Submission to the NSW Civil and Administrative Tribunal Statutory Review

15 July 2019

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ABOUT THE AUTHORS

This submission has been drafted on behalf of two First Nations Applicants by Lucy Schroeder, an Aurora Scholar at the National Justice Project, together with Penelope Han, Emma Henke and Jacqueline Hickman, who are student members of the Australian National University's Interdisciplinary Social Justice Research Hub, an initiative lead by Mary Spiers Williams of the National Centre for Indigenous Studies.

The submission was initiated, and its preparation mentored and supervised by Adjunct Professor George Newhouse of the National Justice Project.

A INTRODUCTION AND TERMS OF REFERENCE

On 30 May 2019 the Department of Justice announced that it is conducting a review of the *Civil and Administrative Tribunal Act 2013*, which established the NSW Civil and Administrative Tribunal (NCAT).

The purpose of the review is to find out how well it is working, and to look at reforms that could strengthen access to justice for people in NSW.[1]

The review seeks submissions on a broad range of issues relating to the operation of the Civil and Administrative Tribunal Act 2013. In particular, answers to the following questions:

- 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?

The focus of these Submissions is on the experience of First Nations peoples in the **Administrative and Equal Opportunity Division** of NCAT.

[1] https://www.ncat.nsw.gov.au/Pages/announcements/20190530_ncat_statutory_review.aspx

B EXECUTIVE SUMMARY

The experience of First Nations peoples in our Courts and tribunals, including NCAT, is often fraught, can be traumatic and contributes to intergenerational trauma.

In these submissions we share the experience of two First Nations people (the "Applicants) who were parties to proceedings in the NSW Civil and Administrative Tribunal ('NCAT') and who experienced a range of processes and procedures which resulted in feelings of injustice and re-traumatisation.

The background identifies critical issues in the First Nations Applicants' attitudes towards and perceptions of the tribunal process, focusing on the lack of trust First Nations people have in the colonial legal system.

The balance of this submission then explores specific examples of matters of concern to the Applicants generally in a chronological order, reflecting their journey, and concludes with recommendations to address them.

These include:

(a) Difficulties in understanding the processes in the Administrative and Equal Opportunity division, the jurisdiction and limits of the tribunal and choice of venue, how to obtain documentary evidence held by an experienced litigant and how to present and prove their case in the context of a tribunal hearing.

(b) Difficulties in evidence gathering – in particular, obtaining essential documents from the respondents

(c) The credibility of documentary evidence over oral evidence;

(d) The systemic racism inherent in the prejudice against oral evidence whilst at the same time tolerating the State department losing critical documentary evidence and taking steps to deny documentary evidence to applicants; and

(e) The adversarial nature of the Administrative and Equal Opportunity Division's processes; and

(f) The lack of cultural awareness of tribunal members.

The final section of this report suggests a way forward, it examines:

1 Culturally aware and safe practices
2 The VCAT Koori Inclusion action plan as a model for reform

This submission is an amalgam of complaints and is not a personal criticism of any particular tribunal member. It is focused on improving the process

SUMMARY RECOMMENDATIONS

1 **The NCAT members code of conduct must be updated to mandate the provision of culturally respectful practices and additional support for unrepresented or First Nations litigants.**

2 **NCAT members should ensure they uphold the member code of conduct.**

3 **The Tribunal should take positive steps to improve accessibility and the provision of legal advice, particularly on: the jurisdictional limits, alternatives to the Administrative and Equal Opportunity Division of NCAT, the case that each party needs to meet and how to gather evidence in the Administrative and Equal Opportunity Division, particularly for individuals with low literacy levels.**

4 **NCAT members in the Administrative and Equal Opportunity Division must ensure that all relevant documentation is produced and shared between the parties, especially in matters where a power imbalance exists between the parties, such as between First Nations people and State Actors.**

5 **Costs should automatically be awarded against State Actors where they fail to act as a model litigant.**

6 **NCAT should ensure that the oral submissions of First Nations people are treated with legitimacy by training its members in cultural awareness and by reforming its rules and procedures in relation to reception and treatment of such evidence.**

7 **NCAT must take positive steps to protect First Nations witnesses from aggressive questioning and bullying during cross examination particularly where a power balance exists and to limit the use of extensive cross examination to matters where it is necessary, even where both parties are represented by lawyers.**

8 **All NCAT Members should complete Cultural Awareness training in order to achieve cultural safety for First Nations Applicants.**

9 **NCAT should review its current cultural awareness and cultural safety training and implement a frequent, long-term, ongoing programme of training that engenders respect for our diverse First Nations cultures, and that develop self-reflexive practices critiquing each member's own culture and standpoint.**

10 **NCAT should recruit more First Nations tribunal members and other employees. NCAT should also develop community partnerships with First Nations communities, such as Elder programmes and with Aboriginal community organisations and legal services.**

11 **NCAT should review its processes and implement processes and policies, including codes of conduct, that are culturally safe.**

12 **NCAT should establish a "Users Group" which includes representatives of some or all of the NSWACT Aboriginal Legal Service, the Aboriginal Tenants Service, Aboriginal Elders and community groups and leaders.**

C BACKGROUND

First Nations communities have experienced exclusion and marginalisation from the legal system like no other group in Australia.[2] After more than 200 years of a colonial history of violence and racism, state institutions have a duty to take steps to identify, ameliorate and eliminate racial discrimination and its effects.

Systemic discrimination, deaths in custody, the imposition of colonial law and the dismantling of First Nations laws have produced a profound distrust in the Australian system.[5] This distrust in the legal system 'affects all aspects of the interaction between Indigenous Australians and access to justice.'[3]

First Nations people have often experienced intergenerational trauma in which legal and administrative systems have failed to protect them. First Nations people are more likely to have personal prior experience of legal and administrative systems working 'against them' instead of 'for them.'[4] This mistrust in the legal institutions such as NCAT is exemplified by a First Nations applicant to NCAT who reported to us that the *"whole system is stacked against us"* and went on to say:

> ***"This whole discrimination system is not built for Aboriginal people…It feels like because I am Aboriginal, I am on trial and because they are professionals the question is why they would lie, so it is almost like saying I am lying.'***

The Children's Court Magistrate Sue Duncombe, who presides over a specialised "Koori" Court has acknowledged this history and observed that "*we have a moral, ethical and legal responsibility to change that record*".

The NSW Koori court has embarked on institutional change and personal change of those working within the courts, changing the way that they think about the legal service delivery and developing insight into the way that First Nations peoples experience court processes and the legal system generally.

The Victorian Civil and Administrative Tribunal (**VCAT**) has also confronted these issues and now aims to address them by implementing a Koori Inclusion Action Plan[5]. Their plan strives to ensure that services and support for First Nations people are culturally safe and culturally responsive.

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[2] Christine Coumarelos et al, 'LAW Survey: Legal needs of Indigenous people in Australia, Updating Justice No 25' (Report No 25, Law and Justice Foundation of New South Wales, 2013) 31; Judicial Commission of New South Wales, *Equality before the Law Bench Book* (Emerald Press Pty Ltd, 2016) 2202 [2.2.2].

[3] Productivity Commission, 'Access to Justice Arrangements Inquiry Report No 72' (Report No 72, 5 September 2014) 763.

[4] Pascoe Pleasance et al, 'Reshaping legal assistance services: Building on the Evidence Base: A discussion paper' (Discussion Paper, Law and Justice Foundation of New South Wales, 2014) 13.

[5] https://www.vcat.vic.gov.au/resources/koori-inclusion-action-plan-2017-18

D CASE STUDY

This submission was instigated by of Aboriginal and Torres Strait Islander peoples ("**First Nations People"**) who complained to the National Justice Project about their experience in the NSW Civil and Administrative ('**NCAT'**). They felt humiliated by the process, demeaned by the power imbalance and were left with the feeling that they had been "re-traumatised".

Their experience offers some insight into how First Nations peoples may experience NCAT processes. The First Nations Applicants' (the "**Applicants**") journey was deeply concerning; it indicates an urgent need for reform of NCAT processes and culture generally. The NCAT's five-year review provides an opportunity to improve the way that First Nations People navigate NCAT and the way that they are treated by NCAT.

The anonymised written statements of the Applicants have formed the basis of this submission. This submission uses their experience to illustrate the how First Nations people feel when they come up against more powerful and better resourced respondents, particularly governments, government departments and semi government authorities (**State Actors**) and large corporations.

Although the objectives of NCAT are to:

- enable the resolution of proceedings justly, quickly, cheaply and with as little formality as possible
- ensure that it is accessible and responsive to the needs of all of its users
- ensure that its decisions are timely, fair, consistent and of a high quality
- ensure that it is accountable and has processes that are open and transparent

This case study shows that NCAT is not achieving its objectives in so far as they relate to First Nations People and is an example of how power imbalances, cultural differences and poor processes combine to prevent access to justice and can result in the re-traumatisation of First Nations applicants within the tribunal setting.

E SUBMISSIONS

(a) Complexity of the tribunal system

A key object of NCAT is to *"ensure that the Tribunal is accountable and has processes that are open and transparent".*[6] This is set out in its constitutive legislation. NCAT recognises that self-represented parties need such support. The Tribunal publishes self-help guides on its website, such as: "Getting Help" and "How we can and cannot assist". Whilst these efforts to promote accessibility of the Tribunal's procedures are positive, they are insufficient.

NCAT processes can be complex and involve formal procedures, such as summonses to obtain documents and formal hearings (including witness examination and cross examination). These processes privilege sophisticated parties with vast resources, but actively deter those who suffer social disadvantage. In many ways, these processes institutionalise discrimination against First Nations people. This is reflected by the following statement from an Applicant:

> ***"The way the NCAT is set up at present it is not a safe place for people who are the targets of discrimination and I truly believe it could be doing harm to those people and stopping other people from coming forward. So, you could say that the NCAT could be adding to discrimination rather than stomping it out."***

In practice, the Tribunal's processes in discrimination proceedings were seen by the Applicants as highly legalised, technical, formalistic and adversarial. The individuals who sought redress through NCAT felt that they were unable to progress their matter without legal assistance. The Applicants statement below reinforces the alienating effect of these processes, especially in regards to First Nations persons:

> ***"All complainants should be afforded legal representation as the whole system is based on legal argument and legal terminology and once again in my case, my legal team had to work around the way I wrote the initial complaint. If they had been able to assist with this initially, my complaint would have been worded the best way to fit the guidelines, so I feel I was even discriminated against in this process."***

Even though tribunal members are required to promote the efficient conduct of proceedings[7], by:

- clearly identifying the issues and orders in dispute;
- facilitating the resolution or narrowing of issues in dispute, where appropriate;
- adjourning proceedings only when necessary in the interests of justice and fairness;
- ensuring that any interlocutory orders and applications do not unnecessarily delay the final determination of proceedings.

The Applicants did not feel supported by that process.

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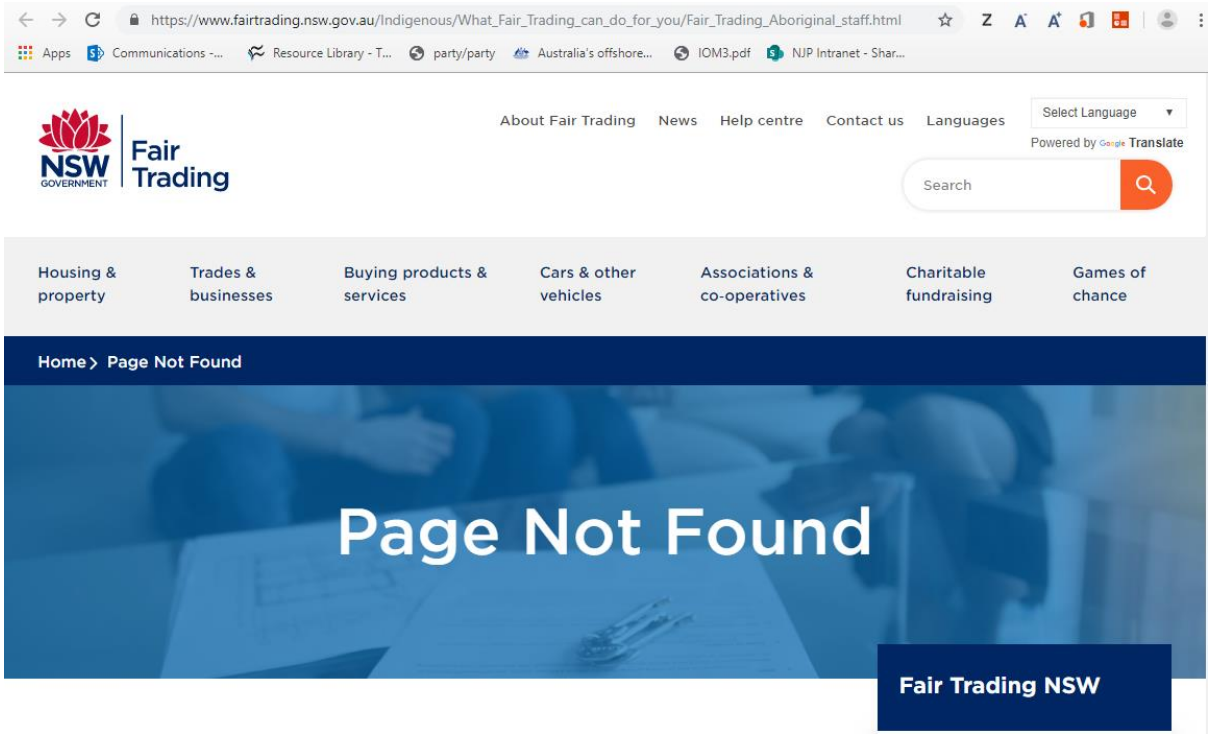
[6] *Civil and Administrative Tribunal Act 2013 No 2*

[7] NSWCAT Member Code of Conduct, at paragraph 20

The Applicants felt that NCAT's Administrative and Equal Opportunity Division did not offer meaningful legal support and that its registrars, employees and members failed to adequately explain tribunal processes to them. Furthermore, at the time of writing these submissions, the authors noticed that the some of the links directing First Nations People towards help from Aboriginal Employees at NCAT were broken and returned the error message "Page Not Found" - see the image below.[8]



The lack of culturally appropriate assistance adversely prejudices First Nations Litigants in particular. As one Applicant commented:

> ***"The NCAT process was never explained to me and no other options like Human rights commission were ever put forward. It wasn't until lawyers took over and explained to me the whole process [that I understood what was happening]."***

NCAT's written resources are inadequate for the needs of many First Nations people and other people who have low literacy. For instance, more than 40% of First Nations people have low literary, with this figure rising to 70% in remote areas. This is further emphasised by one Applicant's statement:

> ***"If we look at the Literacy and Numeracy rates of Aboriginal people, then this process will discriminate against a large number or them if they cannot be part of the review in a verbal setting. Statistically speaking these people come from the most disadvantaged parts of the community and these are the people most likely to be discriminated against."***

[8] https://www.fairtrading.nsw.gov.au/Indigenous/What_Fair_Trading_can_do_for_you/Fair_Trading_Aboriginal_staff.html .

Producing information that is not specifically prepared to assist people with low literacy does not enhance access to justice for them. Alternative means of communicating complex information to people with low literacy have been developed in other dispute resolution forums. NCAT must take steps improve accessibility of its procedures and resources through multimedia platforms, as well as easy English writing packages and assistance lines. Taking these steps will ensure that NCAT realises its key objects in practice and meets the needs of First Nations People.

Recommendations:

1 **The NCAT members code of conduct must be updated to mandate the provision of culturally respectful practices and additional support for unrepresented or First Nations litigants.**

2 **NCAT members should ensure they uphold the member code of conduct.**

3 **The Tribunal should take positive steps to improve accessibility and the provision of legal advice, particularly on: the jurisdictional limits, alternatives to the Administrative and Equal Opportunity Division of NCAT, the case that each party needs to meet and how to gather evidence in the Administrative and Equal Opportunity Division, particularly for individuals with low literacy levels.**

(b) Tolerance of non-disclosure or non-supply of documents

In the case study, the tribunal was seen to tolerate and even excuse the non-disclosure or non-supply of critical documents by the State Actor, without making adverse findings against them. The Applicants noted that the State Actor failed to conduct themselves as a model litigant and that when they secured the assistance of lawyers the State Actor was totally unconcerned about the threat of legal costs for their conduct.

The Applicants felt that the system was unfair to them because their cultural practise were not to use extensive written documentation, and so they were reliant upon the respondents to produce relevant documentary evidence.

One Applicant remarked *"we must prove everything we have said and done, [and we have to] rely on the government and public servants to produce the information".* The respondent, a state actor, controlled the release of documentary evidence which would have confirmed the Applicant's oral evidence. The respondent appeared to do everything within its power to deny the applicants access to critical documents. In some cases, it attempted to deny the relevance of the documents, in other cases it attempted to rely on confidentiality and privilege and finally, it claimed that documents had been lost. The missing documents mysteriously appeared in a later Freedom of Information request. The conduct of the respondent and the tribunal's tolerance of it, created an advantage for the state actor, increasing the power imbalance between the parties and was an added barrier to the First Nations Applicants in obtaining justice.

Recommendation:

4 NCAT members in the Administrative and Equal Opportunity Division must ensure that all relevant documentation is produced and shared between the parties, especially in matters where a power imbalance exists between the parties, such as between First Nations people and state actors.

5 Costs should automatically be awarded against State Actors where they fail to act as a model litigant

(c) Privileging of documentary evidence

NCAT emphasises the importance of written documentation in its hearings, implying that oral sources lack reliability and materiality.[9] NCAT's own website states it

> ***"…decides cases on the evidence presented at the hearing… [litigants] will need to provide the Tribunal and the other party with relevant documents in support of [their] case … [such as] character references, medical reports, contracts, letters, emails, invoices, phone records, minutes of meetings, plans and drawings…."***

NCAT's ostensible preference for written documentation unfairly prejudices First Nations People. Oral communication is the well-established, primary form of communication in Indigenous Australian communities,[10] one that draws upon an extraordinary lineage of knowledge sharing that continues until this day. Conversely, written record keeping is a characteristic of Australia's colonial history.[11] As one Applicant remarked: ***"Aboriginal people do not carry notebooks or diaries around to record information, whereas many defendants are from government and have a whole written system to fall back on."*** As discussed above, this issue was emphasised by the Respondent's failure to provide essential documentarian and NCAT's toleration of this behaviour.

NCAT's stated privileging of documentary evidence over oral testimony does not reflect contemporary attitudes about the reliability and veracity of oral testimony. It ignores the importance of hearing the evidence of vulnerable parties and witnesses who do not keep thorough written records but whose stories are not necessarily untrue. This practice results in First Nations Applicants feeling unheard, invalid or not believed within the tribunal.

Oral evidence can be invaluable in proving truth. This permissibility of oral evidence was emphasised in the case of *Milliripim v Nabalco,* where Blackburn J held:

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[9] Chris Cunneen and Julia Grix, 'The Limitations of Litigation in Stolen Generations Cases' (Research Paper No 15, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2004) 23.

[10] 'Storytelling in Aboriginal and Torres Strait Islander cultures', *Queensland Curriculum & Assessment Authority* (Web Page, 25 July 2018) <https://www.qcaa.qld.edu.au/about/k-12-policies/aboriginal-torres-strait-islander-perspectives/resources/storytelling>.

[11] Cunneen and Grix (n 1) 23.

> ***No difficulty arose in the reception of the oral testimony of the ... [First Nations people] ... as to their religious beliefs, their manner of life, their relationship to other Aboriginals, their clan organization and so forth. … the witness spoke from his own recollection and experience, and secondly, that he did not touch on the question of the clan relationship to particular land ... no question of hearsay is at this stage involved: what is in question is only the personal experience and recollection of individuals.***[12]

In that case, oral evidence was persuasive and illuminated information not contained within documentary evidence. It is paradoxical that the Federal Court of Australia in 1971 had a more progressive stance on documentary evidence than a tribunal that is established to simplify and increase access to justice for legally naïve parties.

NCAT's privileging of documentary evidence over the Applicant's oral evidence, while simultaneously failing to uphold the Respondent's obligation to provide documentary evidence made the Applicant feel discriminated against.

Record-keeping is inherently discretionary unless it is systematised and government staff implicated in poor conduct are unlikely to record incidents of abuse or wrongdoing towards First Nations people.[13] One Applicant expressed the opinion that ***"Sometimes these documents are changed to suit the defendant or in our case lost or not handed over or argued to be irrelevant."*** By requiring evidence be presented in written form, NCAT is, in most cases involving First Nations People, privileging the evidence of the Respondents.

<u>Recommendation:</u>

6 NCAT should ensure that the oral submissions of First Nations people are treated with legitimacy by training its members in cultural awareness and by reforming its rules and procedures in relation to reception and treatment of such evidence.

(d) The adversarial process

One of the most disturbing events which took place during the tribunal process was the cross-examination of a witness that was particularly vulnerable (all parties and the tribunal members knew that this individual had experienced a mental breakdown). The witness was effectively taken apart by an experienced and bullying barrister. There was no need for the hectoring and violence of that barristers' approach. It was as if the Respondents wanted to intentionally re-traumatise the Applicant through the tribunal process. The tribunal members did not appear to be concerned about the cultural safety of the witness or even their emotional safety. We acknowledge that the process must be fair, but the failure to intervent in situations of gratuitous bullying of a witness which was distressing should never have

[12] *Milliripim v Nabalco Pty Ltd* (1971) 17 FLR 141.

[13] Maithri Panagoda, 'Stolen generations litigation in NSW' [2013] (May/June) *Precedent* 34.

happened, particularly in a jurisdiction which is supposed to be informal and responsive to the needs of all of its users.

Although the NCAT Members code of conduct requires members to "control the proceedings in such a way as to create an environment in which participants can and are encouraged to treat other participants courteously and respectfully [and to] be aware of and responsive to cultural and other sensitivities in relation to forms of address, conduct and dress."

That did not occur in the Applicant's case.[14]

Recommendation:

7 NCAT must take positive steps to protect First Nations witnesses from aggressive questioning and bullying during cross examination particularly where a power balance exists and to limit the use of extensive cross examination to matters where it is necessary, even where both parties are represented by lawyers.

(e) Training of Members

First Nations Applicants identified that the gap between the tribunal members' life experiences and the lived experience of First Nations People as a key shortcoming of NCAT.

The lived experience of First Nations People is contextualised within a history of colonisation which has led to disadvantage, racism, a lack of acknowledgement of cultural differences and exclusion. Kado Muir notes that 'legal institutions do not understand Indigenous society … [they do] not understand their relationship with the land, their belief systems, their history'.[15]

This criticism is highlighted by a First Nations Applicant who queried whether the members:

> ***"know what it is like to be discriminated against, do they know people who have been discriminated against."***

Recommendations:

8 All NCAT Members should complete Cultural Awareness training in order to achieve cultural safety for First Nations Applicants.

9 NCAT should review its current cultural awareness and cultural safety training and implement a frequent, long-term, ongoing programme of training that engenders respect for our diverse First Nations cultures, and that develop self-reflexive practices critiquing each member's own culture and standpoint.

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[14] NSWCAT Members Code of Conduct at paragraph 17.

[15] Kado Muir, 'Reconciling through Understanding', Native Title (2015/2016) 19(2) AILR 59 Newsletter (Online), May and June 1999, 3 ff

F WHERE TO FROM HERE

Cultural Safety

In Australia, the concept of cultural safety has been widely accepted, particularly by organisations that represent and/or provide services to Aboriginal and Torres Strait Islander peoples.

An individual experiences cultural safety as an environment: where there is no assault on, challenge to or denial of their identity, their way of being and their needs. Cultural safety is borne of shared respect, shared meaning, shared knowledge and experience, and involves learning, living and working together with dignity, and truly listening.[16] Cultural safety empowers individuals and enables First Nations Peoples to contribute to the achievement of positive outcomes and participate in an alien system. It encompasses a reflection on individual cultural identity and recognition of the impact of personal culture on professional practice.[17]

It is necessary to distinguish the related concepts of cultural safety and cultural competency. Cultural competency is 'a set of congruent behaviours, attitudes, and policies that come together in a system, agency, or amongst professionals and enables that system, agency, or those professionals to work effectively in cross-cultural situations'.[18] Cultural competency has been criticised by Critical Race and Indigenous Scholarship. While well intentioned, it is impossible to truly be competent in another's culture. This belief can engender problematic attitudes. Thus, the goal of NCAT should be the creation of a culturally safe environment, rather than attempting to attain cultural competence.

Cultural safety is vital to effective service delivery to First Nations peoples and is directly related to the level of access to justice afforded to First Nations peoples.[19] Service providers who do not create culturally safe environments are incapable of providing an effective service to First Nations Applicants.[20] A First Nations Applicant queried whether NCAT members had 'cultural competency training to understand the circumstances of Aboriginal people'. In addition, one Applicant remarked:

> ***"Do they know any statistics around education levels, crime rates, incarceration rates, domestic violence and how these statistics are used against Aboriginal people to discriminate and to stereotype and put all Aboriginal people into categories?"***

[16] Robyn Williams, 'Cultural safety — what does it mean for our work practice?' (1999) 23(2) *Australian and New Zealand Journal of Public Health* 213-214.

[17] Maryann Bin-Sallik, 'Cultural Safety: Let's Name It' (2003) 32 *The Australian Journal of Indigenous Education,* 21-28.

[18] Council of Australian Governments, 'Prison to Work Report' (Report, 2016) 23.

[19] National Aboriginal and Torres Strait Islander Legal Services, Submission No 78 to Productivity Commission, *Access to Justice Arrangements,* (8 November 2013).

[20] Ibid.

Currently, NCAT has minimal procedures or guidelines which directly relate to implementing culturally safe processes for First Nations people. The NCAT Annual Report for 2017/18 states that NCAT Registry staff attended a workshop to provide greater understanding of how NCAT can better assist Aboriginal people at the tribunal.[21] The NCAT Accessibility Committee have liaised with the Professional Development Committee of NCAT to encourage education and training on awareness of matters particular to Aboriginal and Torres Strait Islander Communities.[22]

An essential element of creating a culturally safe environment is cultural awareness. For decades, cultural awareness programs have been implemented to improve relationships with First Nation People. Anderson and Wild recommended 'intensive and ongoing cultural awareness training' to 'increase the competence and capability of government employees to know, understand and incorporate Aboriginal cultural values in the design, delivery and evaluation of programs and services that affect their communities'.[23] Community-based programs can provide service providers the opportunity to learn from First Nations peoples.[24]

In the experience of the Applicants, a culturally safe, wraparound model where First Nations community service providers deliver services together with legal practitioners is fundamental to effective service delivery for First Nation applicants.

The VCAT Koori Inclusion Action Plan

The issue of cultural safety has been addressed by the Victorian Civil and Administrative Tribunal (**VCAT**) which aims to become a culturally safe environment and improve communication, engagement and partnerships with the Koori Community by adopting the Koori Inclusion Action Plan. A key action in the Koori Inclusion Action Plan is 'developing and implementing a cultural awareness training program specifically for VCAT members' and 'establishing a pool of culturally competent members who can be directed to hear Koori specific matters.[25]

We support the imposition of ongoing cultural awareness training to improve service delivery in order to create a culturally safe environment. This training should be frequent, long-term, ongoing and engender respect for the diversity of First Nations cultures. It must be undertaken in conjunction with Aboriginal organisations and legal services. Critical to the success of such programmes, is that individuals and organisations are encouraged to develop insight into their own cultural-centric practices and attitudes, in other words, to engender self-reflexive practices critiquing one's own culture and standpoint and be sensitive to others.

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[21] NSW Civil and Administrative Tribunal, *NSW Civil and Administrative Tribunal Annual Report 2017-2018* (Report, 2018) 18-19.

[22] Ibid 90.

[23] Pat Anderson and Rex Wild, *'Ampe akelyernemane meke mekarle: 'little children are sacred' : Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse'* (NTA Government, 2007).

[24]Terri Farrelly and Bronwyn Carlson, 'Towards Cultural Competence in the Justice Sector' (2011) 3 *Indigenous Justice Clearinghouse* 1.

[25]Victoria Civil and Administrative Tribunal, 'Koori Inclusion Action Plan 2017-18' <https://www.vcat.vic.gov.au/resources/koori-inclusion-action-plan-2017-18>

Effective change will only come in partnership with First Nations communities and we recommend implementing mechanisms that enable the involvement of the NSW/ACT Aboriginal Legal Service, the Aboriginal Tenancy Service, Aboriginal Elders and community groups and leaders in governance, processes and decision making.

VCAT's implementation of the Koori Inclusion Action Plan 2017-18 provides a relevant and valuable example of an initiative aimed at encouraging Koori participation in VCAT. This submission notes that VCAT's plan's primary objective is to drive changes to organisational behaviour, based on principles of cultural safety, respect and responsiveness, to ensure that VCAT's processes and practices proactively overcome exclusion through participation. The VCAT Plan includes appointing a new Koori Engagement Project Officer and establishing a recruitment and employment strategy to encourage Koori employment at no less than 2.5% of all VCAT employees.[26]

Those objects should apply equally to NCAT for the benefit of First Nations People of NSW.

Recommendations:

10 NCAT should recruit more First Nations tribunal members and other employees. NCAT should also develop community partnerships with First Nations communities, such as Elder programmes and with Aboriginal community organisations and legal services.

11 NCAT should review its processes and implement processes, including codes of conduct to ensure that they are culturally safe.

12 NCAT should establish a "Users Group" which includes representatives of some or all of the NSWACT Aboriginal Legal Service, The Aboriginal Tenants Service, Aboriginal Elders and community groups and leaders.

[26] Victoria Civil and Administrative Tribunal (n 22).