

9 July 2019

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

**RE:** Review of the Civil and Administrative Tribunal Act 2013

**Matters:** [REDACTED]

**Respondant:** [REDACTED]

**Issue:** Unlicensed and unqualified contractor who undertook a defective bathroom laundry renovation 2015.

Thank you for accepting my submission to the above Review.

This is timely as I am disheartened by the NCAT process. My matter has been nothing short of a nightmare and believe NCAT process, procedure and systems failures have contributed to the lengthy process. My matter is still before the Tribunal awaiting a decision from the Appeal Panel. I believe NCAT have facilitated the continued interference of my matter by allowing [REDACTED] to submit documents which are outside their procedures. Tribunal members failure to address the continued lack of compliance and lateness of providing documentation as per NCAT directions procedure. By NCAT not addressing this, [REDACTED] has continued to disadvantage me by the way he had conducted himself during this process. His attempts at this are blatant and deliberate.

The process has not been consistent and during the course of proceedings have been advised by [REDACTED] namely at the renewal directions hearing in September 2018 "that my matter could take years", it has already taken years. I would like to raise matters that I believe are serious failures of the NCAT System. How a decision can be made within 2 hours of a hearing? How matters of compliance are not addressed? How an unlicensed and unqualified contractor is given a platform to defend defective work when they didn't even comply with directions in the first instance? How the same contractor can renew proceeding after he did not appear for his appeal directions hearing.

I have been before the Tribunal some 14 times over the past 2 years this is unacceptable, stressful and costly. I am not sure how NCAT would resolve a more complex matter given their track record with my matter. I request to participate in any face to face consultations so that I am able to provide further details.

**I request and recommend the following:** That a full review of the above matters are scrutinised as part of the review process. The above matters are an appropriate and relevant illustrations of how NCAT process and procedures are floored. I request that you review all correspondence including emails and folders of documents I have provided. I also request you review Transcripts of my matters that were conducted by [REDACTED] [REDACTED] I found the process to be adversarial rather than a process of resolution and mediation. I had actually felt like I was a criminal and at one of the directions hearings I was racially profiled. I had made a complaint in regard to this, however that particular Tribunal

Member was pleasant but this should not occur. The Tribunal Member as part of due process should identify parties to the matter before them.

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

NCAT is misleading in advising people it is “committed to timely, fair, high-quality dispute resolution and decision making, and to the continuous improvement of our services” ” NCAT provides tribunal services that are prompt, accessible, economical and effective” “In the high volume jurisdictions of NCAT, parties are encouraged to represent themselves in proceedings, although representation may be permitted with leave of the Tribunal.”

I have been in the NCAT system for the past 2 years trying to resolve what I believed to be an open and shut case. ■■■■■ was a unlicensed contractor who undertook defective work. In the initial matter he did not comply with any of directions made, he appealed the matter, did not appear at the appeal hearing and was successful in renewing the proceedings.

There appeared to be no assessment made of the matter in regards to him even complying with directions prior to granting a renewal of proceedings. If in fact there was an assessment my matter would have been finalised.

I would suggest at unlicensed work be referred to the local court as it appears that NCAT is not equipped or “does not care” if a contractor is unlicensed. It would be an easier process to retrieve monies but this would also need to align with NSW Fair Trading. ■■■■■ continued to operate unlicensed Fair Trading don’t seem to care as well. This is a issue in the building industry and there has to be efforts made to deter such practice.

<ul style="list-style-type: none"> <li>• Is NCAT accessible and responsive to its users needs</li> </ul>	<p>No. I had raised on a number of times during many of the directions hearings regarding [REDACTED] and his attempts to interfere with process, he continually did not provide his submissions on time to me or NCAT yet his lateness was not considered as part of the process. He had sought extensions to provide me with his documents and had not met these, at the hearing on in September 2018 my bundle of evidence was sent via registered post and was delivered he advised at that hearing he did not receive this. The Tribunal Member at the hearing had not taken this into consideration in terms of [REDACTED] responsibilities along with NCAT procedures. At the recent appeal hearing [REDACTED] had tampered with my evidence again this seemed to be dismissed. Due to NCAT having no regard to [REDACTED] non compliance over the past 2 years his tactics became more elaborate yet continually were disregarded by the Tribunal. It seemed to get lost in the process in regards to why I was before the Tribunal and that was [REDACTED] unlicensed and unqualified work and more importantly the continuation of [REDACTED] tactics.</p>
<ul style="list-style-type: none"> <li>• Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate</li> </ul>	<p>I was alarmed at the 2<sup>nd</sup> Directions hearing for the initial application when [REDACTED] advised that “she did not care if [REDACTED] was unlicensed” as you can appreciate this was alarming. I had wondered what in fact the Tribunal was for if in fact it did not care if a contractor was unlicensed. NCAT should have zero tolerance in regards to this behaviour as this has not deterred [REDACTED] as he has dragged the matter over 2 years and NCAT have allowed this.</p> <p>NCAT appears to encourage people to not be represented and that it is an efficient mechanism to resolve a matter in fact it is the opposite I had sought legal advice and paid a solicitor to provide me with my statement of claims where it related to</p>

	<p>breach of laws, however this had never been referred to in any proceedings yet I was advised to seek legal advise and in addition are required to obtain a building report which are costly. [REDACTED] had not undertaken his own expert report in the initial claim and the one he had submitted to the Tribunal as part of the recent renewal of proceedings was undertaken by a contractor who had worked for him. The contractor had disclosed this to me when he arrived to do his "expert" report. I had raised this again it was ignored. It was only when I had tabled a ICAC report at the appeal hearing held in April this year when [REDACTED] had confirmed the Expert Report was undertaken by a plumber he engages for his investment property. [REDACTED] had been investigated by ICAC for similar matters I had tried to raise with the Tribunal but was ignored.</p>
<ul style="list-style-type: none"> <li>• Does NCAT resolve legal disputes quickly cheaply and fairly</li> </ul>	<p>No. This is far from quick cheap and fair particularly when it relates to unlicensed and defective work. When you appear before the Tribunal you are directed to seek legal advise and obtain expert reports all are costly. I have spent more than \$10,000 on reports, hundreds of hour preparing, administration and courier costs pursuing a matter that from all accounts should be straight forward. The decisions that have impacted me were unfair. I had compromised and allowed [REDACTED] brother to complete the rectification only due to the fact that [REDACTED] was making this process difficult and the likeliness of getting him to pay was impossible. During the rectification work again there was unlicensed and defective work. I had stopped work due to this and again was directed to obtain a expert report which substantiated my claims yet I was punished because I had stopped work and was awarded some \$5,000 to finish my \$30,000 bathroom laundry renovation. This was not fair given his brother had provided the [REDACTED] and the expert report was</p>

	undertaken by one [REDACTED] contractor. Not sure how this is a fair process.
<ul style="list-style-type: none"> <li>Should NCAT resolve some matters just by looking at documents submitted by the parties, without a hearing in person</li> </ul>	Obviously. If someone appears before the tribunal who are unlicensed and unqualified who undertakes work the shouldn't they should not even be given any opportunity, they should be at Tribunal or a Court punished for such practice. My matter was a straight forward matter yet was made complicated by the NCAT process and allowing an unconscionable contractor to continually mislead and interfere with process to allow me a fair and just outcome.
<ul style="list-style-type: none"> <li>Does NCAT need additional powers to be able to enforce its decision.</li> </ul>	Yes. As like [REDACTED] who tampered with my evidence this matter should be referred to the court or other departments to deal with this type of tactics and illegal activity. The Tribunal should take this matter seriously.

## Background

I have a mortgage on a 2 story duplex [REDACTED]. I had an insurance claim on my property which involved my downstairs laundry and toilet. As the room had to be demolished and rectified due water damage from the adjoining property, I had additional works carried out due to a sever muscle disease I was diagnosed with. The modifications involved putting in a shower and taking out the wall that divided the toilet and laundry.

I had engaged the contractors who were engaged by [REDACTED] to undertake this work ie [REDACTED] [REDACTED]. This work occurred between late September – November 2015. In early 2016 I had noticed that all the grout on the floor of the laundry/bathroom had changed colour. All during 2016 I was in contact with [REDACTED] and [REDACTED] to try and resolve my matter. In July/August 2016 [REDACTED] had agreed to replace the grout. Following this, water had started to seep up through the floor in random spots and this occurred after the shower was used. Due to [REDACTED] and [REDACTED] not accepting any liability I had engaged [REDACTED] to undertake a building report. That report identified it was the waterproofing in the shower that was defective among other things. This report was provided to [REDACTED] and [REDACTED]. As the defects were with the private work [REDACTED] had not accepted liability only for minor defects that was not associated with the waterproofing.

However, I had robustly negotiated compensation from [REDACTED] as they had breached their policy disclosure in that it had engaged unlicensed work as part of Insurance work. This amount included a small contribution towards the work and other compensation. I have suffered stress and anxiety trying to resolve this with [REDACTED] this has been a nightmare.

As [REDACTED] would not accept liability I had no option but to lodge an application with NCAT to have my matter resolved. At the first hearing I was advised to seek legal advice. I had contacted the community legal centre who advised me that [REDACTED] did not hold a licence. Due to my state of health it had never crossed my mind to do a licence check but I had felt reassured as [REDACTED] provided a life time guarantee on work as part of their Policy. I had assumed they would engaged licenced and qualified contractors to undertake its work.

[REDACTED] has not complied with any directions made by Tribunal members, mislead NCAT, failed to file any documents on time, intentionally disadvantaged me, interfered with process, has had noregard for NCAT, had appealed the initial decision and failed to appear at the appeal directions hearing, then successfully renewed those proceedings, tampered with my evidence, lied about not receiving my evidence, and has dragged this matter before the Tribunal 14 times over a 2 year period. It was unfortunate the I had only became aware of an investigation by ICAC for corrupt conduct by [REDACTED] I understand he was prosecuted for misleading the court and falsifying documents , which unfortunately had come to light 3 days prior to the appeal hearing held on 15 April 2019. I had table this report at that hearing along with providing a copy of the report with the NCAT Appeal Office following the hearing.

I had continually raised [REDACTED] tactics as detailed above but these were continually disregarded but most importantly were at odds with NCATS various procedures and policies. The ICAC investigation highlights corruption whereby [REDACTED] lied to a Magistrate falsified documents and provided false information which is consistent with his behaviours during the number of NCAT hearings.

This has been costly, time consuming, the Tribunal has allowed and have encouraged these poor behaviour, there has been no consequences for the [REDACTED] has caused me stress, has inconvenienced me, I have been discriminated during the process, Tribunal members aggressive and most of all has continued to impact my health, family and professional life.