

NCAT: Is It So Super?

It's not a bird and it's not a plane. It's a super tribunal.

On 1 January 2014, the New South Wales Civil and Administrative Tribunal (NCAT) will be established and take over from over 20 existing NSW tribunals. The Consumer Trader & Tenancy Tribunal (CTTT) will be abolished and its work transferred to NCAT. Because it is taking over the work of over 20 existing tribunals, NCAT is sometimes referred to as a super tribunal. So called super tribunals already operate in Victoria, Queensland and Western Australia.

The legislation

The initial legislation setting up NCAT is the Civil and Administrative Tribunal Act 2013 (CATA) which received Royal Assent on 4 March 2013. On 20 November 2013, the NSW Parliament passed two more pieces of legislation concerning NCAT:

- The Civil and Administrative Tribunal Amendment Act 2013 (CATAA) which has commenced operation. CATAA has substantially amended CATA and provided a lot more detail about how NCAT will operate. CATAA inserted in CATA new rules on legal representation, costs, appeals, enforcement and practice and procedure. CATAA also inserted into CATA transitional provisions which deal with how NCAT deals with unfinished cases in the CTTT.
- The Civil and Administrative Legislation (Repeal and Amendment) Act 2013 will, on 1 January 2014, substantially amend other Acts and Regulations such as the Strata Schemes Management Act 1996 and the Strata Schemes Management Regulation 2010. It will also, on 1 January 2014, abolish the CTTT.

NCAT's Consumer and Commercial Division

On 1 January 2014, NCAT's Consumer and Commercial Division will replace the CTTT's Home Building Division and Strata and Community Schemes Division.

New claims and new cases - What does it mean?

A new claim arising on or after 1 January 2014 must be filed in NCAT and new NCAT rules will apply. Some of these include:

- A party will not automatically be entitled to legal representation but must first get the permission of NCAT to be represented by a lawyer. This is a significant change in strata cases where the current law provides that parties in strata disputes may be represented by a lawyer as of right.

- Parties will have to bear their own costs of NCAT proceedings unless there are special circumstances justifying a costs order against a party. This is a significant change for home building cases where the CTTT currently has discretion to award costs against a party in claims over \$30,000 and the CTTT does not require special circumstances before doing so. Usually in the CTTT, the losing party is ordered to pay the winning party's costs (that is costs follow the event).
- However, some specific costs provisions in the Strata Schemes Management Act 1996 are not repealed and will continue to apply in NCAT. For example, in a unit entitlement re-allocation case, like the CTTT, NCAT will have the power to award costs against a developer.
- An appeal from a decision of an NCAT member will be heard by an NCAT Appeal Panel consisting of three NCAT members with a further right of appeal to the Supreme Court. Currently, a party may appeal a CTTT single member's decision to the District Court.
- Like courts, NCAT will be required to conduct its proceedings to facilitate the just, quick and cheap resolution of the real issues in the proceedings.

What about existing cases and claims? The transitional provisions

Detailed transitional provisions will apply so that the current law and procedure applied by the CTTT will apply to unfinished CTTT cases transferred to NCAT. Also, if a party has an existing claim or right to appeal but has not commenced proceedings in the CTTT on that claim or filed an appeal before 1 January 2014, then the law and procedure presently applied by the CTTT will apply in NCAT or in the appeal.

These transitional rules mean:

- If a CTTT member started hearing a case but hasn't finished the hearing before 1 January 2014, the case is transferred to NCAT and the CTTT member continues to hear and determine the case as an NCAT member but applying the pre 1 January 2014 law.
- If a case was started in the CTTT but there has been no hearing by 1 January 2014, it will be transferred to and continue in NCAT but applying the pre 1 January 2014 law.
- If, before 1 January 2014, a person could have filed a claim in the CTTT or appealed from a CTTT decision, then they can file the claim in NCAT or still appeal but the pre 1 January 2014 law still applies.

The pre 1 January 2014 law means for existing cases and claims that:

- In strata cases, a party is entitled to legal representation as of right and does not need NCAT's permission to be represented by a lawyer.
- In home building cases, if the CTTT permitted a party to have legal representation, they can continue to have legal representation in NCAT.
- In home building cases, costs will be at NCAT's discretion without needing to show special circumstances that warrant a costs order.

- Any costs orders or directions made by the CTTT are deemed costs orders and directions of NCAT.
- Appeals go to the District Court.

Key takeaways

- NCAT is established to replace over 20 existing NSW tribunals, including the CTTT.
- Legal representation in NCAT requires permission, a significant change from previous laws.
- Parties must bear their own costs in NCAT proceedings unless special circumstances justify otherwise.
- Transitional provisions ensure that unfinished CTTT cases are handled under existing laws.
- Appeals from NCAT decisions can be made to an NCAT Appeal Panel or the Supreme Court.

Bannermans Lawyers is a NSW strata law firm advising owners corporations, strata managers and lot owners.

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