



# HUNTER COMMUNITY

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## LEGAL CENTRE INC.

### Civil and Administrative Tribunal Act 2013 Statutory Review

24<sup>th</sup> July 2019

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## **1. ABOUT THE HUNTER COMMUNITY LEGAL CENTRE**

The Hunter Community Legal Centre (HCLC) was established in 1991. The HCLC is an independent, not for profit, Community Legal Centre (CLC) funded by the State and Federal Attorneys General Departments.

The HCLC provides free legal advice and representation to disadvantaged people who live, work or study in the Newcastle, Lake Macquarie, Hunter Valley, Port Stephens and Great Lakes regions.

The HCLC provides free duty solicitor services for unrepresented parties in the Newcastle Local Court in relation to apprehended violence orders. HCLC solicitors also represent disadvantaged clients in other Local Court matters.

The HCLC provides free duty solicitor services for youth in the Muswellbrook, East Maitland and Raymond Terrace Local Courts.

The HCLC provides a Community Legal Education (CLE) program for community groups and community sector workers on a range of legal matters. The HCLC also engages in law reform projects to address inequalities in the legal system that impact adversely upon its clients.

## **2. HCLC AND THE NATIONAL CIVIL AND ADMINISTRATIVE NCAT (NCAT) STATUTORY REVIEW**

The HCLC gives free legal advice to disadvantaged people in the Newcastle and Hunter region. Clients have approached the Centre with several types of problems which involve, consumer, motor vehicle issues and other tenancy issues which have led to them having their matters filed in the NCAT.

The NCAT has invited submissions for its statutory review on several terms, some of which will be address by the HCLC in this submission such as:

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

- b. Are there things that NCAT could do to make it easier for people appearing in the NCAT to understand the process and participate?
- c. Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?

### **3. METHODOLOGY:**

The HCLC's volunteer solicitor conducted a telephone survey with 18 of the clients who have had matters before the NCAT. Twelve of them provided substantial responses which have been used in this report. The participants were asked a list of questions but were also given the freedom to raise issues relating to the survey questions. The responses of the participants have been summarised and paraphrased for effective use in this report.

The participants outlined their problems and then questions were asked specific to their matters. The participants were also informed of their anonymity in setting out case studies with the help of their matters.

The submissions made herein are also based on the interaction of the HCLC's Generalist Solicitors with their clients who encounter various issues before the NCAT and actual representation of clients at NCAT.

#### **4. CLIENT DISADVANTAGES:**

##### **4.1 Financial disadvantages**

90.16% of the clients of the HCLC come from a low income level group, which has acutely increased since 2016 when it was 59.74%. They do not have the knowledge or accessibility to legal assistance.

Their only means of legal assistance comes through Legal Aid or HCLC. The HCLC.

##### **4.2 Illiteracy**

The clients who come from low socio-economic backgrounds also have low literacy levels which severely obstruct their ability to access information and/or comprehend the same. It also poses as an obstruction to obtaining knowledge and assistance on their rights and remedies.

##### **4.3 Disabilities:**

32.94% of the clients of the HCLC have a disability and/or mental illness which puts them in a severely disadvantageous position in terms of reading, writing and understanding their rights and asserting their remedies.

##### **4.4 Culturally and linguistically diverse (CALD) backgrounds.**

Almost 5% of the clients from CALD backgrounds either do not speak English at home or speak it at all which makes it even harder to access the legal assistance or information when needed.

## **5. TERMS OF REFERENCE:**

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

The HCLC encounters several of its clients from low socio-economic backgrounds. These clients have a low literacy level and/or live in very poor housing conditions.

Most of the clients are not even aware that the problems they encounter with companies, landlords or other service agents are of a legal nature. They also find it hard to ascertain which authority or jurisdiction would be the most appropriate to assert their rights. This was voiced by several of the participants in the survey.

One of the participants in the survey had a severe intellectual disability owing to which he was unable to find out or research which authority would be the correct authority to resolve his issues.

Almost 45% of the participants of the survey felt that without the assistance of HCLC, they would not have been able to find out that NCAT was the appropriate jurisdiction to seek recourse and/or navigate their way through the procedure. This included filling out forms and applications, drafting up documents and statements and thereafter filing them at NCAT.

The Solicitors at the HCLC have also observed on several occasions that the clients are not aware of which legal rights their issues touch upon and which authority would be able to remedy these wrongs. For example, many social housing tenants do not realise they can make complaints against Housing NSW in NCAT. Housing NSW does not refer them to NCAT so tenants feel any decision by Housing NSW is final and cannot be challenged.

b. Are there things that NCAT could do to make it easier for people appearing in the NCAT to understand the process and participate?

As aforementioned, the participants have a low literacy level and do not have the advantage of access to legal assistance until they come to HCLC for advice. Owing to this disadvantage, they are unable to comprehend the process involved in approaching the NCAT to assert their rights.

66% of the participants in the survey stated that the NCAT should explain to them what is the process involved and their legal rights. They stated that only upon speaking to a solicitor at the HCLC that it became abundantly clear what process is entailed in approaching the NCAT. They stated that the process was “too complicated” for them to understand on their own.

Some of them felt that the NCAT ought to be more clear about why they should have to go through the whole process of mediation and/or conciliation as they felt it can be a waste of time.

One of the participants pointed out that if there was a duty solicitor present at the NCAT it would make it easier to get a detailed explanation on how to approach the NCAT and what documents would be required.

The Solicitors at the HCLC have noticed that clients are unaware of how to file evidence with NCAT. No explanation is given by NCAT as to what constitutes evidence and how best to present it. They often find it daunting to collect and correlate all the evidentiary documents.

In addition to the above, clients of HCLC, being disadvantaged often find themselves up against large agencies, departments and/or companies who are well experienced with the NCAT process. These opponents have the capacity to cough up large sums to engage a solicitor or law firm to represent them. They receive substantial legal advice and have their documents accurately drawn up for them. The clients find that the not only is process of filing evidence overwhelming for them but they then have to go up against an experienced advocate if the matter goes to hearing.

### Case study 1

The Client needed his motorbike repaired so gave it to a garage which, he later discovered, had an expired license to repair. The client felt was significantly overcharged to the amount of \$2,000 and wound up without having his bike repaired but also being abused and harassed by the garage owners and employees. The client had literacy issues and faced a lot of difficulty in writing letters or drafting up statements to submit to the NCAT. It was only after contacting HCLC that he got some guidance through the process. The HCLC solicitor assisted him in drawing up his Application, statement and attaching relevant supporting evidence for his case which according to him would not have been possible owing to his literacy issues.

### Case study 2

Two clients with similar issues of being harassed by their neighbours in Social housing had come before the HCLC for assistance. One client had a history of complaints to Housing NSW and the Consumer, Trader and Tenancy Tribunal (CTTT) regarding his right to quiet enjoyment. Unfortunately in spite of having orders in his favour Housing NSW would not do anything about remedying the situation.

With the assistance of the Solicitor at HCLC, both clients on separate occasions had filed a complaint before the NCAT but ended up getting a quicker and more effective resolution through an Apprehended Violence Order (AVO) from the Local Court. This eventually brought the issue to a closure faster and gave the clients peace of mind rather than chasing their respective opponents through NCAT and FACs Housing. Unfortunately, the solution was counter to the main purpose of NCAT.

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

55% of the participants in the survey felt that it was imperative and worthwhile to appear before the NCAT in person. They felt that documents alone would not suffice and would not give them an opportunity to ensure the Tribunal Member



had an adequate understanding of their circumstances.

From the added input of some of the participants it became clear that literacy of the participants was an important factor in deciding against documents alone. The participants felt that they could argue the case in person better rather than just have everything on in a document. It was felt it would be unfair to rely solely on documents when one side had a clear advantage over the other in terms of education and resources.

### Case study 3

The client approached the Guardianship Division of the NCAT to seek an order of Guardianship in her favour as a carer of her mother. The client who is already distressed as a sole carer of her mother needed assistance in understanding the procedure of filing a guardianship application before the NCAT.

Unfortunately there was no explanation provided by NCAT in relation to the nature of the proceedings. The client contacted HCLC. The HCLC solicitor assisted her in drafting up a statement and guided her through the step by step process of collecting evidence to produce before the NCAT. The client was completely unaware of this process. The client was not satisfied with the fact that there is no hearing which is afforded to the applicant in the guardianship division especially because the procedure is so complicated that no lay person would be able to get all necessary documentation without legal assistance. In addition she would have been able to submit her case better in person by explaining her mother's health condition and need for a guardian.

## **6. Recommendations:**

### **6.1 Make the process more comprehensible**

Owing to the fact that there are several of the clients of HCLC who are from a low socioeconomic background and have low literacy levels, a process which is more understandable and simple would go a long way in assisting such clients.

It is imperative that a tribunal which allows people to self-represent ought to have a process which will be understood by a lay person with potentially limited literacy otherwise it would defeat the purpose for which the NCAT procedure is set up. This means more than brochures and webpages.

NCAT should be able to provide information on any specific process within any division. This can be done by having adequately staffed registries with personnel trained to provide general information. Too often NCAT personnel use the excuse they “cannot provide legal advice” when it is not advice that is being sought but instructions on procedure.

### **6.2 Explain to self-representing clients what documents are required from them**

When clients are asked to produce statements and evidence they're not able to comprehend from a lay person's perspective what material would constitute as evidence in their favour. The NCAT is not expected to give legal advice to the applicants but an explanation and a breakdown of what documents are relevant for the purpose of deciding an applicant's case would be helpful to the progress of the case. Particularly when the opposing party is experienced in NCAT and is well resourced.

### **6.3 Have a duty solicitor present to help the applications file and appear for them**

The presence of a duty Solicitor to assist parties will save on a lot of time, as the parties will then be able to appear before the Tribunal with an idea of the process and what is expected of them. It empowers the client to a large extent especially when the opponents are more likely to be experienced and well resourced.

#### 6.4 Maintain parity in the hearing

The NCAT ought to maintain equality in representation at the time of the hearing of the applicant's case. By allowing the applicant to go unrepresented in comparison to well represented entities, landlords, corporations etc. will only continue to give the impression that justice is only for those that can afford it.

#### 6.5 Enforcement powers to the NCAT

The NCAT ought to be given powers of enforcement of its own order and/or powers to issue contempt for failure to follow its orders. This gives true meaning to the whole process. In the survey conducted by the HCLC, one of the clients expressed his opinion that the NCAT is a “toothless tiger” for its inability to enforce its own orders, going to show that the client held an order of the NCAT to no avail. This is not only a waste of the parties’ time and money but is also a waste of the public funds and the NCAT’s time. This is particularly important when the unsuccessful party is a government department.