



Community Housing Industry Association NSW

Submission to Review of the *Civil and Administrative Tribunal Act 2013*

July 2019

 02 9690-2447

 www.communityhousing.org.au

 Suite 5, 619 Elizabeth Street
Redfern NSW 2016

 adminassistant@communityhousing.org.au



Recommendations

The recommendations in this submission are that:

- The NSW Civil and Administrative Tribunal (NCAT) work with stakeholders, including CHIA NSW, to refine the data items in the Quarterly Management Report to allow more detailed analysis of use of the Tribunal
- Data from the Quarterly Management reports be made available on the NCAT website
- NCAT and CHIA NSW develop a direct relationship to identify how community housing providers and NCAT can work more effectively to improve tenant outcomes and improve efficiency of the Tribunal
- More materials are developed to help tenants to determine if their issue is within the Tribunal's jurisdiction and to help them engage in the Tribunal process
- More flexibility is provided to allow tenants and community housing providers to stipulate when they are available to attend hearings
- Alternative technology, such as videoconferencing, is introduced to make hearings more accessible for users
- Guidelines are developed to support Tribunal Members hearing social housing matters to improve the consistency, fairness and timeliness of decision making
- Community housing organisations which are registered charities be charged the Standard Fee
- Some more straightforward matters may be processed by NCAT without a hearing
- Explore reforms which create stronger incentives for landlords and tenants to resolve disputes earlier with minimal involvement of the Tribunal

About the Community Housing Industry Association NSW

The Community Housing Industry Association NSW (CHIA NSW) is the industry peak body for registered community housing providers (CHPs) in NSW. CHIA NSW is also supporting Aboriginal Community Housing Providers (ACHPs) in NSW in a process to establish a representative body.

CHIA NSW's purpose is to support the development of a not-for-profit rental housing industry which makes a difference to the lives of lower income and disadvantaged households in NSW. CHIA NSW seeks to ensure that registered community housing providers are active in all housing markets, providing a full range of housing products.

The community housing industry in NSW is growing and diversifying. It now manages more than 38,000 homes with a further 14,000 homes in various stages of being transferred from public housing management.

Registered community housing providers in NSW manage both social housing and affordable rental housing. They are grounded in their local communities and understand local housing need. Between

2012 and 2020, CHIA NSW estimates that its members will deliver around \$1 billion in investment to create around 2,700 new homes.

About this Submission

CHIA NSW has sought input from its members to inform this submission. The submission is structured to respond to the relevant review questions identified by the Department of Justice.

The submission relates solely to the Consumer and Commercial Division and more specifically social housing matters. Most of the input from CHIA NSW relates to options for improving how NCAT resolves legal disputes quickly, cheaply and fairly.

Commitment to sustaining tenancies

Community housing exists to give people on lower incomes an opportunity to live in a home they can afford. Community housing providers are committed to sustaining tenancies and view eviction as a last resort recognising that households whose community housing tenancy fails may face homelessness. Community housing providers view NCAT as an essential mechanism to resolve disputes and supports reforms which improve how NCAT works to help sustain tenancies.

CHIA NSW supports its members with resources to help them develop policies and improve practices with the aim of sustaining tenancies. Over the last year, as part of an Industry Development Strategy funded by the NSW Department of Family and Community Services, CHIA NSW has developed a series of [toolkits](#) to help community housing providers to create sustainable tenancies for tenants with complex needs; strengthen practice in responding to domestic and family violence; and work with perpetrators of domestic violence.

Background

CHIA NSW welcomes the opportunity to provide input to the review of the *Civil and Administrative Tribunal Act 2013*. Although NCAT has been operating for just five years, its function is important in sustaining community housing tenancies. Improving engagement and working constructively with NCAT to deliver equitable outcomes for tenants is a priority for the community housing industry.

Generally, community housing providers find that NCAT is accessible with tenants, advocates and staff able to understand the process and participate.

By 2020, community housing providers registered under the National Regulatory System for Community Housing will manage more than 35% of the social housing portfolio in NSW, and almost 6.5% of all rental properties in NSW. The regulatory requirements provide assurance to government, tenants, the community, investors and other stakeholders that community housing providers are operating to high standards.

Community housing providers own and manage housing subject to Federal Government, NSW Government and local government legislation, policies and program guidelines. Different forms of housing managed by community housing providers can have different requirements relating to tenancy conditions, tenure length, and eligibility rules. The NCAT plays an important role to support community housing providers to comply with governments' rules for the housing they manage.

NCAT also supports community housing providers to manage their responsibilities under residential tenancy law. How community housing providers involve NCAT to support them to resolve tenancy issues varies across the sector in NSW.

CHIA NSW surveyed its members in early 2019 regarding how they support financial inclusion of tenants, address rent arrears, and their engagement with NCAT. CHPs reported in the survey that the trigger for serving Termination Notices and lodging applications with NCAT varied considerably:

- A little over a third (35%) wait for 3-4 weeks of rent arrears to build up before serving a Termination Notice
- 29% typically service a Termination Notice when 14 days of rent is outstanding
- 24% wait for 4-6 weeks of arrears
- 12% wait for over 6 weeks of arrears.

In interviews with members, some organisations indicated they lodge NCAT applications at an early stage to highlight to the tenant the seriousness of not paying rent on time, as a way of addressing rent arrears quickly, before the tenant faces potentially serious financial stress. For tenants on limited incomes, addressing debt early is essential to ensuring it does not become entrenched.

Opportunities to work with the community housing industry

There is considerable scope for CHIA NSW and NCAT to work together in the future to improve outcomes for providers and tenants and to improve efficiencies for NCAT. A direct relationship between CHIA NSW and NCAT would support issue resolution, improve practice, and promote information exchange. This would also support work with community housing providers and NCAT on data transparency to:

- provide greater clarity on industry norms and performance trends
- encourage better practices across the industry
- allow stakeholders such as tenants and advocates to understand arrears management and other landlord practices

Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?

Community housing providers tell CHIA NSW that in general, tenants are able to identify NCAT as the right body to resolve their legal issues relating to their tenancy. There is a body of information which has been developed by NCAT, the community housing provider, and by other stakeholders in the social housing industry that guides tenants on what the remit of the NCAT is and how it can support them to resolve their issue.

Further plain-English guidance could be useful to help tenants determine if their issue is within the Tribunal's jurisdiction. Materials should also be made available in other languages to better support people from culturally and linguistically diverse backgrounds seeking to resolve tenancy issues. Guidance could include case studies illustrating common scenarios and that fall within the remit of the NCAT and matters which are not within the Tribunal's jurisdiction.

Is NCAT accessible and responsive to its users' needs?

In general, community housing providers report the NCAT is accessible and responsive to its users' needs. However, some community housing providers report that they have experienced cases of hearings being located in significantly different parts of Sydney than the property. This is challenging for tenants with low incomes and places a strain on resources for not-for-profit community housing providers.

Community housing providers are also concerned that they can no longer inform NCAT of hearing dates that are unsuitable. For tenants, this can be an issue because of the challenge of arranging time off work or managing caring responsibilities. This can also be a problem for community housing providers, particularly for smaller organisations with smaller teams.

Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?

Appearing at a hearing can be an intimidating experience for tenants and community housing provider staff. It would be helpful if people appearing in the Tribunal were given a brief step-by-step guide of what to expect and how to participate in the hearing. This could help to ease tenant anxieties and encourage them to attend the hearings and empower them to be a part of the decision making process which directly impacts upon their lives.

We note that both tenants and housing managers need to be present at Tribunal hearings. This can contribute to delays and add expenses for both parties. Perhaps NCAT could consider whether the use of communications technology, such as videoconferencing, would be feasible and appropriate for Tribunal hearings.

Does NCAT resolve legal disputes quickly, cheaply and fairly?

CHIA NSW's members have noted a number of areas in which resolution of legal disputes could be done more quickly, cheaply, and fairly.

Emphasis on dispute resolution: Using NCAT can be a costly and time consuming and CHIA NSW would support reforms which create a stronger emphasis on dispute resolution ahead of the Tribunal's involvement in a matter.

Consistency of decision making: Our members report that they have experienced inconsistency in decision making between different Tribunal Members or by individual Tribunal Members in cases that community housing providers consider to be of the same essential circumstances and evidence.

For community housing providers working to manage homes fairly and with a responsibility to their other tenants (and the broader community) this inconsistency can be a source of frustration. CHIA NSW would be willing to provide specific examples to NCAT on request.

Delays: CHIA NSW notes that members report experiencing delays at NCAT. Matters can be adjourned on multiple occasions, remaining unresolved for many months because the Tribunal does not make a decision.

Delays increase costs for community housing providers and impact disproportionately on the resources required to manage these matters. Delays can also be distressing for tenants and often mean increasing debts with arrears and/or other debts continuing to accumulate with the matter unresolved.

Increased costs: Government regulation means that most registered community housing providers are now corporations. This means that, despite many being registered charities with not-for-profit status, under the NCAT rules they are charged the Corporation Fee, which has doubled over recent years.

In addition, the fees for administration services, such as photocopying of documents are costly. For example, if a community housing providers summonses documents for a formal hearing, they are unable to 'uplift' the documents produced under summons (as community housing provider staff are not legal practitioners) and are required to photocopy documents.

Appeals: The process for an appeal/set aside is lengthy. Community housing providers at times agree to an appeal or to set aside an order to have the issue resolved quickly as possible, avoiding further costs rather than properly resolving the issue.

Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?

Broadly, community housing providers consider that hearings are important in tenancy matters and give tenants an opportunity to access a process which is designed to deliver a fair outcome.

The NCAT could consider if there is some scope for minor matters, such as orders for specific performance, to be decided without a hearing.