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NCAT Statutory Review  
Director, Courts Strategy  
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**Civil and Administrative Tribunal Act 2013 Statutory Review**

Dear Director

Thank you for your email of 31 May 2019 seeking feedback on whether the policy objectives of the *Civil and Administrative Tribunal Act 2013* (the Act) remain valid, and whether the Act is achieving its purpose. .

We, on behalf of the Office of Local Government (the Office) refer to the *Civil and Administrative Tribunal Act 2013* (the Act) statutory review and request for feedback on whether the policy objectives of the Act remain valid, and whether the Act is achieving its purpose.

In January 2014, the NSW Government consolidated 22 tribunals into one new body – the New South Wales Civil and Administrative Tribunal (NCAT). The Local Government Pecuniary Interest and Disciplinary Tribunal (PIDT) was one of those Tribunals consolidated into the Occupational Division of the NCAT.

The Office is also a decision maker in relation matters relating to the provision of government information under the government Information (Public Access) Act 2009 with appeals to the NCAT being considered by the Administrative and Equal Opportunity Division.

By reference to the Review of the *Civil and Administrative Tribunal Act 2013* Fact Sheet, *the NCAT was established to provide a simple, quick, and effective process for resolving disputes and reviewing administrative action. To achieve this, NCAT has a number of features that make it different from a court. These include:*

- *services and processes to support parties to represent themselves in most matters*
  - *plain language forms and documents*
  - *simplified processes*
  - *a range of dispute resolution mechanisms, in addition to adjudication by Tribunal members. Depending upon the Division and the matter, these may include*
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*conciliation, mediation, conclave, preliminary sessions (planning meetings and case conferences) and directions hearings.*

I understand the Department of Justice is conducting a review to find out how well NCAT is working, and to look at reforms that could strengthen access to justice for people in NSW.

The Office welcomes the opportunity to provide a submission on whether the policy objectives of the Act remain valid, and whether the Act is achieving its purpose.

**Comparative between Local Government Pecuniary Interest and Disciplinary Tribunal and NCAT:**

Does NCAT resolve legal disputes quickly, cheaply and fairly?

The Office has brought matters before the former PIDT and also now before the NCAT. While it is clear is that while the processes and decisions of the NCAT are robust and just, it doesn't appear the NCAT is any cheaper or quicker than the former PIDT.

Is NCAT accessible and responsive to its users' needs?

The Office has found the NCAT to be readily accessible and responsive to its needs. Given the Office is a regional Agency (Nowra), contact is principally via telephone, email or facsimile. Registry staff are excellent in relation to the manner in which they provide assistance to the Office. Similarly, if assistance is required from a Member by way of relisting etc, responses are always very timely for which we are grateful.

Also of note is the NCAT's usability on the issue of teleconferences for such matters as directions hearings and case conferences. The Office recognises the benefit this brings operationally, is grateful to the NCAT for its use of teleconferences in this regard and encourages it to continue to do so moving forward with the possibility of introducing video conferencing for short hearings or ADR where appropriate.

The implementation of an electronic case management system including electronic filing for all documents would assist all users greatly particularly those in regional centres such as the Office.

In the interim, the availability for *all* regional users (ie users outside the Sydney CBD) to file electronically (by email, facsimile or via a form of document sharing system such as Objective Connect or drop box) would assist on the issue of parity on that issue. Such an interim measure could be on the basis that documents filed in this way be also provided by post.

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

In the spirit of s.36 '*just, quick and cheap*', subject to the consideration of submissions, either oral, written or both on the issue being first considered by the NCAT, the Office encourages the NCAT to determine its own procedure in relation to any matter for which the Act or the procedural rules do not otherwise make provision (s.38).

Section 470B of the *Local Government Act 1993* (LGA) provides for circumstances in which the NCAT may dispense with hearing in the event certain conditions are satisfied.

Proposed Amendments to Act:

A proposed amendment to the s.60 of the Act in relation to the issue of '*special circumstances*'.

The Office supports s.60(1) of the Act.

However, it is respectfully suggested the threshold be lowered, particularly in the event where the NCAT is the only jurisdiction in which a particular matter can be considered and also in matters where both parties are represented by an Australian legal practitioner.

To achieve this, it is respectfully suggested that the reference to the word: '*special*' before the word '*circumstances*' be removed from s.60(2) and (3).

A proposed wording might therefore be:

(2) *Costs may be awarded in circumstances where:*

(a) *the Tribunal is the only jurisdiction in which a particular matter may be considered and determined; and*

(b) *both parties are represented by an Australian legal practitioner.*

(3) *In all other circumstances, the Tribunal may award costs in relation to proceedings before it only if it is satisfied that there are circumstances warranting an award of costs.*

(4) *In determining whether there are circumstances warranting an award of costs, the Tribunal may have regard to the following:*

(a) *whether a party has conducted the proceedings in a way that unnecessarily disadvantaged another party to the proceedings,*

(b) *whether a party has been responsible for prolonging unreasonably the time taken to complete the proceedings,*

(c) *the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law,*

(d) *the nature and complexity of the proceedings,*

(e) *whether the proceedings were frivolous or vexatious or otherwise misconceived or lacking in substance,*

(f) *whether a party has refused or failed to comply with the duty imposed by section 36 (3),*

(g) *any other matter that the Tribunal considers relevant.*

Such a proposed amendment does not derogate the NCAT's jurisdiction on the issue. It merely provides an opportunity to recoup costs in for a successful party

where the two criteria listed in sub-section (2) to the proposed draft above are satisfied.

In all other circumstances, the NCAT's jurisdiction remains unchanged but for the removal of the word '*special*' in sub-section (2) and (3) to s.60.

Proposed Amendments of the Civil and Administrative Tribunal Regulation 2013 (the Regulation):

It is proposed that cl.7 of the Regulation be amended to provide a plain English Procedural Direction or Guideline that is a 'one stop shop' on the issue of allowances and expenses of witnesses.

Costs for Government Agencies:

It is suggested that an amendment be made to the Regulation that excludes NSW Government Agencies from the requirement to pay fees for undertaking work in the NCAT.

A Procedural Direction or Guideline in plain English may well also assist.

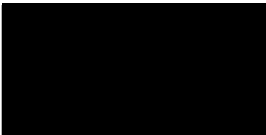
Electronic Case Management:

An electronic case management system be established to reflect the intention of Part 3 of the Civil and Administrative Tribunal Rules 2014.

The Office has previously and does so again now offer to participate in any stage of the development of such a system.

Thank you for this opportunity to provide feedback.

Yours sincerely



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