

Hello

NCAT ACT 2013 REVIEW SUBMISSION

I wish to make a submission in relation to the *NCAT Act 2013* review. I have two categories of involvement with NCAT, including strata and consumer issues. My feedback is mainly focussed on strata issues. I will briefly address consumer issues first.

CONSUMER EXPERIENCE FEEDBACK

When I went to NCAT for a consumer issue, [REDACTED]. The Member's attitude was completely bias and unprofessional, which I perceived to be due to the characteristics of myself compared to the respondent, who the Member, by contrast, allowed to speak for quite a while and was very polite and considerate towards. At the second date, we were sent to mediate, despite having done this at the first visit and expecting we were presenting our arguments and participating in the hearing. It was completely disorganised. The result was the respondent caved in after we were sent to mediate for the second time. We did not even exit the room before this happened and I can only surmise this was due to the store having given the store manager the instructions not to expend any more time at NCAT. For myself, I had just started a new job prior to the first visit and so this was second day off work in the first six weeks. I was also forced to travel over 100km from home and pay the associated expense due to the store being located far from home and the NCAT hearing being listed at the place closest to the respondent rather than at a NCAT location closer to myself, the applicant. The whole thing felt very wrong and procedurally unfair and bias.

STRATA OWNER FEEDBACK

Below are a number of issues and recommended options related to the *NCAT Act 2013* in relation to strata issues:

Issue: NCAT is intended to provide services that are prompt, which it often is not

NCAT should simplify procedures to ensure more matters can be dealt with and exited from the system

Issue: NCAT is intended to provide services that are economical, which it is not, and owners/applicants are left out of pocket for legal services

NCAT should automatically make an Order for costs and include reimbursement of application fee where an applicant is awarded Orders

Issue: Aggrieved lot owners are required to contribute to costs for legal services procured by OCs to oppose them in NCAT

Strata schemes wishing to engage legal services should be required to specially resolve to raise a special levy, not including the individual owner

Issue: Aggrieved lot owners are required to contribute to costs for fines payable by OC for breaching NCAT Orders

Where a strata scheme is fined for failing to comply with an NCAT Order, the amount payable should be raised by a special levy raised by contributions raised by individual OC members, or even individual strata committee members, not including the individual owner

Issue: Aggrieved owners who are forced to take action against OCs may experience bullying and harassment

NCAT Orders should provide for damages to be awarded in relation to time and mental stress in line with civil court provisions

Issue: NCAT is intended to provide services that are effective, which they are not as enforcement jurisdiction extends only to proceedings for a civil penalty

NCAT should implement provisions to forcibly compel a party to comply with Orders, which is in line with other NSW court processes

Issue: NCAT is intended to ensure the decisions of the Tribunal are fair, which it often is not due to unreasonable decisions of members

Guidelines for decision-making should be produced and avenues for appeal made readily available when Members do not comply

Issue: NCAT is intended to ensure the decisions of the Tribunal are consistent, but Members' approaches and attitudes are inconsistent

Processes should be standardised and Members should be trained in customer service and act in a consistently fair manner

Issue: NCAT is intended to ensure the decisions of the Tribunal are of a high quality, which it often is not

Proceedings are often drawn out over many months and quality is not defined in the Act

Issue: NCAT is intended to promote public confidence in tribunal decision-making in the State and in the conduct of tribunal members

Members should be trained to not demonstrate bias towards applicants who are often vulnerable lone strata owners

Issue: NCAT is able to grant leave for a party to proceedings to be represented in cases where the party is a respondent and the applicant is not represented

NCAT should tighten rules around representation to ensure fairness and informality, and not permit wealthy Owners Corporations to be represented (partially at the applicant's cost) where the owner is not represented

Issue: NCAT may award costs only where it is satisfied there are special circumstances warranting an award of costs, which is inconsistent with other NSW court processes and even where special circumstances are met, NCAT does not necessarily award costs, and not 100% of costs

The provision to award costs should be relaxed in line with other NSW court processes

Issue: NCAT is intended to resolve issues justly, quickly, cheaply and with as little formality as possible, which it is not due to the nature of hearings

NCAT should reinstate paper based decision making and consider a range of options to streamline this process to ensure procedural efficiency

NCAT members should be suitable qualified, trained and experienced

NCAT members should be required to comply with an updated Code of Conduct that requires procedural fairness

Members should be subject to reviews and personally liable for failure to comply with legislation and for delivering unreasonable decisions

Issue: NCAT is intended to provide services that are accessible, which it is not for people who cannot afford a lawyer

NCAT should provide a free service to assist owners to complete an application for Orders

NCAT should not accept applications that have been filed incorrectly and should advise applicants within set timeframes

NCAT should notify applicants of issues within an application that may be cause for a member to dismiss the case

Law Access should provide access to specialist strata lawyers for people seeking information via the information line

Legal Aid NSW should provide access to specialist strata lawyers for NSW citizens seeking access to the non-eligibility based legal information service

NCAT should provide some service to provide reliable legal advice to applicants, even if it means tested (Legal Aid does not have strata law expertise)

A strata schemes register should be established that contains information about NCAT action in a scheme, which is available to the public at no cost

I would appreciate confirmation that my submission is received and would appreciate the opportunity to chat further about any issue raised.

Sincerely

[REDACTED]

10 July 2019

From: [REDACTED]

Sent: Thursday, 11 July 2019 9:30 AM

To: Policy MailIn

Subject: Fwd: NCAT Act 2013 Review Submission

Hello

I know the due date was yesterday for submissions but I had one more though regarding NCAT fees, and appreciated if you would add this to the submission I submitted yesterday please?

NCAT fees, including for consumer issues, should be on a sliding scale.

It is often the case that a service or item cost is the same or less than the NCAT application fee.

I recommend considering a sliding scale that provides for the application fee to align with a table of fees or perhaps even be a percentage of the value of the amount claimed.

Considering Australian Consumer Law does not always provide for a refund but in some cases a replacement or repair, it is completely unreasonable to expect anyone to pay out more than it is worth for them.

It is bad enough that consumers (and strata lot owners) are forced to be out of pocket to enforce the law.

But the current rigid fees completely stop people from seeking justice and enforcement of the law.

This is of course accentuated when people are disadvantaged in other ways also, e.g. disability or NESB.

Thanks for your considerations.

Kind regards

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