



Property Council of Australia
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Australia's property industry
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Review of the Civil and Administrative Tribunal Act 2013

The Property Council of Australia welcomes the opportunity to provide input into the statutory review of the Civil and Administrative Tribunal Act 2013 (the Act) which led to the establishment of the NSW Civil and Administrative Tribunal (NCAT) in 2014.

Our members would primarily rely upon NCAT to seek a review of a decision of the NSW Chief Commissioner of State Revenue (CCSR) pursuant to Part 10 Division 2 of the *Taxation Administration Act 1996*.

This submission has been prepared with reference to the factsheet titled "Review of the Civil and Administrative Tribunal Act 2013" downloaded from the Department's website. The factsheet posed a series of questions to guide submissions.

Based on consultation with members of the Property Council's NSW Tax Committee, the following response has been prepared:

<p>Question: Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?</p>	<p>Response: Unless taxpayers obtain specialist advice, it is unlikely that they will know they will know the differences between their options of applying either to the NCAT or, to the Supreme Court for a review of an assessment or other decision of the CCSR the subject of their unsuccessful objection (in whole or in part).</p> <p>It would be helpful if notices from Revenue NSW to taxpayers that disallow an objection (in whole or in part) could, in addition to referring to the right of the taxpayer(s) to apply within 60 days for a review by the NCAT or the NSW</p>
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	<p>Supreme Court, include an attached summary outline of the main differences between the two options, to make it easier for taxpayers to work out whether the NCAT is the right body to resolve their legal dispute.</p>
<p>Question: Is NCAT accessible and responsive to its users needs?</p>	<p>Response: The NCAT website has detailed information about the operation of NCAT. Guidelines and fact sheets about fees, procedures and decisions provide considerable detail for users of NCAT.</p> <p>Although NCAT is based in Sydney it conducts hearings in more than 70 venues across metropolitan and regional areas of NSW.</p> <p>Further rollout of online lodgement beyond that currently available would be welcomed to reduce the need for PDF forms and lodgement of hard copy paperwork including credit card payment forms.</p>
<p>Question: Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?</p>	<p>Response: To assist taxpayers and their advisers, the NCAT could publish on its website, the names of cases that are on appeal from the NCAT to an Appeal Panel of the NCAT, the NSW Supreme Court or the NSW Court of Appeal.</p>
<p>Question: Does NCAT resolve legal disputes quickly, cheaply and fairly?</p>	<p>Response: Not in all cases.</p> <p>In all reported decisions of the Administrative and Equal Opportunity Division (AEOD) of the NCAT and in NCAT Appeal Panel cases, the CCSR has had legal representation.</p> <p>In all cases, the CCSR has been represented by the Crown Solicitors Office and often also by a Barrister and sometimes two Barristers.</p> <p>Taxpayers are sometimes self-represented in the NCAT or, are represented by agents who are not legal practitioners.</p> <p>In cases where taxpayers have legal representation, that representation is usually less than the legal representation of the CCSR which outweighs that of taxpayers.</p> <p>The above has led to the perception of unfairness in the NCAT.</p> <p>Additionally, when taxpayers have employed legal representation for a review by the NCAT</p>

	<p>or, on an appeal to an Appeal Panel, and have been successful on the review or appeal, they have been out of pocket for their legal costs because, notwithstanding that the CCSR has been proven to be in error, that fact has not been interpreted by the NCAT as “special circumstances” for costs.</p> <p>The NCAT would be fairer if the fact of success by a taxpayer against the CCSR on a review by or appeal in the NCAT could be treated as “special circumstances” for costs in the NCAT.</p>
<p>Question: Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?</p>	<p>Response: Only if all parties and the NCAT could so agree.</p>
<p>Question: Does NCAT need additional powers to be able to enforce its decisions?</p>	<p>Response: This does not appear to be necessary in connection with NCAT reviews of decisions of the CCSR in favour of the CCSR are enforced by the CCSR and in decisions in favour of taxpayers are complied with by the CCSR.</p>

Given the very broad scope of administrative matters that NCAT has responsibility over it is important that it operates both efficiently and effectively. Feedback from Property Council members has not identified any major issue with NCAT’s operations.

The recent machinery of government changes put into place after the recent election have strengthened the State Government’s customer first approach, including the appointment of a Minister for Customer Service and the establishment of a Department for Customer Service. This approach should be extended to the way that the NSW Government treats its citizens and taxpayers when seeking an administrative review of Government decisions, including tax assessments issued by Revenue NSW. We would recommend that the views of the new Department of Customer Service be sought as part of the statutory review and any specific recommendations be given careful consideration.

The Property Council of Australia and our members look forward to the release outcomes of the statutory review in due course.

Yours sincerely

