

The Director, Courts Strategy
Department of Justice
GPO Box 31
SYDNEY NSW 2001

10 July 2019

Also via email: policy@justice.nsw.gov.au

Dear Director

Review of the *Civil and Administrative Tribunal Act 2013*

We refer to the Department of Justice "Review of the *Civil and Administrative Tribunal Act 2013*" and provide the following submission in response.

The Australian Centre for Disability Law (ACDL) is a specialist community legal centre that operates a law practice in NSW focusing mainly on disability discrimination law. Our vision and purpose is to work towards a society where persons with disability can live with dignity and where their human rights are recognised, respected, protected and fulfilled. We do this by providing free information, advice and representation services to persons with disability and to their associates. ACDL also undertakes a range of complementary activities including policy and law reform, and community legal education.

The majority of our experience with the NSW Civil and Administrative Tribunal (NCAT) relates to the Administrative and Equal Opportunity Division (AEOD), and this submission will focus on that area.

Is NCAT accessible and responsive to its users' needs?

We submit that our clients and ourselves often find NCAT inaccessible, as some of the information provided by NCAT is out of date and confusing.

Beginning a matter – notice of listing and information sheet

When a matter is referred to NCAT from the ADB, the first step for a client is to receive a *Notice of Listing for a Case Conference*. The back of the listing form is titled "Information Sheet – Case Conference". This directs people to "read Administrative and Equal Opportunity Division Procedural Direction 4: 'Anti-

Discrimination Matters' on the NCAT website. This document tells you what you need to do to prepare for the case conference."

However, we note that this direction no longer exists, and can instead only be found in "Revoked and superseded Procedural Directions 2017", and there is no current corresponding direction on case conferences that can be found on the website.

The information sheet goes on to suggest that parties read 'Administrative and Equal Opportunity Division Procedural Direction 8: 'Mediation' on the NCAT website. This direction also does not exist except in "Revoked and superseded Procedural Directions 2017". Therefore it is hard for parties to find guidance on the processes at the NCAT.

There is also a section on this form titled "Communicating with the Tribunal", which states that all written communications must "be posted or delivered in hard copy to the Registry (not faxed or emailed)". However, we note that the Tribunal's method of communicating with the parties is often entirely via email, and accepts correspondence and filed documents such as Notices of Representation entirely via email also.

Recommendation

We recommend that the "Information Sheet – Case Conference" should be updated to ensure that it is accurate and provides relevant information and references to parties. We also recommend that the Tribunal update its protocol on how to electronically communicate with the Tribunal and what will be considered an appropriate method of correspondence, and ensure that all information provided to people and parties is accurate and up to date.

Communication with the NCAT - mediators

We note the importance of mediation as an alternative form of dispute resolution, however have found difficulties in accessing it effectively through NCAT in the preparation stages. It is difficult to contact someone when there are issues to be discussed prior to the mediation, and we note that the NCAT generally should improve their accessibility and support for people with mental health issues, particularly in the AEOD division.

In a recent case before the Tribunal, where our client had mental health issues that were being exacerbated by the case and the opposing party, there was no clear process for contacting the mediator to discuss how to ensure that the mediation would proceed in order to protect our client and notify the mediator of the adjustments our client required. The Registry was unable to assist, as staff could not confirm who was responsible for approving the requests we wanted to make on behalf of our client. It was only after multiple written communications to the Registry requesting to speak to the mediator about the matter that the mediator contacted us directly, and he could not give much assurance about the process or who would be attending, which meant that we could not adequately prepare our client to ensure that she could get the most out of this process to deal with her complaint.

We were also not made aware of who would be attending the mediation for the other side, as while the Notice of Listing requested that we provide that information to NCAT, it was not then provided to both parties, so we were unable to prepare our vulnerable client for who to expect to see at the mediation.

We note that in other jurisdictions, mediation processes provide a clear framework for each party to discuss the matters with the mediators prior to the mediation, to discuss needs and issues, and this allows for each party to be fully prepared for the mediation process.

Recommendation

We recommend that the NCAT develop a clearer protocol for case managing pre-mediation processes, including gathering and providing information about attendees to both parties, discussing reasonable adjustments and ensuring that vulnerable parties have access to appropriate information and support, including an option to contact the mediator prior to the mediation in the AEOD division.

Communication with the NCAT - general

Contact with the NCAT in relation to particular matters can be difficult. It is not clear what the timeframes are for responding to a call to the NCAT. The voicemail message for one case officer states "If you believe the matter is urgent please state why". It is unclear what the timeframe for responding to an urgent matter is or to a matter that is not "urgent", or what NCAT would consider urgent. While it is appreciated that the case officers may have high caseloads, an indication of when to expect a call back would be useful.

Recommendation

We recommend that an agreed timeframe for expecting a call back and what constitutes an 'urgent' matter be published on the NCAT website.

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

As discussed above, we recommend that NCAT update its communication protocols to parties to ensure that it is relevant, up to date and consistent.

The "Steps in an Anti-Discrimination Matter" factsheet is helpful, but should be reviewed alongside the general information sheet to ensure that they are consistent in the information they provide to parties about what to expect.

Does NCAT resolve legal disputes quickly, cheaply and fairly?

While the "Steps in a Discrimination Matter" document provided with the initial case conference listing notes that mediations will be listed for 3-4 weeks after that case conference, it has been our recent experience that due to limited availability of rooms and members, mediations do not occur until at least 6 weeks after the first case

conference. This causes unnecessary delay and distress for parties who have already likely been through an unsuccessful conciliation process at the ADB, and want to start getting the matter resolved.

Recommendation

We recommend that additional resources be provided to reduce delays in assigning matters and mediations.

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

We note that if the NCAT decides to adopt this process, then clear guidelines for what should be submitted by each party will need to be developed. We have concerns about the difficulties that some of our vulnerable clients would face in drafting appropriate written submissions in relation to a claim should this be adopted in relation to certain matters before NCAT, particularly those in which the parties are unrepresented.

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

The current method of enforcing a decision of the Tribunal is to make an application to the Supreme Court, which can be costly and difficult for individuals. We note that it would be easier and would better promote the concept of "just, quick and cheap" if the Tribunal had powers to enforce its own decisions.

Thank you for your consideration of this submission. If you require any further information please do not hesitate to contact Ms Laura Cottam on [REDACTED]

Yours faithfully

[REDACTED]