

From: Gregory Smith

Mobile: [REDACTED]

To the Director, Courts Strategy.

Dear [REDACTED],

In response to Dept of Justice request for submissions relating to the current review of the Civil and Administrative Tribunal Act 2013.

After some 8 years of appearing at NCAT and NSW Supreme Court of Appeal hearings appealing a decision by NSW Trustee and Guardian office holders, I have some observations, from the perspective of an appellant, which may be of interest.

Please note that I am quite satisfied with the NSW Supreme Court of Appeal's judgment of the matter, which considering the circumstances and facts of the case, was as fair as could be expected.

My observations relate to two aspects quoted in your terms of reference-

1. "Does NCAT resolve legal disputes quickly, cheaply and fairly?"
2. "Does NCAT need additional powers to be able to enforce its decisions?"

POINT 1. "quickly, cheaply and fairly".

I was in my early teens when I first saw a graphic depiction of Lady Justice (Justicia).

I recall being perplexed by the depiction of Lady Justice blindfolded.

The scales to weigh the evidence and the sword to uphold the rule of law I readily comprehended. But why the blindfold?

I now understand that the blindfold signifies impartiality. Justice must be applied impartially, without regard to wealth, power or other status. In other words, without bias favoring any of the parties in dispute.

The no bias rule is intrinsic to natural justice and procedural fairness.

Instances of bias favoring the NSW Trustee and Guardian, by NCAT adjudicators during my appeals against the NSW T&G's decision are documented and would, I believe, carry weight in any constitutionally recognized Court of law.

That there is a propensity towards bias in the NCAT decision making process, stems from several incongruities:-

Requiring government affiliated bureaucrats to impartially assess decisions made by fellow bureaucrats creates an ideological hurdle which even higher courts

sometimes fail to surmount. This form of bias could more succinctly be labeled 'cronyism' or institutional bias.

The NCAT Act allows adjudicators to dispense with 'rules of evidence' so they may gather and accept or ignore evidence as they choose.

Whilst I can understand the motive behind the framing of the Civil and Administrative Act – to provide dispute resolution considerably more cheaply than constitutionally recognized Courts, the lack of rules of evidence creates scope for institutional bias at NCAT level which is considerably less likely to pass for justice before constitutionally recognized Courts.

That institutional bias would counter act the common law principles of justice should surprise no one.

POINT 2. "additional powers"

Whilst I do not have detailed information as to the purpose for which NCAT believes it requires additional powers, based on my interactions with NCAT, I proscribe:-

Until such time as NCAT decision making procedures more closely comply with the canons of justice expected of the higher Courts I could not endorse the proposition that NCAT should have greater powers to enforce its decisions. An avenue to appeal NCAT decisions to the higher courts must be maintained.

Why is this important?

Public confidence in the government institutions is essential to maintain civil society.

I strongly recommend that you spend some time viewing the Australian Association to Stop Guardianship and Administration Abuse website-
<https://aasgaa.org>

in order to assess the possible consequences of ceding further powers to a quasi judicial body which is not bound by rules of evidence.

Yours Sincerely,

Gregory Smith