

This submission deals purely with the issues around ARPRA's involvement with Homeowners and Operators from Residential Communities. Therefore, our focus will be narrowed but direct in this regard. Whilst having said that we know that people attending Tribunals often have very similar perspectives of NCAT.

When the 22 tribunals were formed into one body the premise was to enhance Justice for people in NSW.

What is Justice?

According to the Legal Dictionary | Law.com
(<https://dictionary.law.com/Default.aspx?selected=1086>)

“justice. n. 1) fairness. 2) moral rightness. 3) a scheme or system of **law** in which every person receives his/ her/its due from the system, including all rights, both natural and **legal**. One problem is that attorneys, judges and legislatures often get caught up more in procedure than in achieving **justice** for all.”

Our organisation believes that whilst the potential for fairness is available it does not appear to be the norm. This comes about because the Homeowners in Residential Community settings generally are older and do not have a reasonable understanding of what NCAT offers or is trying to achieve.

In the NCAT review information provided it states NCAT was established to provide a simple, quick, and effective process for resolving disputes and reviewing administrative action.

As Advocates for Homeowners, we have not found this to be the true. Whilst the Registrars and their staff work hard at trying to get matters listed it is often the lack of support when a person attends the first hearing that slows the system down. The advice from Tribunal Members is to go into a conference room and see if you can sort it out. By the time most matters get to the first hearing stage considerable discussion has already occurred and unless the parties have been able to seek advice and or representation further discussion becomes pointless.

What we suggest is when people make application to NCAT they should receive advice by way of a brochure or contact numbers of organisations such as ARPRA as a source of information, support and guidance.

The reason for this approach is that we have found if we are able to give advice and, in most cases, mediate on people's behalf, fewer applications proceed to a direction hearing and resolutions are often created.

With our knowledge of what is occurring currently it is felt providing answers to the questions posed in the handout on the Review of NCAT is the best way to direct our findings and thoughts. With the underlying idea to try and assist make NCAT a much fairer system to uphold the rights of individuals or groups.

Questions -

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

Often Homeowners know about Fair Trading, Ombudsman and Local Members of Parliament as organisations or individuals they can go to and seek advice, guidance or help to deal with issues they have from within their communities.

NCAT is seen as a legal entity more in line with a Court and to go there you need legal advice. This is not seen as being readily available. Therefore, people go from organisation to organisation trying to get the right advice.

This needs to be addressed by ensuring specific organisations who specialise in one facet of the tribunal process are the point of reference. The example we use is ARPRA. ARPRA's sole focus is Residential Communities. Who better to give people advice on Residential Communities than, ARPRA.

Other areas can be covered such as tenancy problems by referral to Tenants Union or TAAS for advice on tenancy matters.

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

As NCAT is seen as a legal entity it is not acknowledged that it is easily accessible. For people to find out about NCAT it is often via phone contact with Fair Trading or verbal discussion with other Homeowners. Alternatively access via the internet. Then you must complete an application form, filling out what sections of an Act have been breached and submitting supporting evidence. Then you must state what orders you are seeking. To the person with little knowledge of the Law and its processes this is very daunting.

NCAT can be responsive to users but it is a slow process that people do not easily understand. The process and time to get a result is often so daunting that people give up in despair.

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

Yes, if potential users are given good advice initially either verbally or by brochure, then they will become more confident in using NCAT. It is the fear of the unknown which prevent people from taking the first step. Add this to the fact that they do not want to be harassed by the Operator if they make a complaint and you have all the ingredients for driving people away from using NCAT and the purpose it was designed. Enhancing the Justice for all.

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

NCAT is not seen as a quick process as most matters from initial application to final hearing and then determination can be around 4 to 6 months. If the matter is then appealed by either party, you can add several more months to get a resolution.

Whilst the application fee has risen from \$5 under CTTT to \$14 for concession holders under NCAT it is still seen as reasonable. Unless there are many applicants on the same issue. Then \$14 times 200 people is seen as excessive to have a class action. Where there are many people with the same issue a representation group of five or so would be enough to show intent and reduce the excessive costs involved.

NCAT has become very legalistic in its approach and whilst this is often seen as a good thing, when there are different Tribunal Members' determinations on similar issues fairness is often questioned.

Lawyers understand the complexities of determinations, but the ordinary person is often left floundering at the result. Again, this can be overcome by ensuring good advice is given prior to people coming before The Tribunal.

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

Yes, where it is a clear legal situation easily defined. Provided people are given good advice on the potential outcomes and what each scenario might mean for them then proceeding in this manner can expedite an outcome.

• Does NCAT need additional powers to be able to enforce its decisions?

Yes. NCAT is seen as a toothless tiger. There are provisions within The RLLC Act for penalties to be applied but not one has ever been applied because the Tribunal (Member) does not have the power to impose the fine. The Member must refer the breach to Fair Trading to pursue court action.

In a final summation of what is occurring at NCAT from ARPRA's advocates' perspective there are times when people contact ARPRA, get advice and ask to be represented at The Tribunal. Up until very recently when ARPRA's Advocates appeared at The Tribunal and sought leave to appear on behalf of a client that leave was readily granted.

Today at several Tribunals some Members are questioning the need for people to be supported and in turn represented by Advocates. Surely this is a prime example of putting hurdles in place to turn people away from going to Tribunals. The process as described above is seen to be legalistic enough without this sort of intimidation occurring.

Submitted for your consideration.

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