



## Submission to the Civil and Administrative Tribunal Act Statutory Review

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The RVRA represents the interest of residents of retirement villages throughout New South Wales and has, since the implementation of NCAT legislation in 2014, had its attention drawn to the operation of NCAT by many, many of its members who have been involved in matters before the Tribunal. In the great majority of those instances feedback about the way in which the Tribunal operates has indicated dissatisfaction, and in some cases very great dissatisfaction, among retirement village residents about its operations. The very small numbers of claims lodged from the sector is indicative of the poor regard in which the Tribunal is held.

This submission does not seek in any way to pursue reviews of the specific cases it has knowledge of, but to draw attention to some basic tenets which should be incorporated into the legislation which will, in relation to retirement village matters, make it more closely aligned to its objects.

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

To a large extent the answer to this question, so far as the retirement village sector is concerned, is to be found within the terms of the Retirement Villages Act 1999. This statute lays down the Tribunal's jurisdiction.

- **Is NCAT accessible and responsive to its users' needs?**

Applicants to NCAT in retirement village matters are elderly and in almost every case suffer the impediments that accompany ageing.

- They have limited (and diminishing) mental, emotional and physical resilience.
- The NCAT website is not user friendly for those with visual impairment e.g. not much difference between the normal and increased font size and some parts do not increase in size; many would not be aware of the Listen facility.

They frequently have limited knowledge of, or skills in, computerised communication and research availability. Our statistics show that more than 50% of our members do not have a computer or do not have the skills to interact with the NCAT website and work through the process of selecting the correct orders.

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- They have widely varying levels of education and of advocacy skills.
- The decision to go to NCAT is, for retirement village residents almost always made as a last resort after they have exhausted their strength and patience with the other party and with enormous levels of stress over a long period of time.
- Residents in receipt of various pensions (be they government funded or privately funded) need to husband assets which are the source of their living income. A very large proportion of retirement village residents have limited financial resources without the opportunity to replenish through continuing employment. The threat of being confronted with legal representation costs and/or the imposition of another party's legal costs is a major barrier to many residents seeking access to the Tribunal.
- Residents are in many ways captive to their village. Unlike other classes of consumer, they cannot take advantage of an open market to secure just and fair treatment by simply changing suppliers. In most cases they have a very large part of their capital assets invested in their retirement village unit. Were they to leave the village, they know that they would surrender approximately one third of those assets in the form of a deferred management fee. Consequently, they would be unable to afford alternative living arrangements of the same standard (to say nothing of the trauma and stress of moving residences).
- Because of their age, retirement village residents (particularly those living in New South Wales regional areas) have difficulty travelling to major centres, particularly when an NCAT matter may require multiple appearances before a tribunal, and the requirement that they do this in many cases acts as a severe disincentive for the lodgement of any application to a Tribunal.

Specifically, the distances residents must travel, the hours of sitting and taking part, the formality of the 'court' like proceedings and the intimidation felt by elderly residents when faced with the operator, manager and often a high powered, aggressive solicitor make this a very hostile event for residents. If experienced once, they are unlikely to follow up with a second attempt.

The retirement village resident demographic is arguably a special class of potential applicants to NCAT, yet there is no recognition of this in either the NCAT Act or the Retirement Villages Act. On the basis of many complaints that RVRA receives from its members, these circumstances create for retirement village residents serious disadvantage in terms of NCAT's accessibility and responsiveness. It is simply not good enough for Tribunal members to treat them as they would other members of the community.

• **Does NCAT resolve legal disputes quickly, cheaply and fairly?**

The issue of legal representation is a matter of very great concern to retirement village resident applicants before NCAT. The application of section 45 of the NCAT Act is, in RVRA's view, far too widely interpreted in relation to retirement village matters. It needs be made clear that exceptional circumstances need to exist for a Tribunal to allow legal representation given the very clear intention of section 45(1) of the NCAT Act.





5. Restricting any orders for costs that might be made by a Tribunal to circumstances in which the tribunal has clearly warned a village resident applicant that their actions place them in jeopardy.
  6. Enhancing the process under which orders of a Tribunal are enforced to ensure, in the terms of s3(d) of the NCAT Act justice, speed, cost effectiveness and minimal formality is achieved.
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