

Submission to the review of NCAT's role in tenancy disputes

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQA+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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Recommendations

Recommendation 1

NCAT should review the online registry to improve its effectiveness and accessibility, including through expanding the types of documents which can be lodged online and reviewing file upload limits.

Recommendation 2

NCAT Registry offices should provide parties with an information sheet on what to expect from proceedings after the application has been filed.

Recommendation 3

NCAT Registry offices should introduce a process for fast-tracking urgent requests.

Recommendation 4

NCAT Registry offices should ensure that legal representatives directly receive Tribunal correspondence for their client's matter.

Recommendation 5

NCAT should establish a social housing list day with Members who have expertise in hearing social housing matters.

Recommendation 6

NCAT should amend the Consumer and Commercial Division Guideline on Representation to include additional circumstances where Tribunal would waive the need to request leave for legal representation.

Recommendation 7

NCAT should issue a Guideline on how the Tribunal can improve accessibility for parties with culturally and linguistically diverse backgrounds. This should include a presumption of adjournment if an interpreter is requested but not available, guidance on the use of Plain English and allowance for additional time in proceedings.

Recommendation 8

NCAT should deliver training on domestic and family violence to all Members and staff.

Recommendation 9

NCAT should consider introducing family violence support roles.

Recommendation 10

NCAT should issue a procedural direction on use of names and forms of address to avoid misgendering parties.

Recommendation 11

NCAT should deliver gender inclusivity training to all Members.

Recommendation 12

The NSW Government should adequately resource legal services and TAAS to meet the demand for assistance with tenancy disputes.

Recommendation 13

NCAT should annually report on the number of termination applications resulting in a termination order; the number of termination orders made in the absence of the tenant; the representation of parties; and the demographics of NCAT users.

Recommendation 14

NCAT should amend the guideline on Publishing Reasons for Decisions to introduce a presumption on favour of publishing decisions in all residential tenancy matters.

1. Introduction

The Justice and Equity Centre (JEC) provides free legal advice and assistance to people experiencing or at risk of homelessness through the Homeless Persons Legal Service (HPLS). We also work with StreetCare, an advisory group of advocates with lived experiences of homelessness. Our policy and advocacy work aims to address the structural causes of homelessness and is informed by the experiences of HPLS clients and StreetCare members.

We welcome the opportunity to contribute to the review of the role of the NSW Civil and Administrative Tribunal (NCAT) in tenancy disputes. We support the NSW Government's commitment to making the rental system fairer, including by ensuring that tenants have affordable access and quick resolution of their matters in NCAT.

HPLS experience in tenancy disputes

We provide legal support to both social housing tenants and private tenants who are at risk of, or experiencing homelessness. In tenancy disputes, HPLS supports clients who are respondents in proceedings initiated by their landlord. This is often in response to applications for termination or orders for specific performance.

We also assist clients who are living in inadequate, unsafe or sometimes uninhabitable properties due to outstanding repairs issues. These issues can be a particular concern for tenants living in social housing, where maintenance requests can be ignored for months or years. Much of social housing stock is in dire need of repair and maintenance, with a recent report finding that only 60% of NSW public housing meets minimum standards.¹

HPLS clients in NCAT tenancy disputes often experience multiple disadvantages and face significant barriers throughout the NCAT process. For example rental disputes can often occur at a time when the client is experiencing other crises, such as domestic and family violence or other family or mental health issues.

A significant proportion of our clients have mental illness, cognitive impairment or intellectual disability, which can impact on their capacity to engage in Tribunal. For example, they may find it difficult to make necessary arrangements for court dates. Clients may have also difficulties with communication, including reading or writing, and may speak a language other than English.

Many clients also have a history of negative interactions with institutions, including Tribunals. They may lack faith that their rights will be recognised, or that the process or outcome will be fair.

¹ Marnina Lefebvre and Max Douglass, *Security Through Social Housing: The Need for a Generational Investment in NSW's Public Housing System* (Report, March 2024) 16
<<https://cms.vinnies.org.au/media/340p0rx1/mckell-institute-st-vincent-de-paul-society-nsw-security-through-social-housing-2024.pdf?path=340p0rx1%2Fmckell-institute-st-vincent-de-paul-society-nsw-security-through-social-housing-2024.pdf>>.

Tribunal proceedings can be extremely intimidating for clients and can exacerbate housing and financial stress, placing strain on mental and physical health of tenants. As a result, clients may disengage from the Tribunal.

The inherent power imbalance between tenants and landlords means that tenants may already be at a disadvantage in NCAT, particularly as landlords are typically represented by an experienced advocate. Legal assistance can significantly improve the likelihood that vulnerable tenants will achieve a just outcome.

The role of NCAT

It is crucial that NCAT is accessible to our clients to avoid evictions into homelessness. The approach to tenancy disputes in NCAT should be underpinned by the recognition that access to safe and adequate housing is a key determinant of a person's health and wellbeing.² Ensuring just outcomes for tenants is especially vital in the context of a housing crisis, where there is a shortage of social and affordable housing in NSW.³

Our submission makes recommendations to improve NCAT's application processes, case management practices, and hearings procedures. We also provide recommendations on additional areas for improvement relating to resourcing for tenancy supports and publication of data and decisions. These recommendations aim to ensure better support for tenants experiencing disadvantage.

While our submission follows the review's terms of reference, we note that a proper assessment of NCAT's role in tenancy matters must include a review of the legal and regulatory framework.

² Peter Phibbs and Susan Thompson, *The health impacts of housing: toward a policy-relevant research agenda* (AHURI Final Report No. 173, August 2011) 5 <https://www.be.unsw.edu.au/sites/default/files/upload/research/centres/cf/publications/ahuriprojectreports/AHURI_Final_Report_No173.pdf>.

³ NSW Parliamentary Research Service, *Social and affordable housing shortages* (Research Paper No. 2023-05, May 2023) 4 <<https://www.parliament.nsw.gov.au/researchpapers/Documents/Social-and-affordable-housing-shortages.pdf>>.

2. Application processes

2.1 Improving the effectiveness and accessibility of NCAT's online registry

NCAT's online registry has improved processes for tenancy disputes by reducing time and expense of filing applications by post or at the Registry. This supports NCAT's aims to provide a simple, quick and effective process for resolving disputes.

However, we note that the online registry has significant limitations. Some applications cannot be lodged online, such as a set-aside application, and only 5 documents to be uploaded at once with a maximum file size of 5MB. HPLS lawyers have reported that these limits add unnecessary complexity and time to application processes. We recommend that NCAT review the limitations of the online registry to support quicker and simpler processes.

Additionally, NCAT does not have a consistent procedure for lodging documents after the application stage. While some HPLS lawyers have been able to lodge documents such as submissions and evidence via email, others have been instructed by NCAT to lodge documents at the Registry. To standardise this procedure, the online registry should be expanded to allow documents to be lodged online.

Further improvements are also needed to make the online registry more accessible. HPLS lawyers and StreetCare lived experience advocates report that the online registry is not user-friendly and is confusing to navigate. The registry should be reviewed to support greater accessibility and ease of use.

Recommendation 1: NCAT should review the online registry to improve its effectiveness and accessibility, including through expanding the types of documents which can be lodged online and reviewing file upload limits.

2.2 Clarity on Tribunal processes

It is important that NCAT clearly communicates the stages of Tribunal processes to allow parties to effectively prepare for, and participate, in the proceedings. HPLS lawyers have reported that communications from NCAT can be vague and confusing – resulting in a lack of clarity around processes including when parties have to file evidence before a hearing, and whether conciliation and a hearing will occur on the same day.

We suggest that once an application has been filed, parties should be provided with an information sheet with a general timeline of the proceedings, what is expected at each stage and where they can find more information.

Recommendation 2: NCAT Registry offices should provide parties with an information sheet on what to expect from proceedings after the application has been filed.

2.3 Fast tracking urgent requests

All of our clients are at risk of, or experiencing, homelessness and may be prioritising their basic needs, including access to shelter, food and medicine – leaving less time and energy for Tribunal processes. This means that many clients may not request support from HPLS until very close to their hearing date. HPLS lawyers are committed to assisting our clients through their Tribunal proceedings. While we work to support the Tribunal's objective to resolve matters quickly and cheaply, unfortunately urgent and time-sensitive requests to NCAT's office are sometimes unavoidable.

Case study: needing an interpreter at NCAT

Mary* came from a non English speaking background and lived with significant mental health issues, which had previously resulted in her admission as an inpatient to a mental health ward. She did not understand legal concepts without an interpreter and had difficulties communicating when stressed.

Unfortunately, Mary sought assistance from HPLS at a late stage. HPLS assisted her to collate evidence and prepare submissions for her hearing in NCAT. The day before her hearing, HPLS contacted NCAT on Mary's behalf to request an interpreter to be present during the proceedings. The Registry advised the HPLS lawyer to send the request via email that day.

The day after the hearing, HPLS was notified by the Registry at NCAT that the request had only just been received and that an interpreter was not provided for the hearing. The client's matter was heard and finalised without an interpreter.

*Name has been changed to protect privacy.

To fast-track urgent NCAT requests, the Tribunal should consider the approach taken in the District Court of NSW where parties and their representatives can contact the judge's associate to communicate with the judge on short notice. An equivalent system could be established for Tribunal members and assisting staff. Alternatively, NCAT could consider assigning Registry staff to specific matters so these staff members can act as a direct contact point for parties and representatives. We understand that Members may not be assigned to matters until a few days before the matter is heard, so the latter option may be preferable.

Recommendation 3: NCAT Registry offices should introduce a process for fast-tracking urgent requests.

2.4 Sending correspondence to legal representation

It is our experience that HPLS lawyers do not always receive correspondence from the Tribunal about their client's matters, despite being granted leave to represent the client. For example, in a recent matter before NCAT HPLS lawyers were not sent the notice of listing for their client's hearing.

While in some circumstances the lawyer can be provided with this information by the client, it is preferable that the client's legal representative also receives this correspondence directly from NCAT. HPLS clients may not send Tribunal correspondence to their lawyers, or may be delayed

in sending this information. Our clients can periodically lose contact with our lawyers as they may be in a time of significant stress or crisis. They may also be moving between different accommodation and the correspondence may be sent to a previous address. In these circumstances, a lawyer can reduce the burden on clients by keeping across the administrative details of the proceedings.

Recommendation 4: NCAT Registry offices should ensure that legal representatives directly receive Tribunal correspondence for their client's matter.

3. Case management practices

3.1 Social housing list

The value of the Aboriginal Tenancy List

We welcome NCAT's introduction of an Aboriginal Tenancy List. The co-location of support services is an effective way to support tenants through the Tribunal process and ensure that their legal and non-legal needs are addressed in a culturally safe way. The extra time afforded to Tribunal members to deal with matters also ensures that tenants are better able to understand and engage with the proceedings. In doing so, the Aboriginal Tenancy List improves the Tribunal's capacity to deliver just and equitable outcomes.

Implementing a social housing list

Given the significant benefits of the Aboriginal Tenancy List, we recommend that NCAT also introduce a list day for social housing tenants.

Many social housing tenants experience multiple forms of disadvantage, such as domestic and family violence, living with a disability, or mental health issues. The increasingly restrictive eligibility criteria for social housing has also meant that tenants are more likely to have complex needs. Allowing additional time for social housing disputes and ensuring the availability of tenancy and community support services would increase the capacity of tenants to engage in NCAT processes and achieve a fair outcome.

We suggest that matters in a social housing list should be heard by Members who are specially trained to understand how the disadvantages experienced by social housing tenants may impact on their matters. Members should also learn how to ensure a trauma-informed approach so that the Tribunal is responsive to the needs of these tenants. Further, it would be beneficial for Members to have special expertise in tenancy law, as we note that general Members are not required to have legal qualifications.⁴

As discussed in the July NCAT Consultative Forum for Tenancy, Aboriginal and Social Housing, we recognise that creating a list day may require additional NCAT resources and ongoing engagement from external support services which may be underfunded. Even so, we submit that the benefits of establishing a list outweigh the barriers.

Recommendation 5: NCAT should establish a social housing list day with Members who have expertise in hearing social housing matters.

⁴ *Civil and Administrative Tribunal 2013 (NSW) s 13(6).*

3.2 Legal representation in tenancy disputes

Benefits of legal representation for vulnerable clients

Many HPLS clients face significant barriers to participating in tenancy proceedings (as outlined in section 1) which can create challenges in navigating NCAT and advocating for themselves. Legal representation is crucial to helping these clients understand Tribunal processes, gather relevant evidence and effectively present their case.

Legal representation can also be a necessary measure to alleviate the power imbalance between vulnerable tenants and private landlords, government agencies and community housing providers. These parties are typically represented by experienced advocates with a thorough understanding of NCAT and relevant laws. It is appropriate that tenants also have access to qualified and experienced advocates.

Tribunal members providing assistance

We acknowledge that Tribunal members are required to ensure parties understand the nature of proceedings and have a reasonable opportunity to be heard.⁵ We have seen many cases of excellent practice by Members who have spent considerable time and effort explaining proceedings to individuals who are not represented and ensuring that parties are aware of all options available to them. Nonetheless, there are some vulnerable individuals who cannot be assisted in this way and who require legal representation.

Granting leave for legal representation

Current guidelines stipulate that NCAT will grant leave for representation in certain circumstances, including if the Tribunal is of the opinion that the party would be placed at a disadvantage if they were not represented.⁶ While in a majority of matters Tribunal members will grant leave for representation, in some instances Members have been reluctant to do so, despite a strong argument for representation.

Case study: seeking leave for representation

Elena* was a First Nations woman with six children. She was a social housing tenant who engaged HPLS after she was served a termination notice and was experiencing homelessness.

Elena's matter was complex. Due to Homes NSW policy, Elena was at risk of being classed as an 'unsatisfactory former tenant' which would have removed her future access to social housing and resulted in ongoing homelessness. At the hearing, the HPLS lawyer sought leave to appear on Elena's behalf to delay the termination order being made until such time as the HPLS lawyer could negotiate with Homes NSW.

⁵ *Civil and Administrative Tribunal Act 2013 (NSW) s 38(5).*

⁶ NSW Civil and Administrative Tribunal, *Consumer and Commercial Division Guideline: Representation*, August 2019, 3.

The HPLS lawyer travelled to a regional location to seek leave to represent Elena. This was strongly resisted by the Member, who was inclined to terminate Elena's lease on that date. Despite the particular complexities of this case and the grave impact the termination order would have on our client, our lawyer was required to make lengthy submissions on why leave to represent our client ought to be granted.

Eventually, leave was granted for our lawyer to appear in the conciliation and group listing. The Member informed our lawyer that further leave would be needed to represent Elena if the matter was to progress to a hearing.

*Name has been changed to protect privacy.

As the above case study demonstrates, Tribunal Members may be resistant to requests for leave to represent vulnerable clients. While current guidelines allow Members to grant or refuse leave based on the circumstances of the case, this discretionary approach results in uncertainty over whether leave will be granted. HPLS lawyers are obliged to advise clients of the risk that representation may not be granted, which creates significant stress for clients when it is unclear how their matter will proceed on the day.

Tenancy matters often have grave consequences and may result in a tenant being made homeless. This highlights the importance of ensuring that clients who would benefit from representation are able to receive it.

We therefore recommend that representation should be granted without a requirement to seek leave in the following circumstances:

1. If the Tribunal is of the opinion that the tenant has a special vulnerability (e.g. a mental illness or intellectual impairment) that may prevent them from understanding or taking part in the proceedings; or
2. If the party is represented by a Tenants' Advice and Advocacy Service, Legal Aid, a community legal centre, or a lawyer acting pro bono.

While this reform would be best implemented through amending s 45 of the *Civil and Administrative Tribunal Act*,⁷ we note that legal and regulatory changes are out of scope for this review. In the alternative, we recommend that the Guideline on Representation in the Consumer and Commercial Division be amended.

Recommendation 6: NCAT should amend the Consumer and Commercial Division Guideline on Representation to include additional circumstances where Tribunal would waive the need to request leave for legal representation.

⁷ *Civil and Administrative Tribunal Act 2013 (NSW).*

4. Hearings procedures

4.1 Accessibility for Culturally and Linguistically Diverse Tenants

Access to interpreters

As discussed in our case study in section 2.3, we are aware of some cases where Tribunal Members have proceeded to hear matters without an interpreter, despite one being requested.

NCAT must ensure that parties who need an interpreter are provided one. Without an interpreter, these parties will not be fully able to understand, and participate in, the proceedings and this can result in unjust outcomes. This undermines the objectives of NCAT to ensure the Tribunal is fair, accessible and responsive to all users.⁸

We suggest that where an interpreter is requested, proceedings should not continue in the absence of an interpreter unless there are exceptional circumstances. This should be stipulated in an NCAT guideline.

Additional considerations for proceedings

To ensure that Tribunal processes are fair, it is important that Members give consideration to how a party's culturally and linguistically diverse background may influence their experience of NCAT, style of communication or behaviour.

As explained in the NSW Judicial Commission's Equality Before the Law Bench Book, if cultural differences are not effectively considered, people from culturally diverse groups can feel uncomfortable, fearful or overwhelmed.⁹ These parties may also face barriers to understanding the proceedings, getting their point across and being adequately understood¹⁰ even if an interpreter is present. HPLS are aware of tenants from culturally diverse backgrounds who have agreed to consent orders despite not fully understanding what they are agreeing to.

We note that Members are required to be aware of, and address, barriers which can impede parties in presenting their case, including language and cultural background.¹¹ To support this requirement, it would be beneficial for NCAT to allow additional time for proceedings with culturally and linguistically diverse parties. This is in recognition that parties may benefit from further explanations on the process from the Member, or that proceedings may take longer where interpreters are involved.

⁸ *Civil and Administrative Tribunal Act 2013 (NSW) s 3.*

⁹ Judicial Commission of NSW, *Equality before the Law Bench Book* (Revision EQBB 23, October 23) 3.2.3. <<https://www.judcom.nsw.gov.au/publications/benchbks/equality/section03.html#p3.2.3>>

¹⁰ *Ibid.*

¹¹ NSW Civil and Administrative Tribunal, *NCAT Member Code of Conduct*, 9 July 2020, 2.

The Tribunal should also use Plain English language for proceedings with culturally and linguistically diverse parties. This will result in greater understanding of the proceedings, and improved communication and participation by parties.

Recommendation 7: NCAT should issue a Guideline on how the Tribunal can improve accessibility for parties with culturally and linguistically diverse backgrounds. This should include a presumption of adjournment if an interpreter is requested but not available, guidance on the use of Plain English and allowance for additional time in proceedings.

4.2 Improving outcomes for victim-survivors of domestic and family violence in tenancy disputes

HPLS often assists clients who are experiencing domestic and family violence with tenancy disputes in NCAT. Family violence is a key driver of housing instability and homelessness in NSW.¹² NCAT must ensure that proceedings are accessible for victim-survivors and that Members adopt a trauma-informed approach. In doing so, NCAT can improve outcomes for victim-survivors and limit the number of cases where victim-survivors are evicted into homelessness.

We acknowledge the benefits of the NCAT Domestic Violence Protocol¹³ in assisting victim-survivors to have confidence in the Tribunal and be empowered to actively participate in proceedings. However, further improvements to NCAT are needed.

HPLS has seen cases where Members effectively demonstrate their knowledge and understanding of domestic and family violence in tenancy disputes. Even so, we have also had experiences where Members have failed to fully appreciate the complexities of domestic and family violence. In particular, we have observed the need for improved understanding of coercive control and how this may relate to breaches of the tenancy agreement, for example where a client goes into rental arrears due to a perpetrator controlling the client's finances.

We recommend that NCAT provide training to Members and staff on domestic and family violence, including how it presents and its impact on renters and their tenancies.

We also suggest that NCAT consider introducing family violence support roles to improve accessibility for victim-survivors, as used in Victoria's Civil and Administrative Tribunal. These roles support victim-survivors to navigate Tribunal processes by providing non-legal advice and referrals to appropriate community agencies. They also work with victim-survivors to ensure their safety if their matter proceeds to hearing.

Recommendation 8: NCAT should deliver training on domestic and family violence to all Members and staff.

¹² NSW Department of Communities and Justice, *Pathways to Homelessness* (Final Report, December 2021) 84, <file:///Users/adaly/Downloads/pathways-to-homelessness-final-report-december-2021%20(1).pdf>.

¹³ NSW Civil and Administrative Tribunal, *NCAT Domestic Violence Protocol*, May 2019.

Recommendation 9: NCAT should consider introducing family violence support roles.

4.3 Misgendering of parties

HPLS lawyers have reported some cases where Tribunal members, and other parties, have repeatedly misgendered clients by using the wrong pronouns. This is despite frequent reminders by HPLS lawyers during proceedings.

Misgendering can be very distressing for clients as it can prompt feelings of anxiety, depression and alienation – making them reticent to engage in NCAT proceedings. If the Tribunal is to be responsive to the needs of its users, Members must use the correct pronouns and where, necessary, ensure other parties do so as well.

NCAT should issue a procedural direction on the forms of address used by parties. This could be modelled on the Supreme Court Practice Note SC Gen 22 which has been endorsed for use in the NSW Local Court. This Practice Note recognises that forms of address are ‘an important component of the mutual respect to which all parties in judicial proceedings are entitled.’¹⁴ NCAT should also deliver gender inclusivity training to all Members to avoid further misgendering of parties.

Recommendation 10: NCAT should issue a procedural direction on use of names and forms of address to avoid misgendering parties.

Recommendation 11: NCAT should deliver gender inclusivity training to all Members.

¹⁴ Supreme Court of NSW, *Practice Note SC GEN 22: Pronunciation of Names and Forms of Address*, 12 April 2024, 1.

5. Additional areas for improvement

5.1 Adequate resourcing of tenancy and legal services

Legal services including HPLS and Tenants Advice and Advocacy Services (TAAS) play a significant role in providing free advice and assistance to renters in NCAT tenancy disputes. These services are particularly important in assisting vulnerable renters who cannot afford to pay for legal advice and who would likely face significant barriers accessing NCAT.

Tenancy services are struggling to meet the growing demand for advice and assistance. Adequate resourcing of these services will ensure that tenants have affordable access to NCAT, which is identified as a key focus in this review's terms of reference.

Recommendation 12: The NSW Government should adequately resource legal services and TAAS to meet the demand for assistance with tenancy disputes.

5.2 Publication of data

The publication of additional NCAT data would support improved understanding of the effectiveness of NCAT, and any systemic issues requiring reform. It would also allow tenancy and legal services to identify where there may be unmet need for assistance and provide better support to these tenants. The benefits of additional operational data for service delivering planning were recognised in the NSW Government's 2021 Statutory Review Report of the *Civil and Administrative Tribunal Act 2013* ('Statutory Review of the CAT Act').¹⁵

We acknowledge that some data is already available through NCAT Annual Reports and user consultative forum reports. While this data provides helpful information on the volume of matters, it does not provide information about who is using NCAT and how their matters progress through the Tribunal.

We recommend increased collection and publication of data on:

1. The outcomes of tenancy applications compared to the orders sought
2. The number of termination orders made in the absence of the tenant
3. Whether parties are represented (whether by an agent, advocate, legal representative, or other support person); and
4. The demographics of NCAT users.

¹⁵ NSW Department of Communities and Justice, *Report on the Statutory Review of the Civil and Administrative Tribunal Act 2013* (November 2021) 69.

Recommendation 13: NCAT should annually report on the number of termination applications resulting in a termination order; the number of termination orders made in the absence of the tenant; the representation of parties; and the demographics of NCAT users.

5.3 Publication of decisions

The current guideline on Publishing Reasons for Decisions stipulate that the Consumer and Commercial Division does not routinely publish its written reasons for decisions.¹⁶ A selection of decisions will be published based on whether the reasons for a decision could be of assistance to other proceedings, or raise issues of public interest or importance.¹⁷

While we acknowledge the resources involved in publishing decisions, we recommend that NCAT amend this guideline to introduce a presumption in favour of publication in all residential tenancy matters. This aligns with the findings of the *Statutory Review of the CAT Act* which discussed the comparatively low rate of publishing decisions in the Consumer and Commercial Division and suggested that the Tribunal consider opportunities for increasing the publication rate. Increasing the publication of tenancy decisions would allow parties to understand the outcomes which can be achieved and support greater transparency and accountability in line with NCAT's legislative purpose.¹⁸

Recommendation 14: NCAT should amend the guideline on Publishing Reasons for Decisions to introduce a presumption on favour of publishing decisions in all residential tenancy matters.

¹⁶ NSW Civil and Administrative Tribunal, *Publishing Reasons for Decisions*, October 2019, 3.

¹⁷ Ibid.

¹⁸ *Civil and Administrative Tribunal Act 2013 (NSW)* s 3(f).