

This article explains what is NCAT, who are tribunal members, and the role of NCAT's various divisions. Additionally, it addresses the effect of NCAT decisions and orders made as well as the options available if orders are not complied with by the other party.



## **A. WHAT IS NCAT?**

The NSW Civil and Administrative Tribunal (NCAT) is a super tribunal that was established by the *Civil and Administrative Tribunal Act 2013* on 1 January 2014. It aims to act as a specialist tribunal service through merging 22 former tribunals into a single 'one-stop shop'. This super tribunal promotes simplicity and consistency, through allowing individuals to manage and settle their legal affairs without the added complexity of the courts.

## **B. TRIBUNAL MEMBERS**

Proceedings within NCAT are heard and decided upon before a tribunal member. Tribunal members are appointed under the *Civil and Administrative Tribunal Act 2013* by either the Governor or the Attorney General. Tribunal members are similar to judges in that they hear and make decisions on cases through interpreting the law and the evidence presented. As a result of this, tribunal members are specialists in the matters that they hear as they are hired on the basis of their relevant experience and qualifications regarding their specific area.

## **C. DIVISIONS OF NCAT**

NCAT is operated through four separate divisions that each encompass a range of broad and diverse matters. Each division entails its own structure and procedures to reflect the nature of the work carried out in that specific division. The four operational divisions of NCAT are:

- Administrative and Equal Opportunity Division
- Consumer and Commercial Division
- Guardianship Division
- Occupational Division

### **C.1. ADMINISTRATIVE AND EQUAL OPPORTUNITY**

The administrative and equal opportunity division seeks to review administrative decisions made by government agencies, such as decisions on firearm licences and state taxation. Additionally, this division also determines matters concerning anti-discrimination, whereby tribunal members aim to resolve complaints relating to breaches of the *Anti-Discrimination Act 1977*.

### **C.2. CONSUMER AND COMMERCIAL DIVISION**

The consumer and commercial division seeks to deal with matters regarding consumer and commercial disputes between individuals, businesses and/or the NSW government. These matters generally comprise of 'everyday disputes' such as matters relating to tenancy, consumer claims and motor vehicles.

### **C.3. GUARDIANSHIP DIVISION**

The guardianship division seeks to determine applications and make decisions for individuals who are unable to make them on their own. Under the *Guardianship Act 1987*, this division reviews and determines applications on:



1. Guardianship Orders: where a 'guardian' is appointed to make personal and lifestyle decisions on behalf of an individual who is incapable of making them on their own.
2. Financial Management Orders: where a 'financial manager' is appointed to manage the financial affairs of an individual who is incapable of doing so by himself or herself.
3. Consent for Treatment: where consent for medical treatment is given in circumstances where the individual cannot consent for himself or herself, where there is no person responsible that is able to consent for that individual or where the person responsible will not or cannot provide consent to the treatment.
4. Enduring Power of Attorney: where enduring powers of attorney are reviewed to establish if they are invalid. This is done through determining whether an individual was mentally capable and if he/she was competent enough to make one.
5. Enduring Guardianship: where enduring guardianships can be suspended, revoked, confirmed or varied depending on the circumstances.
6. Clinical Trials: where approval to a clinical trial is determined for any individual incapable of providing consent or making decisions regarding his/her treatment.

#### C.4. OCCUPATIONAL DIVISION

The occupational division seeks to review decisions of government agencies regarding licencing of occupations, such as that of taxi drivers, security guards and real estate agents. Additionally, this division is responsible for resolving complaints against the professional conduct and discipline of a range of professions such as lawyers and doctors.

#### D. TRIBUNAL DECISIONS AND ORDERS

The decisions and orders made by NCAT are legally enforceable and binding which means they must be complied with. Decisions are generally made at the end of hearing, however, in some cases, there may be a reserved decision. In this situation, a tribunal member simply needs more time to reach a decision, and thus a decision is given on a later date. In most cases, one of the following three outcomes are ordered:

1. Approval of the full orders that the applicant sought being made;
2. Approval of only some parts of the applicant's application; or
3. Dismissal of application.

#### E. ENFORCING NCAT ORDERS

As mentioned above, decisions and orders made by NCAT are legally binding and enforceable. As a result, enforcement options are available if the other party refuses to abide by the order.

##### E.1. ENFORCING A MONEY ORDER

A money order can be enforced through requesting a 'certified money order' from NCAT. This order is then registered with the Local Court and enforcement action through the Local Court is then taken. This may include a 'writ for the levy of property' where the debtor's property is seized and sold or a garnishee order where money is taken from the debtor's bank account until the debt is met.

##### E.2. WARRANTS FOR POSSESSION

A warrant for possession can be requested if a tenant or resident has not left the premises despite being ordered to do so by NCAT. This warrant authorises an officer to enter the premises and ensure that the tenant or resident leaves.



### E.3. RENEWAL OF PROCEEDINGS

A renewal for proceedings can be applied if a work order is not complied with as ordered by NCAT. This enforcement option is available for all Consumer and Commercial Division matters excluding strata and community schemes matters.

### F. CONCLUSION

In conclusion, NCAT is akin to a court in NSW.

Comasters is able to accept instructions from clients in either **commencing** an application at NCAT or **responding** to an application at NCAT.

Comasters Law Firm can advise and assist clients with matters and applications at NCAT.

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