



9 July 2019

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Submission to the Civil and Administrative Tribunal Act Statutory Review

Thank you for the opportunity to contribute to the review of the Civil and Administrative Tribunal Act 2013. Samaritans is a charity operating along the east coast of NSW between the Central Coast and Kempsey and as far west as Mudgee. Samaritans support people across a range of sectors including child, youth and family, disability, homelessness and many others. While Samaritans do utilise the services of the NSW Civil Administrative Tribunal (NCAT) as an organisation, we are also aware of many scenarios where our clients will use NCAT or be called to attend a hearing. We draw on these experiences to provide a number of recommendations for consideration under the review.

Accessibility

The NCAT website provides a significant amount of information about the types of cases that NCAT can address. However, the volume of text, language used, and general navigation of the website can make it difficult to find information easily. This is particularly true for people with lower literacy skills, intellectual disability and even mental health issues such as anxiety.

The information provided on the NCAT website around preparing for a hearing does little to prepare people for the realities of the day, such as the fast pace, whether there may be other people present in the room, or if they may be alone at any point with the person they have a grievance with. Offering this information may help some people to feel more comfortable and prepare themselves, so they are better able to present their case on the day.

The NCAT helpline staff are generally very helpful and willing to share the information people require, although it may be difficult for people to understand which division to call. Even though the divisions are explained briefly in the automated phone message, this information is not quickly understood from the NCAT website.

Individuals' Rights

Ensuring that information about individuals' rights is accessible for all people should be a key priority for NCAT. Without clear, easy to understand information, there is the potential for hearings to be unfairly swayed to the more knowledgeable party. This is observed mostly among our clients who are called to appear in tenancy matters where a landlord has submitted a case for review. However it is also vitally important for people with lower literacy skills and intellectual disability who may already be facing additional barriers to exercising their rights.

In tenancy matters for example, the lack of understanding among tenants can lead to:

- Anxiety around the process and likely outcomes.
- Lack of preparedness to present their own evidence and represent themselves.
- Inadvertent advantage given to the landlord because they were prepared, or they may be represented or supported by an agent who has a direct interest in the matter because of their agreement with the landlord.

Following the hearing there may still be barriers for people in getting a fair outcome. For example, NCAT may find in favour of a tenant at a hearing but the tenant receives a no-grounds eviction notice shortly after the hearing. While NCAT have the power to order these notices not valid based on it being retaliatory, tenants without full understanding of their rights or the role of NCAT may not make a claim when this happens.

Responsiveness, Timeliness and Affordability

NCAT fees are generally quite reasonable and the option for fees to be waived for special circumstances is a vital inclusion to ensure that a person can exercise their rights regardless of their financial situation.

The timeframes set for hearing a case after an application is submitted generally allow enough time for each party to gather their evidence, provided they understand the process and their rights and obligations. It also allows time for people to seek advice from advocacy services and community legal centres and in some cases come to a resolution prior to the hearing, but again this relies on the individual knowing that this option is available to them.

Samaritans would be cautious to recommend that matters be heard from just a review of the documents and without a hearing. This is particularly the case in tenancy matters against tenants because of the issues mentioned above. We do recognise that for some situations, particularly where one of the parties are feeling anxious about appearing at NCAT, this could be an option and may speed up processes for all parties. Should this option be considered, we would suggest that appropriate safeguards be put in place to protect all parties and should include consent given by both parties for this course of action, evidence checklists and similar tools provided to aid each party, and substantial additional support for people with lower levels of literacy that might have trouble understanding what they are agreeing to and/or have trouble putting their evidence forward in this way.

Samaritans experiences have been that while NCAT have the powers they need to enforce decisions; the processes and availability of information may mean that people aren't always aware of the orders that NCAT can make.

Possible Solutions

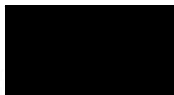
Samaritans offers the following recommendations which may contribute to addressing the issues raised above:

1. Convert academic and legal language to plain English throughout the website and in forms and flyers wherever possible. Where this is not possible, provide clear and easy to understand explanations of key terms and functions.
2. Bring “Language and Disability Support” to higher prominence on the homepage so it is easier to navigate to.
3. Provide easy read fact sheets for more of the commonly used areas of the website, such as what NCAT can help with. We were only able to locate one easy read fact sheet on the NCAT website currently.
4. Provide clearer menus with fewer menus to click through to take a person to the information they need, such as what NCAT can help with.
5. Place greater emphasis on having a support person attend or contacting an advocacy service or community legal centre for advice in advance.
6. Enable greater oversight for NCAT of responses and actions taken following a hearing.
7. Ensure people are provided with enough information following a hearing to enable them to exercise their rights, such as having no-grounds eviction notices nullified.
8. Increase education about the role of NCAT and the rights of individuals, either directly through the additional of more fact sheets and videos on the NCAT website, or through other agencies who may refer to NCAT, such as Fair Trading.

For the most part, NCAT resolves issues fairly and allows people to avoid costly court proceedings. Samaritans encourages this review to consider our comments and how similar issues might apply to other cohorts of people. The introduction of appropriate processes and changes that address the issues of accessibility and education will ensure truly equal treatment for all people who present at NCAT or are not currently aware of NCATs role.

We look forward to hearing more from the review about the round table discussions to be held in September to November of this year and welcome the opportunity to continue contributing to this review as needed.

Yours faithfully,



Chief Executive Officer