

Factsheet: Being a Respondent at NCAT

This Factsheet helps you understand what you need to do if you are a respondent in a New South Wales Civil and Administrative Tribunal (**NCAT**) matter, especially:

- The process of resolving an issue through NCAT;
- How to prepare for an NCAT hearing;
- What will happen at an NCAT hearing; and
- What happens when NCAT makes orders.

Part A: What does the NCAT do?

NCAT deals with disputes in a wide variety of areas, including consumer claims, tenancy issues and building works, guardianship, discrimination and can also review NSW government administrative decisions.

NCAT can help you negotiate an agreement with the person you are having the dispute with, or make a legally enforceable decision about your dispute if you are unable to reach an agreement.

NCAT is designed to provide a low cost and accessible system for resolving disputes. Parties are encouraged to run their own cases without representation.

Part B: What types of disputes can NCAT help resolve?

There are four main divisions of NCAT, which each dealing with different types of issues. These are:

1. Administrative and Equal Opportunity Division

This division reviews administrative decisions made by NSW Government agencies, such as access to information held by the NSW Government. This division also resolves complaints referred to it by the NSW Anti-Discrimination Board relating to discrimination, harassment, victimisation and vilification.

2. Consumer and Commercial Division

This division resolves a broad range of disputes including disputes relating to leases, boarding houses, home building, uncollected goods, motor vehicles, dividing fences and the supply of goods and services.

3. Guardianship Division

The Guardianship Division determines applications about adults in NSW, or adults who have property or other financial assets in NSW, who may be incapable of making decisions about their own affairs and need someone to be legally appointed to make those decisions for them.

4. Occupational Division

This division reviews decisions made by government agencies about licensing for people in a range of occupations, including drivers and operators of taxis, buses, hire cars and tow trucks, security guards, builders, real estate agents, travel agents, pawn brokers and second-hand dealers, motor dealers and repairers.

This division also hears complaints about the professional conduct of a number of professions, including legal practitioners, health practitioners and building professionals. It also hears pecuniary interest matters (these include matters about personal financial interests) against councillors and other council employees. Individual consumers with complaints of professional misconduct must raise these with professional associations or certain independent statutory bodies, such as the Office of the Legal Services Commissioner or the Health Care Complaints Commission, rather than NCAT.

If you are a 'respondent' in an NCAT claim it will probably be in the Consumer and Commercial Division, where most claims are brought.

Part C: Fees and Charges

There is no fee for being a respondent in an NCAT matter. However, some services that NCAT provides do have a cost, such as photocopying. A full list of fees is available online at <http://www.ncat.nsw.gov.au/>.

Part D: The process of resolving an issue through NCAT

If you are the 'respondent', it means that someone else who believes they have a dispute with you has applied to NCAT to have that dispute resolved.

You will normally have to self-represent yourself at NCAT. In some cases, NCAT may agree to give leave for someone else (such as a lawyer) to appear on your behalf.

You will receive a notice of listing and a copy of the application form that the person who raised the dispute has lodged with NCAT. You should read the application form carefully as it will tell you what they think the dispute is about and what orders they want NCAT to make. You should also think about whether you agree with any part of the application and whether there are any offers or compromises you are willing to make to resolve the disagreement. You should also think about what evidence you can bring to NCAT to prove your version of events.

Once you have a notice of listing, there are a few different ways to resolve the dispute:

- 1. Settle the dispute yourself*

You can contact the person who has made the application to try and settle the disagreement and avoid having to go to the tribunal. If you manage to settle the dispute, you should ask the applicant to withdraw the application as you cannot withdraw it yourself. Once the applicant withdraws their application, you will either receive a notice from NCAT confirming the application has been withdrawn or you will be invited to a hearing where the withdrawal request will be considered. If you do not receive a notice, you must assume that the original hearing will still be going ahead.

- 2. Preliminary Session/Case Conference*

If the claim is within the Administrative and Equal Opportunity Division, you may have to attend a 'case conference'. A case conference is a preliminary session held at NCAT where a Tribunal Member will talk to you and the other party about the options for resolving your case.

3. Conciliation/Mediation

If you go to the tribunal, you might be asked to try conciliation or mediation to resolve the dispute. Conciliation is an informal, private meeting where you can try and reach an agreement with the person who raised the dispute. A conciliator may be available at NCAT to help you and the other person to come to an agreement. Mediation is a structured negotiation process that involves an impartial third party assisting both sides to try and reach an agreement.

4. Hearing

If you cannot reach an agreement to resolve the dispute, the application will be referred for a hearing where an NCAT Member will make a decision. It is generally in your interest to attend the hearing as this will be your chance to tell your side of the story and ask questions of the other person. See below for more information on what to do at an NCAT hearing.

5. Don't attend the hearing

If you do not settle the dispute and you do not attend the hearing, NCAT will likely hear the matter without you. If this happens, enforceable orders may be made against you. You will still have to comply with these orders, even if you did not attend the hearing.

Part E: How to prepare for a hearing

There are a number of things you should do to prepare for a hearing:

1. Write down your issues and start thinking about the evidence or supporting documents you need to bring to the hearing.
2. Write down a timeline of everything that has happened in relation to your issue.

3. Collect all the documents and other things that you are going to use as evidence of your case. You also might want to organise them in a folder.
4. Practice presenting your case and sticking to the facts.

Part F: What will happen at an NCAT hearing?

NCAT encourages parties to run their own cases without representation. However, hearings are still quite formal, and you should be polite and respectful at all times. The NCAT Member runs the hearing. The Member sits at the front of the room facing the parties, and you and the other party will sit at a table facing the Member. You should address the Member as 'Ms' or 'Mr' and their surname. The Member will ask you questions, and allow both sides to put forward any evidence they might have and ask questions of each other.

Once both parties have given their evidence, the Member will make a decision based on that evidence and the law. Where appropriate, NCAT can then make orders which might require you to pay some money, or, for example, terminate a lease or do something specific like complete some repairs. If you don't understand the orders, you can ask the Member to explain them to you at the hearing.

Orders made by NCAT are legally enforceable and you must comply with any orders made against you.

Part G: What if you don't agree with the outcome?

There may be some circumstances where you have a right to appeal the decision made at the hearing to an Internal Appeal Panel of NCAT. You should always check whether a decision is appealable to the Appeal Panel before deciding whether to appeal and also check the timeframe for lodging the appeal (which can be as short as 14 days from the day you were notified of the decision). Generally, an internal appeal is not a chance to have a second hearing. NCAT encourages parties to obtain legal advice when they are considering whether or not to lodge an appeal.

Part H: More Information

If you would like more information about NCAT, you can contact NCAT on 1300 006 228 between 8.30am and 4:30pm Monday to Friday (except public holidays).

You can also visit the NCAT webpage:
<http://www.ncat.nsw.gov.au/>

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