disputes that involve a retaining wall cannot be heard in NCAT unless the retaining wall supports or maintains the fence. Though this is a legal advice question based on an interpretation of the dividing fences legislation, it would be useful for NCAT to provide clear guidelines or include notes on their application forms as to what matters can/cannot be heard in NCAT.

Where our customers' are facing more difficulties is where there is a federal diversity jurisdiction issue and it is not clear to them how to proceed with their matter. NCAT does provide some limited guidance, however what might be a straight forward matter in NCAT becomes more complex when the matter is referred to the courts system. There is also some confusion where; people are being told to make an application to NCAT for conciliation when NCAT will not be able to hear the matter and will refer the matter to the court system, when people have been through conciliation and have been unable to come to an agreement and have to commence proceedings in the Local Court, particularly in relation to paying the filing fee again, what division to file their application in and if over \$20,000 whether costs could be incurred.

Is NCAT accessible and responsive to its users' needs?

NCAT has some useful plain language information and guides available on its website for customers. Sample forms and/or instructions for completing forms available on the website would be of further use to unrepresented parties. Videos of the tribunal processes for different types of matters would also be useful for unrepresented parties to be able to get a better idea as to what to expect throughout the process.

As a general comment on the level of accessibility and NCAT's ease of use for unrepresented applicants, it is often the case that our customers feel that the tribunal jurisdiction is not as informal as expected. There are still a large number of aspects of the tribunal's process that can create hurdles for unrepresented applicants – including ensuring they are pursuing the

right entity, understanding the federal diversity jurisdiction issue if applicable, knowing about the process including option for reviewing a decision, and understanding the enforcement process. For example, it can be a daunting and onerous process for small consumer claims.

Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?

NCAT has a great opportunity to either deal with matters on the papers or even move towards adopting an online option like the online court system for civil matters.

Moving matters online has also recently been adopted by the Workers Compensation Commission. Some of NCAT's matters lend themselves well to being dealt with without a hearing in person based on supporting evidence filed by the parties.

Unless the matter is complex and requires expert evidence (for example, home building matters), a vast number of tenancy, consumer or fencing matters could be heard based on the papers.

Does NCAT need additional powers to be able to enforce its decisions?

It is often a source of frustration for our customer that they may be successful in obtaining a monetary order from the tribunal, but cannot enforce that same order through the tribunal – instead having to then navigate the court system for enforcement of the tribunal order. It would be easier and make more sense to users of NCAT that they be able to enforce NCAT orders through the tribunal.