



Review of the *Civil and Administrative Tribunal Act 2013 (NSW)*

**The Real Estate Institute of New South Wales
Limited**

Submission

10 July 2019

To: The Director
Courts Strategy
Department of Justice

By email: policy@justice.nsw.gov.au



1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the call for submissions by the Department of Justice (**Department**) as part of its statutory review of the *Civil and Administrative Tribunal Act 2013* (NSW) (**NCAT Act**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This Submission has been prepared with the assistance of the REINSW Property Management Chapter Committee. These members are licenced real estate professionals with experience and expertise in their field. Accordingly, the REINSW Property Management Chapter Committee feels it necessary to provide the Department with feedback on the operation of the NCAT Act by way of this Submission.

REINSW would like the Department to consider the following matters, which are discussed in more detail throughout this Submission:

- (a) REINSW recommends a solution to the federal jurisdictional issue; and
- (b) NCAT's operational issues and limited resources and how REINSW's recommendations can help improve those issues and increase those resources.

2. REINSW FEEDBACK ON NCAT ACT

2.1 Federal Jurisdictional Issue

The statutory review Factsheet issued by the Department states that the review will not re-examine the issue of whether the New South Wales Administrative and Appeals Tribunal (**NCAT**) is a tribunal or a court of the State on the basis that recent court decisions have confirmed it is a tribunal.

In no way is REINSW questioning these court decisions and agrees that, based on the current legislation, NCAT is a tribunal. However, REINSW respectfully disagrees with the Department's position not to consider the issue as part of this review. REINSW believes that it is a perfect opportunity to rectify the situation so as to minimise the consequential negative, daily impacts it is having on consumers.

REINSW strongly urges the Department to amend the NCAT Act so that NCAT is a court of record (refer to paragraph 2.1(d) below for further details). It is the Parliament that has the power to make this change. This is because the Parliament can define jurisdiction by investing any court of a State with federal jurisdiction (s77(iii) of the *Commonwealth of Australia Constitution Act 1900* (Cth) (**Constitution**)). By making this amendment to the NCAT Act, the Parliament would allow the Judiciary to make future decisions based on a more appropriate and practical piece of legislation.

(a) Background

The High Court handed down its decision in April 2018 in *Burns v Gaynor* [2018] HCA 15 finding that sections 75 and 76 of the Constitution prohibits NCAT from exercising federal diversity jurisdiction. This means that NCAT has no jurisdiction to consider matters that involve the Commonwealth and Commonwealth laws.

As the Department would be aware, Chapter III of the Constitution (specifically, section 77) creates a power that is conferred onto Parliament to make laws defining the jurisdiction of both State and Federal courts. Section 39(2) of the *Judiciary Act 1903* (Cth) allows original jurisdiction to be conferred onto a court in “*all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38...*”. Since no exception in section 38 applies, State Courts can hold federal jurisdiction in all matters “*...between residents of different States...*”, as per section 75(iv) of the Constitution.

However, the problem that consumers are faced with is that NCAT has not been held to be a ‘court of the State’.

The decision in *Burns v Gaynor* currently affects landlords and tenants alike as the ability to have a case heard before NCAT where one party resides interstate is not a power that is conferred to NCAT. Instead, parties need to have their matter heard in the Local or District Courts.

REINSW is of the view that this precedent decision adversely affects the very purpose of NCAT and the NCAT Act, which establishes the tribunal. The purpose of the NCAT Act is to provide a streamlined administrative tribunal service that is prompt, accessible, economically viable and equipped to deal with a broad range of issues. In most cases, NCAT resolves disputes quickly, cheaply and fairly.

This Submission addresses why the jurisdictional issue negates the purpose and objectives of NCAT, unfortunately detrimentally impacting on consumers (including, landlords, tenants and property managers).

(b) Consequences of the Jurisdictional Issue

With respect to the affected cases following the decision in *Burns v Gaynor*, REINSW is concerned that the current position fails to uphold an effective administrative process as it creates a plethora of burdens on the parties and appears to negate the purposes of NCAT. Landlords and tenants remain uncertain of where their case can



be heard as there are usually no other options besides seeking resolution through the tribunal.

In addition to these disadvantages, if no action is taken by the Department to rectify the issue then consumers will continue to be exposed to the following significant risks (without intending to be an exhaustive list):

- (i) Undermining the purpose of NCAT to provide a low-cost alternative dispute resolution avenue with a \$50 administration fee, as opposed to costly legal representation and court administration fees within the court system, rendering the court avenue prohibitive to consumers (refer to paragraph 2.1(c)(i) for more detail on these costly court fees).
- (ii) Limiting the ease of process and creating more timely processes that prohibit a just and quick resolution for the applicant.
- (iii) Substantial market risks - if NCAT is unable to hear the dispute, owners could potentially be prompted to withdraw their investment properties which would cause a disruption to the private rental market and, as a negative result, cause rent prices to rise.
- (iv) Exposure to financial loss for both tenants and landlords.
- (v) Potential risk for an applicant to register their address in a different State to avoid a tribunal hearing – REINSW is aware of tenants who have registered as their home address a relative's address that is outside of New South Wales so that their case cannot be heard by NCAT.
- (vi) Extensive waiting periods that could result in financial loss for the landlord, as they may not be able to terminate the relevant tenancy agreement, deal with bond disputes, rental arrears, etc.
- (vii) Limitations and confusion with respect to representation at court – for further detail on this please refer to paragraph 2.1(c)(iii).
- (viii) REINSW also queries how the court process will match the current NCAT process when it comes to matters initiated in the tribunal but subsequently referred to the court for resolution. For instance, REINSW questions if the court will treat tenancy matters as a priority in the same way as NCAT does and whether the court will adopt NCAT's efficiencies including, without limitation, with respect to the rules of evidence, cost savings (ie. the \$50 NCAT application fee), party representation and the opportunity for conciliation. Further, REINSW is aware of alternative dispute resolution services that parties are encouraged by NCAT to pursue prior to a hearing (including conciliation and mediation), however, these services are only optional and not promoted by the Local Court to the detriment of parties who initially apply to NCAT. There are also other services provided to the parties in NCAT that are free of charge but are provided at a cost in the Local Court. For example, NCAT offers a free translation service whereas a party needs to organise and pay for this service in the Local Court independently.

- (ix) While tribunal members consider the facts of the case on the evidence appearing before them, they are still bound by the legal precedent of a higher court. For this reason, REINSW questions how effectively NCAT will follow matters that are factually similar (minus the jurisdictional issue) to those that have been heard in the Local or District Court. REINSW queries whether NCAT has any processes or guidelines in place to effectively ensure that its decisions in these types of matters are consistent with the precedent decisions of the courts.

(c) Consequences of Jurisdictional Issue in Further Detail

(i) Financial Loss

It is the landlord who suffers financial loss due to the effect of the current provisions.

Further to the point made in paragraph 2.1(b)(i), REINSW is aware of the fee disparity between NCAT and the court system. NCAT currently charges a standard fee for the lodgement of a general application in residential proceedings, being \$50 as per Schedule 2 to the *Civil and Administrative Tribunal Regulation 2013* (NSW). On the other hand, filing an originating process:

- (a) in the Local Court under Part 3 of the *Local Court Act 2007* carries a standard fee of \$249, as per Part 4 of Schedule 1 to the *Civil Procedure Regulation 2017* (NSW) (**CP Regulation**);
- (b) in the District Court carries a standard fee of \$681, pursuant to Part 3 of Schedule 1 to the CP Regulation;
- (c) attracts other miscellaneous court fees as set out in Part 5 of Schedule 1 to the CP Regulation; and
- (d) is accompanied with legal representation fees.

REINSW considers the associated court fees to be prohibitive when compared to those of NCAT. It believes that these court fees will place landlords and managing agents at a significant financial loss. Further, REINSW fears that the fees and increased difficulty of process may represent a roadblock for applicants to pursue their matter in the Local Court. If NCAT had jurisdiction to hear these types of cases, then only the \$50 fee would apply to lodge the general application, and NCAT as an avenue for justice would be available to applicants in these circumstances.

REINSW takes notice of a case that went through the Orange Local Court, which further outlines the financial burden of NCAT's lack of jurisdiction to hear matters where one party resides interstate. In this case, the delay proved quite



costly to the applicant who was urged to pay their legal fees upfront and to spend thousands of dollars in Local Court fees. To make matters worse, there was no guarantee that they would regain their lost funds, which included rental arrears, locksmith charges and sheriff fees.

REINSW sees no fairness in the parties being subject to a loss where there is no cost-effective dispute resolution process to pursue.

(ii) Extensive Waiting Periods

The current process requires the applicant to first apply to NCAT so that it can determine whether the matter is permissible under its jurisdiction. If it is determined that NCAT cannot hear the matter, then NCAT issues a notice to the applicant to that effect and it is the applicant's responsibility to initiate proceedings by providing the notice and supporting documentation to the Local Court Registrar. The applicant not only has to take the time to prepare and lodge these documents with the Local Court Registry, but they must also wait for a hearing date before their matter can progress. Parties have often found that the Local Court has not considered their matter to be urgent, therefore agents and parties alike are waiting in the courthouse all day, in order for their matter to be heard.

The Department will appreciate that rent may not be paid or, in another circumstance, damage to the premises may continue to be made, during these delays.

REINSW believes that this process brings with it extensive waiting periods which cause not only financial loss to landlords but also emotional distress for all parties involved, which is far from ideal.

(iii) Limitations on Representation

NCAT allows for an applicant to be represented by their property manager but REINSW is aware of conflicting opinions in the market on whether a property manager can represent their client in the Local Court or whether a legal representative must do so. This has caused confusion as to the process and fees involved in having matters heard in the Local Court.

REINSW has received the **enclosed** email from the Local and District Court Registry dated 30 May 2019 confirming that parties may only be represented by a legal representative in Local Court proceedings. This means that a property manager will no longer be allowed to represent their client with such matters and the avenue is left open for parties to represent themselves or acquire costly legal representation.

However, REINSW conducted further research on the issue of representation and found that an applicant may file a Summons seeking leave to be represented by a non-legal representative during their court proceeding, as per



the **enclosed** Summons Form 4B. The Registrar will then determine the outcome of this request to be represented by an agent.

What is certain is that the jurisdictional issue creates a strenuous and confusing process for applicants because the market is unsure of who can represent applicants in proceedings.

(iv) Discrimination

REINSW sees no reason why landlords should be penalised because of the State in which they choose to reside or must reside. Further, tenants cannot bring an action against a landlord if the landlord resides interstate. Many landlords in New South Wales relocate interstate for various reasons but, in particular, due to their job circumstances. This includes, for example, men and women who are part of the Australian Defence Force and are constantly subject to relocation. REINSW is of the view that this jurisdictional issue discriminates on those people who choose or are compelled to live interstate and on tenants who cannot bring actions against landlords who live interstate.

(v) Economic Risk

REINSW believes that there is a large risk to the market due to the lack of certainty in the current resolution process. If NCAT cannot hear these types of matters, then landlords will likely invest in assets other than in the housing market, which will increase rents and cause the property market to drop. The Department needs to consider that this is a large avoidable economic market risk.

(d) Solution to the Problem

REINSW acknowledges the limitations of the legislature in not providing an adequate provision in the NCAT Act appropriately dealing with the jurisdictional issue.

Accordingly, REINSW recommends a legislative change that would solve the whole problem. It is for the legislature to amend the NCAT Act so that it includes a provision equivalent to section 164(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). This section was applied and upheld in *Owen v Menzies* [2012] QCA where the court found that the Queensland Civil and Administrative Tribunal is a court of record as ordained by the legislature, because the tribunal contains elements of implementing a judicial process that is of impartiality, formally processing and implementing judgement orders. REINSW proposes that NCAT could operate in the same way by adjusting its operations and processes accordingly.

This amendment to the NCAT Act will not confer any further powers onto NCAT, besides the right of federal jurisdiction. The outcome for the parties will remain the same as if the matter was heard in the Local Court.



As an alternative solution, REINSW recommends that the Department consider the possibility of matters being heard by NCAT if a party's real estate agent is domiciled in New South Wales as opposed to the party itself. This concept is already permissible in practice as per section 190(3) of the *Residential Tenancies Act 2010* (NSW) whereby a landlord's agent may make an application to NCAT on behalf of a landlord.

REINSW urges the Department to take one of its recommended courses of action to avoid the disadvantages outlined above (including cost, time and market damage), which ultimately creates a lack of proper administration of justice. Instead, the recommended solutions will honour NCAT's purpose for which it was established and see benefits for consumers and the market, which is a win-win solution.

2.2 NCAT's Operational Issues

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

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

REINSW is of the opinion that determining whether NCAT is the right body to resolve legal issues is only easy for consumers that have been properly trained and guided through its processes. For this reason, REINSW recommends that users of NCAT receive mandatory training prior to having their matter heard.

To implement this mandatory training requirement, REINSW suggests an addition to the application form whereby the applicant declares whether or not they have received training with the tribunal. Following receipt of this information and when issuing a Hearing Notice, NCAT could also send alongside that notice a link to an online forum with training webinars on topics the parties can choose from to best suit their needs. For this reason, REINSW also proposes that NCAT should partner with REINSW, and provide REINSW with the relevant funding for the purpose of training agents, as better trained agents will assist with the efficient administration of justice and transparency for all parties involved in NCAT dealings.

This mandatory training process will provide consumers with an informed knowledge of how NCAT's services work, and to best access the resources that it offers. REINSW is of the view that with more accessible training and more relevant and regular production of fact sheets, consumers will be better informed of NCAT's processes and policies with a better understanding of detailed areas of consideration. REINSW calls for more fact sheets issued by NCAT to provide ongoing education to practitioners and consumers on matters relating to the Consumer and Commercial Division. Consequently,

NCAT will provide smoother results that create a timelier process because the parties will be better educated on NCAT's processes, including with respect to case management, notices and listings, conciliation, the hearing and the orders.

(b) *Is NCAT accessible and responsive to its users' needs?*

While REINSW appreciates the high level of competency of the tribunal, it would like to comment on how the tribunal operates inconsistently among these main areas of consideration:

- I. REINSW is aware that consumers find it difficult to access decisions of the tribunal mainly because they are not categorised in a user-friendly way. To overcome this issue, REINSW recommends that NCAT's types of cases on its website be broadened to contain an extensive list of categories (for instance, rental arrears, termination of leases, break fees, etc) and for NCAT's decisions and orders to be published and categorised in accordance with these case types. The aim of this is to create easier accessibility for the consumer, to keep them educated and well informed and to minimise potential delays.

Further, and with respect, REINSW also suggests that NCAT update its decisions more regularly and consistently across its locations so that all decisions are more readily accessible.

- II. With respect to certain tribunal locations, there are safety and security concerns when appearing before NCAT. REINSW notes that in some tribunal locations there is a lack of security officers, working metal detectors and mandatory checking of prohibited items in bags when entering the tribunal. This is particularly so in rural locations and the consequence is often that a party is scared for their safety, particularly where there is threatening behaviour from the other party in serious rental dispute matters. Since consumer safety is paramount, REINSW suggests that NCAT be consistent with the level of security across all tribunal locations.
- III. REINSW has been notified that parties, agents and witnesses are often not sworn in or affirmed during their hearing. This inconsistency provides a lack of quality for the consumer and is likely to taint what is being said in the room and, therefore, the ultimate judgement. REINSW would like to reinforce that the proper processes must be adhered to and that NCAT remain consistent across all tribunal locations by ensuring that all participants are appropriately sworn in or affirmed (as appropriate).
- IV. With the rapid increase in high density in New South Wales, REINSW has been notified that there is a lack of resources NCAT provides and this is particularly so across certain regional locations, resulting in conciliators being unavailable. The absence of this

resource, in some circumstances, negates the purpose of the tribunal in providing an impartial and objective facilitator. Without conciliators, consumers are left with the question of why their matter is being heard in front of a member at the tribunal if there is no certainty of their matter being safeguarded under the benefit of impartiality that a conciliator provides (refer to paragraph 2.3 for more on the need for, yet inconsistent availability of, conciliators).

REINSW refers to the letter from NCAT to REINSW's President dated 13 May 2019 in relation to NCAT's proposal to increase access to conciliators for dispute resolution purposes. As a way to implement this proposal, REINSW welcomes and supports the proposed amendments to the sitting pattern for group lists so that parties can seek conciliation before proceeding to hearing (where conciliation is unsuccessful or if only one party appears). While REINSW believes that this initiative will resolve various key issues and is a step in the right direction, the issue of being under-resourced has vastly affected the consumer and remains to be resolved.

(c) *Does NCAT resolve legal disputes quickly, cheaply and fairly?*

REINSW has been informed by practitioners that the time NCAT allots to each hearing appears to be too short, resulting in either adjournments or the parties not having enough time to put forward their case. While REINSW considers that the service offered by NCAT is quicker for consumers than the court system, industry professionals have noted upon their experience that often there are too many matters listed in one session. The result of this is that a large number of matters are being adjourned.

Whilst REINSW has no issue with adjourning matters of a trivial nature or nominal amount, REINSW submits that there are certain types of disputes that should not be adjourned, such as those involving rental arrears. These types of disputes should not be adjourned and should be heard before the tribunal as a matter of urgency to mitigate loss and to uphold the nature of NCAT providing a fair and quick service.

In addition to this, in recent times NCAT has omitted from its application form the option for applicants to specify times and days which do not suit to have their matters heard. This change has caused consumers difficulties because if the hearing is set for a day which the applicant cannot attend, they are compelled to seek an adjournment and their reason for non-attendance is considered at the discretion of the Registrar. With respect, this lack of flexibility awarded to the applicant demonstrates that NCAT has added another layer of burden onto consumers which goes against its ethos of providing a consumer friendly, just, quick and fair service.

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

REINSW submits that while there are many benefits to having a matter resolved purely on its application to uphold a quick and easy process, REINSW needs to better understand the process suggested by NCAT. For instance, will the parties be required to provide evidence under oath perhaps by way of a statutory declaration or otherwise? REINSW insists that all evidence provided in this manner must be given under oath.

REINSW is concerned that NCAT resolving matters without a hearing would not empower parties to have their matter heard and would not afford parties the opportunity to provide all the requisite information and to respond to the submissions of the other side. While REINSW understands that matters are often dealt with and resolved outside of the tribunal, it is concerned of the danger of members determining matters without a hearing because they could make assumptions about the nature and seriousness of a party's position without those assumptions being valid. The proposal of resolving matters without a hearing requires NCAT to further consider the anti-ambush doctrine where a party has the right to reply. This could result in a lengthy process that would require extra administration work and due diligence to ensure that the parties' rights are adhered to. Having the decision made purely on documents submitted by the parties without a hearing limits the chance for a consumer to appropriately respond and provide increasingly relevant information regarding their application or defence.

(e) *Does NCAT need additional powers to be able to enforce its decisions?*

REINSW is aware that the current process of enforcing orders is too time-consuming and needs to be quicker, particularly where a tenant fails to comply with orders to vacate. REINSW would also like to stress that this is contributed to by the impact of the various delays during the whole process of the dealings with NCAT (including, without limitation, with respect to adjournments).

REINSW understands that the process involves the landlord or agent delivering the orders to the tenant on the same day of the decision, or it is emailed or posted within a few days. During this time period, the delay in postage, particularly if the tenant has not listed their email address on the NCAT application form, causes a substantial delay in executing the NCAT orders and this is particularly so if a tenant is to be removed from the property. If the tenant is present at the tribunal, they may retrieve a copy of the orders at that time. However, REINSW submits that an enforcement issue occurs during the delay of time when the tenant has not complied with NCAT's order to vacate the premises. Once the landlord has been



made aware of such failure, the landlord or landlord's agent may apply to NCAT for a warrant for possession of the premises, which may be collected from the tribunal in a sealed document if present, or otherwise posted via mail. The warrant for possession then needs to be given to the Sherriff's Office, and a time is scheduled for when this warrant can be executed, removing the tenant from the property. This constitutes a lengthy process which is quite unreasonable for the landlord who is forced to suffer financial hardship through no fault of their own.

To add to the delay of enforcement, due to their limited resources, Sheriff Officers are often unavailable or cannot comply with the timeframes ordered by NCAT. This creates a greater problem especially if the dispute is in a rural or regional area, in which the Sheriff's Office may not receive the sealed orders for quite some time because of the post. Due to the lack of resources, the Sheriff's Officer may not be able to execute the warrant for possession of the property within a timeframe that upholds the rights of the landlord, especially in disputes dealing with rental arrears. This, coupled with the delays as mentioned in paragraph 2.2(c) above, not only lengthens the process but creates one that is unnecessarily and unreasonably costly, particularly where a tenant is not paying rent.

In an effort to resolve the resulting delays and frustration in the enforcement process, REINSW recommends that NCAT implement a streamlined automated process that allows it to directly inform the Sheriff's Office of the orders and provide the orders to them electronically. This will no doubt improve the enforcement process and limit slow hardcopy mail service.

2.3 Other Important Matters for Consideration

- (a) As abovementioned, REINSW would like to see NCAT offer a consistent conciliation service particularly in regional areas as part of its dispute resolution process. For instance, REINSW is aware that there are no conciliators present at NCAT's Wagga Wagga and Wollongong tribunal locations. REINSW submits that the lack of regional resources extends NCAT's inability to provide a service that upholds the purpose of a consumer considering using the tribunal. Without intending to be an exhaustive list, the benefits of having a conciliator include increasing the likelihood of settlements, reducing the number of matters heard by members and reducing adjournments. With no conciliator, consumers run into potential problems such as a reduced chance of accessing NCAT or facing a costly and time-consuming court process if they are urgently searching for an impartial and objective platform.
- (b) REINSW requests NCAT to question the appropriateness of, and need for, parties participating in the NSW Fair Trading dispute resolution process. Parties that elect to go through this process may reach an agreement which may not be honoured or adhered to by a party post-agreement. Subsequently, one of the parties may apply to NCAT to have the same matter resolved

through NCAT's dispute resolution process. This ultimately replicates NSW Fair Trading's process with the important exception that NCAT has the power to create orders. With this in mind, REINSW questions why the Government wastes so much time and resources in NSW Fair Trading's dispute resolution process when parties ultimately end up in NCAT anyway to resolve their disputes.

- (c) REINSW queries how NCAT is now dealing with, or intends to deal with, matters heard prior to the decision of *Burns v Gaynor*. Before this decision, where the tribunal made determinations in matters where a party resides interstate the question arises whether those decisions are invalid now that it has been determined that NCAT is not a court of record and has no jurisdiction to hear those matters. REINSW also queries whether NCAT is planning to review its decisions in these matters and advise the relevant parties accordingly. REINSW is further concerned that NCAT continues to hear matters without an enquiry regarding the location of the parties. There is no process of discovery in place to ensure that NCAT has jurisdiction to determine the matter on the grounds that the parties reside in New South Wales. *Burns v Gaynor* has created a heavy administrative and judicial burden for NCAT, further creating confusion for parties seeking a cheap, fair and low-cost outcome from the tribunal.

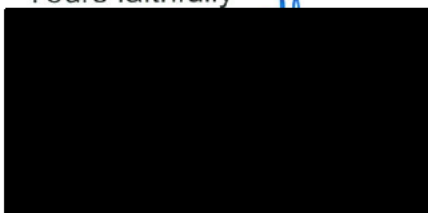
3. CONCLUSION

REINSW considers NCAT to be a vital forum where consumers can resolve their disputes efficiently, fairly, cost-effectively and objectively. However, like all forms of dispute resolution, REINSW recognises that NCAT has its limitations. In support of improving the tribunal's operations and procedures, REINSW embraces this statutory review.

Importantly, REINSW feels that the current federal jurisdiction issue hinders the right of consumers to have their case heard in a tribunal that was established for their very benefit. This issue creates a high level of confusion as applicants are often unaware of the jurisdiction of the tribunal and unsure of whether their matter can be heard, and to what extent the jurisdictional issue will impact them financially. REINSW has therefore prepared this Submission in an effort to minimise the current and potential confusion in the market and increase consumer benefit by ensuring equal access to NCAT regardless of where a party resides.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully



SUMMONS

COURT DETAILS

Court Local Court
#Division General Division
#List Federal Proceedings (part 3A *Civil and Administrative Tribunal Act 2013*)

Registry

Case number

TITLE OF PROCEEDINGS

[First] plaintiff [name]
#Second plaintiff #Number of
plaintiffs (if more than two) [#name #number
Refer to Party Details at rear for full list of parties]

[First] defendant [name]
#Second defendant #Number of
defendants (if more than two) [#name #number
Refer to Party Details at rear for full list of parties]

#Additional information [eg Estate of (name), Adoption of (child's name)]

FILING DETAILS

Filed for [name] plaintiff[s]
Contact name and telephone [name] [telephone]
Contact email [email address]

HEARING DETAILS

This summons is listed at [time, date and place to be inserted by the registry].

TYPE OF CLAIM

Federal Jurisdiction

RELIEF CLAIMED

- 1 Leave is sought to commence proceedings in the Local Court pursuant to **section 34B** of the *Civil and Administrative Tribunal Act 2013*.
- 2 Seek orders to be made by the Court as per the application made to NCAT on **[insert date of application]**. Orders sought:
 - a. [order sought]
 - b. [order sought]
 - c. [order sought]
 - d. [order sought]
- 3 **[If leave sought to be represented by non-legal representative i.e. a managing agent – otherwise, delete this paragraph]** Seek leave for [insert name, position, company] who is my [relationship to plaintiff] to represent me in these proceedings as my non-legal representative pursuant to **section 34C(4)(e)(iii)** of the *Civil and Administrative Tribunal Act 2013*.

SIGNATURE

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

[eg authorised officer, role of party]

Date of signature

NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.

- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address

Postal address

Telephone

[on separate page]

#PARTY DETAILS

[Include only if more than two plaintiffs and/or more than two defendants.]

PARTIES TO THE PROCEEDINGS**Plaintiff[s]**

[name] [role of party eg first plaintiff]

[repeat as required for each additional plaintiff]

Defendant[s]

[name] [role of party eg first defendant]

[repeat as required for each additional defendant]

FURTHER DETAILS ABOUT PLAINTIFF[S]**[First] plaintiff**

Name

Address

[The filing party must give the party's address.]

#[unit/level number]

#[building name]

[street number]

[street name]

[street type]

[suburb/city]

[state/territory]

[postcode]

#[country (if not Australia)]

#Frequent user identifier

[include if the plaintiff is a registered frequent user]

[repeat the above information as required for the second and each additional plaintiff]

Contact details for plaintiff acting in person or by authorised officer

#Name of authorised officer

#Capacity to act for plaintiff

Address for service

[The filing party must give an address for service. This must be an address in NSW unless the exceptions listed in UCPR 4.5(3) apply. State "as above" if the filing party's address for service is the same as the filing party's address stated above.]

#as above

#[unit/level number]

#[building name]

[street number]

[street name]

[street type]

[suburb/city]

[state/territory]

[postcode]

Telephone

#Fax

Email

DETAILS ABOUT DEFENDANT[S]**[First] defendant**

Name

Address

#[unit/level number]

#[building name]

[street number]

[street name]

[street type]

[suburb/city]

[state/territory]

[postcode]

#[country (if not Australia)]

[repeat the above information as required for the second and each additional defendant]

Nicole Unger

From: SydneyCivilRegistry <sydneycivilregistry@justice.nsw.gov.au>
Sent: Thursday, 30 May 2019 3:11 PM
To: Fay Anagnostakis
Subject: RE: Case number: general enquiry

Dear Theofania,

Parties can only be represented by Solicitors in the Local Court

Kind Regards

GM

Local and District Court Clerk | NSW Courts and Tribunal Services
Level 4, John Maddison Tower | 86 – 90 Goulburn St, Sydney NSW 2000

From: Fay Anagnostakis [mailto:fanagnostakis@reinsw.com.au]
Sent: Thursday, 23 May 2019 2:42 PM
To: SydneyCivilRegistry
Subject: RE: Case number: general enquiry

Dear Sydney Civil Registry,

Unfortunately the information provided below does not answer my query. Could you please provide details of where this information can be specifically located in Austlii? I am after specific statute or procedural notes.

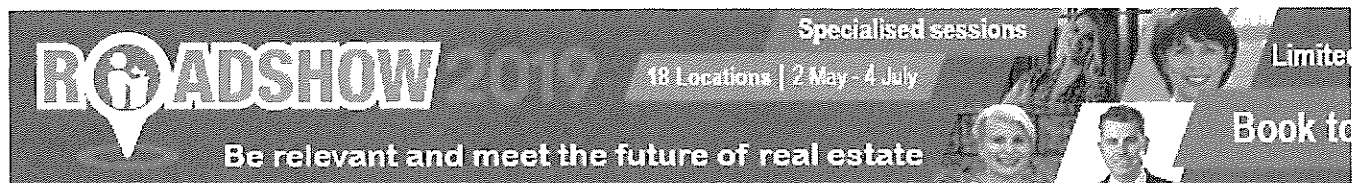
The question originally given to the Local Court via phone was:

Due to jurisdictional issues, landlord's that have moved interstate can not access NCAT if a tenancy dispute arises and therefore will need to have their matter heard in the local court. *Can a landlord be represented in court by an agent?* (Tribunal Legislation allows for agents to represent clients in the tribunal, but I could not locate any Local Court Rules stating the equivalent).

Thank you in advance,

Kind regards,

Theofania (Fay) Anagnostakis | Policy Officer, Legal
Real Estate Institute of New South Wales
30-32 Wentworth Avenue, Sydney NSW 2000
T: (02) 8267 0570
www.reinsw.com.au



From: SydneyCivilRegistry <sydneycivilregistry@justice.nsw.gov.au>
Sent: Thursday, 23 May 2019 1:50 PM
To: Fay Anagnostakis <fanagnostakis@reinsw.com.au>
Subject: Case number: general enquiry

Good Afternoon,

In response to the referral received from the NSW Courts Service Centre regarding your request to clarify an act or legislation:

Please note that legal information can be found on AustLII. For your information their website is :
www.austlii.edu.au

Thank you.

Sydney Civil Registry

Email: sydneycivilregistry@justice.nsw.gov.au | Phone: 1300 679 272
Sydney Civil Registry, John Madison Tower, Level 4, 86-90 Goulburn St, Sydney
PO Box K1026, Haymarket 2000

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