

Review of the *Civil and Administrative Tribunal Act 2013*

Noted that the scope of this review is to cover:

<p>What will the review look at?</p> <p>We expect to receive submissions on a broad range of issues relating to the operation of the <i>Civil and Administrative Tribunal Act 2013</i>. However, you may wish to consider the following questions:</p> <ul style="list-style-type: none">• Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?• Is NCAT accessible and responsive to its users' needs?• Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?• Does NCAT resolve legal disputes quickly, cheaply and fairly?• Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?• Does NCAT need additional powers to be able to enforce its decisions?	<p><i>I offer the following perspectives as an 86 year old male who has lived in a NSW retirement village [RV] for almost 16 years with my wife. Approved by other village residents, and as a retired commercial accountant and businessman, I have assisted residents' financed lawyers as Case Manager in at least 16 Tribunal applications [and Supreme Court hearing] against an operator [by name: ██████████] during the last 9 years.</i></p> <p>Whilst specific legislation nominates NCAT as the body governing hearing of RV disputes our experience is that other legal issues often arise as a result of NCAT Orders which RV legislation fails to resolve. The NCAT legislation lacks definition of penalties to be automatically applied to assure enforcement of Orders which NCAT may hand down against an operator and demand penalties be paid for legislative breaches.</p> <p>In one of our experiences NCAT combined 5 different RV applications into one series of hearings causing frustratingly and costly long delays [one set of hearings extended for almost 18 months]. The combined results when issued created eventual confusion in application of Orders.</p> <p>Certain NCAT Members who conducted past Directions Hearings have 'caved in' to quite unjustified appeals by lawyers representing the operator to continue their [costly] legal representation and to introduce [costly] expert witnesses to argue what should have logically been seen by the Member reference to legislation to be just 'open and shut' issues.</p> <p>Many disputes have definitely not been resolved "quickly, cheaply and fairly" by some Members. At one Directions Hearing, the Member supported the operator's lawyer's threats against me [simply an applicant representing other residents] that I would be held personally liable and would be pursued if I proceeded with the application and lost.</p> <p>I contend that many issues covering RV disputes could definitely be resolved by examination of submissions from both parties, carried out only by NCAT experts in RV legislation, and fitting Orders then issued.</p> <p>I contend, after long and wearing experiences of the Tribunal's processes, that unless NCAT strongly and precisely [i.e. no 'wriggle room'] legislates to include powers to automatically penalise detected breaches of any legislation that is applicable within its hearings, and to enforce its handed down decisions and the Orders it issues, then the whole NCAT process becomes a costly waste of everyone's time and of taxpayers' money spent to fund the present Tribunal system.</p>
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Submission on 19 June 2019 from:

Neil Smith

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