What is NCAT? – NCAT (or New South Wales Civil and Administrative Tribunal) is the New Super-Tribunal for New South Wales that will Consolidate 23 Tribunals including the Consumer Trader and Tenancy Tribunal (CTTT)

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Introduction

From 1 January 2014, NCAT will replace and take up the work previously dealt with by 23 separate tribunals in NSW.

The formation of NCAT through the amalgamation of these tribunals and other bodies is hoped to promote a more consistent approach to decision making, as well as to enhance accessibility, improve efficiencies through economies of scale and increase accountability, transparency and quality of decision making.

What is NCAT?

NCAT will be a “one stop shop” for almost all of the state’s tribunals. NCAT will be similar to the super-tribunals already established in Victoria, Western Australia, the Australian Capital Territory and Queensland. However, it is intended that NCAT will be different from those super-tribunals as it will be structured in a way that will preserve existing specialties.

NCAT will have four divisions:

• Administrative and Equal Opportunity;
• Consumer and Commercial;
• Occupational; and
• Guardianship.

What Kind of Powers/Authority Will NCAT Have?

NCAT will have four different types of jurisdiction:

• General Jurisdiction to hear the matters previously heard by the tribunals being consolidated;
• Administrative Review Jurisdiction over most of its decisions, and a number of government agencies and bodies;
• Appeal Jurisdiction over its decisions and a number of external bodies; and
• Enforcement Jurisdiction to order civil enforcement, issue civil penalties and hear proceedings for contempt of court. Penalties are limited to $22,000 for a corporation and $11,000 in any other case.1

Which Tribunals Will Be Affected

Most of the existing tribunals in NSW will be consolidated into NCAT. This includes the CTTT, a number of occupational tribunals, and the Local Lands Boards. There are a small number of tribunals that will not be consolidated, although they may be considered for consolidation in the future.


What Will Change?

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To understand the change that will occur through the formation of NCAT, it is necessary to compare the function of NCAT with one of the tribunals being replaced - the CTTT.

The CTTT currently hears commercial, consumer, home building, motor vehicles, residential parks, retirement villages, social housing, strata and community schemes, and tenancy disputes. The limits of CTTT’s jurisdiction to hear claims is subject to certain monetary limitations, such as $30,000 for consumer claims, $500,000 for home building claims, and $30,000 for motor vehicle claims (or unlimited for new cars used for private purposes).

After 1 January 2014, NCAT will have jurisdiction to hear these claims. NCAT rules and regulations are currently being drafted to clarify its functions and procedures. Matters likely to be covered are set out below.

1. Legal Representation
In both the CTTT and NCAT, the general rule is that a party to proceedings has the carriage of his or her own case and is not entitled to be legally represented, unless the tribunal grants leave.2

In both tribunals, a party is entitled to legal representation if the party has been granted legal assistance under the Fair Trading Act 1987.3

In the CTTT, where the amount claimed or disputed is less than or equal to $10,000, a party is not entitled to legal representation unless "exceptional circumstances" exist.4 No monetary limitation of this nature applies in NCAT.

2. Costs
In both the CTTT and NCAT, the general rule is that each party to proceedings pays their own costs.5

In the CTTT, costs can only be awarded if the CTTT is satisfied that there are “exceptional circumstances”.6 Where the amount claimed is more than $10,000, but less than $30,000, in addition to exceptional circumstances, an order for costs will only be made against a party in the proceedings if that party conducts the proceedings in a way that unreasonably disadvantages another party in the proceedings.7 Where the claim is for more than $30,000, the CTTT may award costs in such circumstances as it thinks fit.8

There are no distinctions of this nature for NCAT – it may award costs only if there are “special circumstances” – the amount claimed is not relevant.9

3. Resolution Processes
The CTTT has an obligation to use its best endeavours to bring the parties to a settlement that is acceptable to all the parties.10 Generally this is done through a voluntary conciliation process. However, mediation is compulsory in agricultural tenancy disputes, and strata and community scheme disputes. NCAT may, where considered appropriate, use (or require the parties to proceedings to use) any one or more resolution processes.11 This means that NCAT will be able to refer parties to various kinds of resolution process (including mediation or conciliation), without the parties consent. The kinds of resolution processes, and the circumstances in which these processes will apply, will be dealt with specifically in the NCAT regulations, which are in the process of being drafted.12

4. Procedure
Like the CTTT, NCAT is to act with as little formality as the circumstances of the case permit without regard to technicalities or legal forms.13

Currently, CTTT hearings are held in a hearing room, with the member sitting slightly raised. This arrangement has proven effective, differentiating between the tribunal member, but not interfering with the flexibility for matters to be dealt with informally. The newly appointed head of NCAT, Justice Wright, has indicated that NCAT will continue to use this arrangement; however, NCAT will also use conference rooms where the formality of a hearing room is not appropriate.14

The CTTT currently has online lodgement systems to enable it to deal with its large caseload. NCAT will utilise the CTTT’s online expertise, and continue to offer this service.15

What Happens to Claims Before/After 1 January 2014?
If an application has been lodged with any of the existing tribunals being consolidated into NCAT before 1 January 2014 but is yet to be heard, the application does not have to be re-lodged with NCAT. Any applications falling into this category will be considered to have been commenced in NCAT.16

If the matter is part-heard, the hearing will not have to begin again, but will continue to be heard by the members of the abolished tribunal. The members of the abolished tribunal will be taken to have been duly appointed members of NCAT for the purposes of determining the matter.17

For both unheard applications and part heard applications, NCAT may exercise all the functions that the relevant tribunal had immediately before its abolition, and the laws that would have applied to the proceedings prior to the commencement of NCAT’s operations will continue to apply.18

If events giving rise to a claim occurred before 1 January 2014 and a claim could have been lodged in one of the tribunals being consolidated into NCAT, but was not lodged by 1 January 2014, the application can be commenced in NCAT. However, NCAT will exercise all the functions of the consolidated tribunal and the law that applied to the proceedings prior to NCAT will continue to apply.19 The same applies for appeals that could have been made before 1 January 2014.20
Claims that arise after 1 January 2014 will be heard by NCAT, and only NCAT rules and regulations will apply.

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1 Civil and Administrative Tribunal Act 2013 (NSW), s 77(3).
2 Consumer, Trader and Tenancy Tribunal Act 2001, s 36, Civil and Administrative Tribunal Act 2013 (NSW), s 45.
3 Consumer, Trader and Tenancy Tribunal Act 2001, s 36(4), Civil and Administrative Tribunal Act 2013 (NSW), Sch 4, cl 7.
4 Consumer, Trader and Tenancy Tribunal Act 2001, s 36(3).
5 Consumer, Trader and Tenancy Tribunal Act 2001, s 36, Civil and Administrative Tribunal Act 2013 (NSW), s 60.
6 Consumer, Trader and Tenancy Tribunal Regulations 2009, cl 20.
7 Ibid.
8 Ibid.
9 Civil and Administrative Tribunal Act 2013 (NSW), s 60.
10 Consumer, Trader and Tenancy Tribunal Act 2001, s 37.
11 Civil and Administrative Tribunal Act 2013 (NSW), s 37.
12 Consumer, Trader and Tenancy Tribunal Act 2001, s 28(3), Civil and Administrative Tribunal Act 2013 (NSW), s 38(4).
14 Ibid.
15 Civil and Administrative Tribunal Act 2013 (NSW), Schedule 1, cl 7(1).
16 Civil and Administrative Tribunal Act 2013 (NSW), Schedule 1, cl 7(2).
17 Civil and Administrative Tribunal Act 2013 (NSW), Schedule 1, cl 7(3).
18 Civil and Administrative Tribunal Act 2013 (NSW), Schedule 1, cl 9.
19 Civil and Administrative Tribunal Act 2013 (NSW), Schedule 1, cl 10.