The Real Estate Institute of New South Wales Limited

Submission on the role of the NSW Civil and Administrative Tribunal in tenancy disputes

13 November 2024

TO: **Mark Follett**
Executive Director
Policy, Reform and Legislation Branch
Department of Communities and Justice

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1. Introduction

This submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to consultation on the role of the NSW Civil and Administrative Tribunal (**NCAT**) in tenancy disputes.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared in consultation with REINSW's Property Management Chapter Committee who are licensed real estate professionals with experience and expertise in the field of property management. Their extensive knowledge of the industry, and their first-hand experience with NCAT for tenancy matters, allows them to offer valuable insight and feedback into the experience of a party navigating the Tribunal system, aspects of the Tribunal system which are working well in practice as well as opportunities for improvement based on current challenges experienced by parties to proceedings.

2. Impact of the *Residential Tenancies Amendment Act 2024* on NCAT proceedings

On 31 October 2024, the *Residential Tenancies Amendment Act 2024* (**RTA Act**) received assent. The RTA Act makes significant changes to the *Residential Tenancies Act 2010* (NSW) (**RT Act**) including, most notably:

- abolishing no ground terminations for periodic tenancies (section 85 of the RT Act) and removing a landlord's right to end a lease at the end of a fixed term (section 84 of the RT Act) and introducing prescribed grounds for termination instead; and

- making changes to the laws on pets in rental accommodation so that landlords will only be permitted to refuse a pet application made by a tenant on prescribed grounds and will only be allowed to impose "reasonable conditions" when granting consent.

The provisions relating to terminations and changes to the laws on pets will commence by proclamation.

REINSW's view is that these residential tenancy reforms are likely to significantly increase tenancy disputes between landlords and tenants as to the basis on which a termination notice was issued, on whether the landlord's grounds for refusing consent to keep a pet are applicable, and on whether any conditions imposed by the landlord are reasonable. REINSW is concerned that this will increase the number of matters which end up at NCAT, as has been demonstrated in the Victorian Civil and Administrative Tribunal (**VCAT**) system post the introduction of similar tenancy reforms in Victoria.

The impact of similar tenancy reforms on the VCAT system resulted in it implementing a "VCAT Backlog Recovery Program" with a dedicated member and registry resources to

address its growing caseload due to "challenges in the rental market, COVID-19 pandemic and new rental laws".[1]

REINSW's view is that changes arising from the RTA Act will see an increase in NCAT's caseload, deplete its resources and cause unnecessary time and expense to the parties. This will prejudice landlords and tenants alike by increasing hearing wait times, making it harder for parties to resolve a matter in a timely manner. ***REINSW recommends*** NCAT ensures it has adequate resources in the Consumer and Commercial Division ahead of these reforms commencing to ensure that it can keep up with the likely increased caseload.

3. NCAT Portal

REINSW has received feedback from agents about issues they have experienced with the new NCAT online portal. These issues, some of which REINSW raised with NCAT earlier this year and some of which are subsequent feedback from agents, are set out in detail below.

- **Portal not user-friendly**: agents have expressed views that the portal (and lodgement process) remains difficult to navigate, even for experienced practitioners. It lacks the detailed prompts which were present in the previous NCAT portal which helped to guide users through the process.

- **NCAT Orders:** REINSW understands that orders are not available to be downloaded directly from the portal after a hearing and are only sent by email. Furthermore, the orders are only emailed to the main account holder as opposed to the property manager who attended the hearing.

- **Application process:** agents have expressed the following concerns and difficulties when lodging applications through the new portal:

    - The application lodgement process is unclear and hard to navigate. Even experienced property managers (let alone lay persons) are having trouble interpreting the correct section under which to make an application by using the table provided on the portal whereas the previous portal provided clear prompts and guidance.

    - The application is not available to review, or reference, from the portal.

    - The previous application form was more user-friendly. When submitting an application, orders must be entered manually and it is easy to miss an order, enter an incorrect order, or enter an order unable to be made. This is especially difficult for tenants and property managers who do not use the system on a regular basis.

    - REINSW understands that NCAT will not always be able to accommodate parties' availability, given its caseload. However, it is difficult for a property manager to represent the landlord if a hearing or listing falls at a time when they are on leave (which is a statutory entitlement) or are simply unavailable to attend. REINSW understands from agents in practice that, when this occurs,

[1] Victorian Civil and Administrative Tribunal, 'VCAT to clear residential tenancy backlog by end of 2024' (media release: 10 October 2023)

NCAT requires another employee to attend in the property manager's absence. However, this may prejudice the landlord as that employee may not have a detailed knowledge of the matter's history or, in small regional offices, might not be suitably experienced to present a case. ***REINSW recommends*** that there should be more flexibility on seeking an adjournment where a property manager has legitimate grounds for non-attendance (for example, providing a medical certificate or proof of compassionate grounds for leave). ***REINSW also recommends*** that the application form should allow parties to record prior arranged leave commitments so that the NCAT registry can take this into consideration when listing the matter, if appropriate, and having regard to its internal case management procedures.

- The process for withdrawing an NCAT application is not clear. NCAT's website requires a "request to withdraw a Consumer and Commercial Division application" form to be completed and sent to the "NCAT Registry office managing [the] case by email, post or in person".[2] However, REINSW is aware that an agent recently followed these instructions and was subsequently instructed to upload the form to the online portal to withdraw their application. ***REINSW recommends*** clarifying this process on NCAT's website so that there is no confusion.

- There is no effective way to lodge an application if the online portal is not working. REINSW is aware that an agent was recently instructed by a landlord to lodge an application on the last day permitted to do so. NCAT's portal was not operating so the agent attempted to lodge it at a Service NSW location. Service NSW was not able to complete the form as they only had one field available for the landlord and tenant's names. Service NSW asked the agent to seek instructions from NCAT as to how to proceed, but at this point, it was 4:35pm and the NCAT registry had closed for the day. Although the application was eventually lodged, the party names in the application was incorrect which then needed to be explained to the Tribunal member. ***REINSW recommends*** that NCAT liaise with Service NSW to update their online application form to allow multiple parties to be listed so that there is an alternative means of correctly lodging an application if the NCAT online portal is not operational.

- **Delays associated with the portal**: agents have reported the following delays associated with the new portal:

  - It can take overnight for a new user's registration to be set up (i.e. for their login information to come through attached to the agency), although the agent providing this feedback noted this occurred when the new portal first opened for use, and so the time for registration may have improved since then.

  - Agents have provided feedback to REINSW about delays in obtaining a copy of urgent orders. One agent reported that it took 12 days to obtain the order for immediate vacant possession. When they called NCAT's helpline, the new portal was cited as the issue. Another agent provided feedback that NCAT made an order to pay and an effective immediate termination order. However,

[2] NSW Civil and Administrative Tribunal 'Withdraw your application' *NCAT* (web page, 1 August 2024) https://ncat.nsw.gov.au/how-ncat-works/how-to-apply/withdraw-your-application.html

the orders were not emailed to the agent until the next day and, when they were, the order for vacant possession was missing.

- For applications made last year, it took 2-3 weeks for hearing notices to come through. This year, provided the application was not rejected, applications have come through the same day.

- An agent reported that when they lodged an application for termination due to non-payment of rent, the address in NCAT changed to the lot number rather than the street number. As a result, the hearing was adjourned for 4 weeks to allow the address to be updated.

- **Supporting documents**: agents have reported the following concerns about the lodgement of supporting documents:

  - There appears to be inconsistent approaches to providing supporting documents and evidence. Depending on the hearing forum, and the Tribunal member, sometimes a physical copy of this documentation is required whereas other Tribunal members are happy to refer to supporting documents which has been lodged electronically. This inconsistent approach to evidence complicates the hearing preparation process.

  - The number of supporting documents which can be uploaded to the portal are limited to 5, which, for anything but the most straightforward matters, is simply insufficient. ***REINSW recommends*** that NCAT either allow more supporting documents to be filed or clarify the nature and scope of supporting documents to be provided at this stage of proceedings. For example, does NCAT require full hearing documents to be uploaded (which are time consuming to prepare and may not be required if an agreement is subsequently reached with the tenant) or is only basic information (such as a termination or lease) required when the application is lodged? More information about the purpose of the supporting document would be helpful for parties so that they can meet NCAT's expectations and expedite proceedings going forward.

  - The file size for the ingoing and outgoing inspection reports are too large to be loaded into the portal during the application lodgement process.

  - There have been difficulties uploading supporting documents as a PDF, even though this is the only file type supported during the online application lodgement process. For example, one agent uploaded the supporting documents as a PDF, and the website showed the application as having been lodged. The agent was not notified that the application had not been correctly uploaded due to an issue with the supporting document's file. It was only when the agent had not received a hearing notice that they re-checked the portal and saw that the application had been rejected. Upon liaising with NCAT e-services, it appeared the application had been rejected because there had been an issue opening the PDF supporting documents uploaded as part of the application.

REINSW recommends NCAT considers how it can rectify these portal issues to ensure that the portal provides a good user experience for all parties and, where relevant, provide clear instructions to parties (for example, how to withdraw an application, what steps to take if the portal is down, what kinds of supporting documents are required etc?).

4. Hearing venues and virtual attendance policy

REINSW is concerned about the impact that NCAT venue closures and a recent sheriff strike has had on tenancy matters, especially for parties in regional New South Wales. These venue closures and strikes have resulted in tenancy matters being transferred to alternative hearing locations, which require parties to a tenancy dispute to travel extensive distances (sometimes upwards of 150km) to attend a listing or hearing.

Under normal circumstances, REINSW supports in-person hearings because having the parties in one room can facilitate the resolution of proceedings by adding a "human element". However, REINSW's view is that there is a time and a place for attendance via video conference or telephone. For parties in regional areas, for instance, the distance can present significant challenges. REINSW has raised these challenges in previous correspondence with NCAT on this issue but, in summary, it can:

- Impact the safety of tenants and agents as it requires them to drive long distances on busy highways to attend hearings or listings. For property managers, the company cars provided for their role are small models intended for covering small distances between property listings, not 200km on country roads.
- Impacts tenants' access to justice as, in many cases, there are no public transport options available to reach a hearing venue and some tenants may not own a car.
- Affects agents' workload as it takes significant time out of their day to drive to attend a short listing, hearing or adjourned hearing.
- Affects real estate agencies' resourcing and staffing arrangements because there are fewer people in the office.
- Increases company car maintenance and petrol costs.
- Increases landlord's costs because, on top of other hearing costs, agents will need to charge travel time as part of their fees. As a result, unless a claim is more than $1,000, it is often not worth a landlord pursuing it once the agent's representation costs and other hearing costs are considered.

REINSW also refers NCAT to **Annexure A** to this submission which summarises the impact that these venue transfers have had on agents. This summary was provided to NCAT last year when REINSW first raised these concerns, and their impact on parties to tenancy disputes is still ongoing and relevant.

REINSW understands that, currently, parties may only attend a hearing virtually for travel which is more than 200km or 2 hours or longer. REINSW's view is that any party required to drive more than one hour should be permitted to attend virtually due to time, resourcing and road safety reasons. Furthermore, this approach to virtual hearings seems to be applied inconsistently in practice with some agents reporting that they are automatically granted virtual hearings, while others have not been permitted to attend via videoconference.

There also seems to be an inconsistent application between parties to a matter. REINSW is aware of a recent matter where a video link was provided to the parties. The agent attended via that link and the tenant did not attend the hearing at all. The Tribunal Member informed the agent that the audiovisual link was only for the tenant (despite there being no mention of this when the link was provided to the parties) and required the agent to immediately drive to the hearing forum before the Tribunal Member would hear the matter.

REINSW recommends that parties should be able to attend a hearing virtually if the hearing venue is not easily accessible to attend in person, and that NCAT should update its policy so that Members must grant permission for parties to attend virtually if they are located more than one hour's drive from the hearing forum or have an alternative good reason.

5. Other operational procedure issues

REINSW provided detailed feedback about operational procedures in its submission in response to issues arising from NCAT hearings and the federal jurisdiction issue, dated 14 March 2022 which is enclosed as **Annexure B** to this submission (**Hearing Feedback Submission**). REINSW's view is that many of the matters raised in that submission are ongoing and are still relevant to the scope of this review.

While REINSW refers NCAT to that submission for an in-depth explanation of those issues, some of the main issues raised are as follows.

- **Federal Jurisdiction Issue**: this has been a long-standing issue arising from the decision of the High Court in *Burns v Gaynor* [2018] HCA 15, the effect of which means that parties to property-related matters who reside interstate cannot have their matter determined by NCAT but must apply to the Local or District Court instead. The Federal Jurisdiction Issue means that property-related proceedings involving interstate parties are:
    - Time consuming - they must progress through the regular court system over NCAT, the latter of which is intended to be a "simple, quick and effective process for resolving disputes and resolving administrative actions".
    - Expensive - they may require legal advice and representation and parties may incur other significant ancillary losses – for example, loss of a first home owners buyer's grant because of delays in hearing the matter in a timely manner.
    - Confusing - some property-related matters must still file an application in NCAT, obtain a letter referring them to the Local or District Court and then seek leave of that court to commence proceedings. Agents have also reported to REINSW that some Judges or Magistrates seemed uncertain whether they have the power to hear proceedings or make the orders sought.
    - Inefficient from a resourcing perspective - such matters also take up the Court's valuable time and resources for relatively straightforward matters which could otherwise be determined by a Tribunal.

The delays and difficulties associated with the Federal Jurisdiction Issue sometimes prevent landlords from bringing genuine cases altogether. REINSW believes the same would be true for tenants. REINSW is aware of a recent media story where a tenant had a matter for ongoing, unresolved mould issues dismissed because the landlord lived interstate. As described in more detail below, it also impacts third parties such as purchasers.

The Federal Jurisdiction Issue appears to be of particular concern for communities on the boarder of different States and Territories where tenants need only travel short distances to classify as "interstate", thus requiring a landlord to pursue the matter through the regular court system, if at all.

REINSW has previously addressed this issue in several submissions to NCAT and has also liaised with the Attorney General of New South Wales to try to resolve this matter due to the impact that it has on property-related matters and affected consumers.

REINSW recently received a letter from the Attorney General indicating that it did not share the same concerns as REINSW in relation to the Federal Jurisdiction Issue because Part 3A of the *Civil and Administrative Tribunal Act 2013* (NSW) (**NCAT Act**) ensures that a party does not need to pay additional filing fees unless the nature of their claim varies substantially and allows the Court to grant leave for a party to be represented by a person who is not an Australian Legal Practitioner. REINSW's view is that higher application fees, and legal representation costs, are factors but do not reflect the extent of this issue and its implications for the parties. In REINSW's Hearing Feedback Submission, it provided a case study where a tenanted property was sold, and settlement was delayed due to the tenant failing to give vacant possession. In these circumstances, the cost was not higher application fees or representation costs, but the purchaser's loss of their first Home Buyers Grant because they were unable to obtain a hearing before it expired due to delays caused by the Federal Jurisdiction Issue. The purchaser was significantly and negatively impacted by the Federal Jurisdiction Issue, despite REINSW trying to prevent these situations from occurring with its lobbying to have the issue resolved.

REINSW has proposed a number of potential solutions to the Federal Jurisdiction Issue, such as inserting a provision into the NCAT Act to make the Tribunal a court of record, similar to section 164(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (QLD), which was upheld in *Owen v Menzies* [2012] QCA 170. It also suggested allowing an agent residing in NSW to make an application on behalf of the interstate landlord akin to section 190(3) of the *Residential Tenancies Act 2010* (NSW) which permits an agent to apply to NCAT on the landlord's behalf.

However, if these suggestions are not suitable for NCAT, REINSW would be happy to work with NCAT and the Attorney General to devise a viable solution. Irrespective of how, ***REINSW recommends*** that a solution needs to be reached to streamline the administration of justice for matters involving interstate parties.

- **Notification of hearings and hearing dates**: in REINSW's Hearing Feedback Submission it raised issues of agents, on behalf of respondent landlords, not receiving adequate service of an application or hearing date often due to incorrect details being entered on the initiating application.

  In a response to REINSW's Hearing Feedback Submission, NCAT outlined its processes regarding service as well as how a Tribunal Member determines whether

a party has been appropriately serviced before hearing a matter *ex parte*. However, REINSW has received feedback from agents that this is a common, ongoing issue of concern – especially if incorrect details are entered from the outset.

For example, REINSW is aware of a matter where a tenant to a bond dispute entered an incorrect email and postal address as well as incorrect respondent details so the agent was unable to access the hearing link in the online portal. The agent made a request to update these details at the first conciliation, but they were not updated, and the formal hearing notice was also sent to the incorrect address. REINSW is concerned that without adequate notice of service, it can result in matters being resolved in favour of the applicant at the first hearing date if the respondent has not appeared. ***REINSW reiterates recommendations*** made in that submission that, where a respondent does not appear, the applicant should be required to show proof of having notified the respondent by email and proof of the respondent's email address, or consider other alternative ways to address this issue, so that the respondent has the opportunity to answer the case against them.

- **Delays arising from conciliation and hearing practices**: In REINSW's Hearing Feedback Submission it provided an example of a matter involving rent arrears where there was a 4-month delay between the date of the application and the matter's hearing. REINSW's view was that this delay financially prejudiced the landlord who did not receive rent for the duration of this period. Additionally, REINSW raised conflict of interest concerns because, in that matter, the conciliator was the same NCAT member who heard the final hearing despite conciliation being confidential.

  Although NCAT addressed such matters in its response to REINSW's Hearing Feedback Submission, REINSW understands that hearing delays are of ongoing concern, with agents recently providing two examples of where it took approximately 3 months between the lodgement of the application and the hearing. REINSW understands that another matter had taken 6 weeks to obtain a hearing, when usually this timeframe would be 2-3 weeks, and that this had significantly disadvantaged the landlord. ***REINSW reiterates recommendations*** made in its Hearing Feedback Submission that NCAT consider ways to reduce delays in the hearing of a matter.

6. Summary

In summary, REINSW:

- recommends NCAT ensure it has adequate resources in the Consumer and Commercial Division ahead of the RTA Act reforms relating to termination and pets commencing to ensure it can keep up with the likely increased caseload;

- recommends there should be more flexibility on seeking an adjournment for tenancy matters where a property manager has legitimate grounds for non-attendance (for example, providing a medical certificate or proof of compassionate grounds for leave). REINSW also recommends that the application form should allow parties to record prior arranged leave commitments so that the NCAT registry can take this into consideration when listing the matter, if appropriate, and having regard to its internal case management procedures;

- recommends clarifying the process for withdrawing an application on NCAT's website so that there is no confusion;

- recommends that NCAT liaise with Service NSW to update their online application form to allow multiple parties to be listed so that there is an alternative means of correctly lodging an application if the NCAT online portal is not operational;

- recommends that NCAT either allow more supporting documents to be filed or clarify the nature and scope of supporting documents to be provided at this stage of proceedings. For example, does NCAT require full hearing documents to be uploaded (which are time consuming to prepare and may not be required if an agreement is subsequently reached with the tenant) or is only basic information (such as a termination or lease) required when the application is lodged? More information about the purpose of the supporting document would be helpful for parties so that they can meet NCAT's expectations and expedite proceedings going forward;

- recommends NCAT consider how they can rectify the NCAT portal issues raised above in paragraph 3 to this submission to ensure that the portal provides a good user experience for all parties and, where relevant, provide clear instructions to parties (for example, how to withdraw an application, what steps to take if the portal is down, what kinds of supporting documents are required etc);

- recommends that parties should be able to attend a hearing virtually if the hearing venue is not easily accessible to attend in person, and that NCAT should update its policy so that Members must grant permission for parties to attend virtually if they are located more than one hour's drive from the hearing forum or have an alternative good reason;

- recommends that a solution to the Federal Jurisdiction Issue needs to be reached to streamline the administration of justice for matters involving interstate parties;

- reiterates recommendations made in its Hearing Feedback Submission that, where a respondent does not appear, the applicant should be required to show proof of having notified the respondent by email and proof of the respondent's email address, or consider other alternative ways to address issues related to service (especially service issues arising due to incorrect details being entered on the application), so that the respondent has the opportunity to answer the case against them; and

- recommendations made in its Hearing Feedback Submission that NCAT consider ways to reduce delays in the hearing of a matter.

7. Conclusion

REINSW has considered the role of NCAT in tenancy disputes and has provided its comments above, aiming to provide input on as many pertinent aspects of this role as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer

Annexure A

The following pages include examples of technical difficulties and extended travel times for NCAT hearings that agents have experienced in tenancy matters.

Examples of Technical Difficulties and Travel Times for NCAT Hearings

Hearing Forum	Issue Summary
Virtual Hearing	An agent informed REINSW that they attended a virtual hearing but could not hear NCAT, though they could hear and see other parties. After waiting 20 minutes for their matter, the agent called NCAT and were told that the Tribunal had ruled in favour of the tenant. Even though NCAT could see they had logged on, they were found not to have attended because they didn't respond due to technological difficulties.
Lithgow Agent required to attend Penrith	[redacted] is an agent in Lithgow and is happy for NCAT to contact [redacted] about this issue. [redacted] informed REINSW that [redacted] needs to travel to Penrith for NCAT hearings which is an hour and a half drive each way. [redacted] explained that the CTTT had heard hearings in Lithgow. Subsequently matters were heard at Katoomba or Bathurst which, while a 40 minute drive each way, was closer than Penrith. [redacted] indicated that unless a full hearing was required, it would make a real difference to agents in regional areas if they could appear by video link for interim hearings if they live more than an hour away. Currently, [redacted] has been informed by NCAT that [redacted] would only be considered for a video hearing if [redacted] lived more than two hours from the venue. [redacted] informed REINSW that this travel time impacts landlords too as agents have to charge for the travel time. When travel time is considered, in addition to other associated hearing costs, it can often cost a landlord $600 to $800 to pursue a matter. It might not be worth bringing a claim unless it is greater than $1000 even though NCAT's objective is to be a low cost, timely, adjudicator of property related disputes.
Albury Agent required to attend Wagga Wagga	An agent from Albury shared the following experience regarding an NCAT hearing in Wagga Wagga: • The agent was required to attend a 3:15pm hearing in Wagga Wagga, 130km away. • The agent left around 12:30pm, encountered roadworks, but arrived on time. • Four other parties attended the 3:15pm listing; three from Wagga Wagga and one from Tumut (107km away). • The tribunal member heard the Tumut matter first as both parties were in attendance, then an AVL matter with parties attending from Albury and was going to hear a local matter but the agent requested to be heard first as they had a 2 hour return drive to Albury. • The tribunal member told the agent they could apply for leave to attend by AVL and the agent said they had previously done so but their application had been refused. • The hearing lasted for five minute and the respondent did not attend in person or via AVL. • The agent drove back to Albury, arriving at 5:35pm and had to deliver a letter to the tenant to the tenant advising of the hearing's decision by 6pm. • The agent applied for leave to appear by AVL for a subsequent April hearing but was refused because:

	The Tribunal President's direction in respect of virtual hearings have been updated. Parties are required to attend hearings unless they have travelling time of 2 hours or longer or 200 km or more. From the parties' location to the hearing venue in Wagga Wagga does not meet the criteria. • The week of the April hearing two staff members were ill, leaving only two staff members in the office. • The agent's experience was that usually, if the respondent didn't attend the first hearing, the matter would be adjourned so the agent would have to make a second trip to Wagga Wagga. • The agent wasn't opposed to face-to-face hearings as these had worked well when they could attend the courtroom in Albury. They were only opposed to the significant travel required to attend. • The agent was under the impression that the Albury courtroom remained open but that there was no tribunal member for Albury whereas there were three tribunal members in Wagga Wagga. • The agent expressed a view that it would be preferrable for one tribunal member to attend Albury once a week rather than requiring tenants, 20 real estate agencies and other services such as the Department of Housing, Homes Out West and similar organisations to drive to Wagga Wagga to attend hearings. • The agent expressed concerns that it was difficult for tenants to attend hearings and concerns about travel time, road closures due to flooding and the cost of fuel. On one occasion the agent was held up for 45 minutes due to a road accident.
Albury to Wagga, Parkes to Orange or Dubbo, Yass to Queanbeyan	Agents REINSW's Compass Chapter Committee provided examples of agents being required to travel to attend hearings from Albury to Wagga, Yass to Queanbeyan and Parkes to Orange or Dubbo (a distance of up to 150km).
Agent in Yass required to attend hearings in Queanbeyan	An agent informed REINSW that agents previously attended hearings at Yass Courthouse but now had to travel to Queanbeyan courthouse which is 1.15 hour away with no public transport from Yass. NCAT did not permit cases to be transferred to Goulburn which was only a 50 minute drive. This agent said that while telephone hearings were still common it could lead to "lengthy delays and often poorer outcomes" due to technology issues and lack of a "human element".
Agent in Port Macquarie required to attend hearings in Taree	An agent informed REINSW that NCAT hearings are not being heard in Port Macquarie, rather in Taree, 85km away. This agency raised the following issues: • tenants are also impacted by venue closures; • there is a risk to agents driving this distance, on a highway, in a small company car; • the cost of petrol and vehicle maintenance is high; • it places strain on an agency's staffing when staff members are out of the office for three plus hours (2 hours of travel plus hearing time) for an for an initial hearing which may proceed to formal hearing; • NCAT has refused applications for leave to appear by telephone when staff members had legitimate reasons (for example, a child with a disability) and instead they required another staff member to appear in their place. However, the other staff member wasn't part of the tenancy so doesn't have the relevant background knowledge.

North Coast / Newcastle to Central Coast and Parramatta to Penrith	REINSW has received feedback from calls received on its Helpline that some agents from the North Coast or Newcastle have had to travel to the Central Coast for hearings and some hearings usually heard at Parramatta have been heard in Penrith instead. This has started to become more of an issue since the return to face to face hearings.
Dubbo	Hearing venues are being allocated all over the state.

Annexure B

The following pages include REINSW's submission in response to issues arising from NCAT hearings and jurisdiction issue dated 14 March 2022.

Civil and Administrative Tribunal Act 2013 (NSW)

The Real Estate Institute of New South Wales Limited

Submission in response to issues arising from NCAT hearings and jurisdiction issue

14 March 2022

TO: ***The Hon. Mark Speakman, SC MP, Attorney General of NSW***
The Hon Justice Lee Armstrong, President of NCAT
Mark Harrowell, Deputy President and Division Head of NCAT's Consumer and Commercial Division
Cathy Szczygielski, Executive Director and Principal Registrar of NCAT
Pauline Green, Director and Registrar for NCAT's Consumer and Commercial Division
Kajhal McIntyre, Senior Policy Officer for Courts, Access to Justice & Regulatory for the Department of Communities and Justice

[redacted]

1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) on its own initiative to raise awareness to several matters which have been areas of concern for members of REINSW.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This Submission has been based on actual examples of issues which affect members of REINSW in the course of their day-to-day practice as property professionals, and, although the Department of Communities and Justice **(Department)** and the Attorney General of NSW **(Attorney General)** have not invited public comment on these issues, REINSW feels that it is imperative to bring the following matters to the Department and Attorney General's attention:

(a) the ability for the New South Wales Civil and Administrative Tribunal **(NCAT)** to exercise federal jurisdiction, which is a matter that REINSW has raised with the Department several times in the past, but which continues to be a significant issue in the timely and cost-effective resolution of property disputes where one or more parties reside interstate;

(b) the technological difficulties arising from the rise in videoconference and telephone hearings as a result of the COVID-19 pandemic, which have caused significant delays and expense to parties and, in some cases, have even affected the procedural fairness of a hearing;

(c) a request to make the link to NCAT's electronic portal for the filing of evidence online widely available to expedite the preparation of matters for hearing;

(d) seeking clarification from the Department regarding the application of section 107 of the *Residential Tenancies Act 2010* (NSW) **(RT Act)** so that REINSW can update members accordingly; and

(e) concerns about delays arising from conciliation practices prior to hearing.

REINSW hopes that the Department and Attorney General will consider REINSW's comments and recommendations in this Submission, and take steps to apply and implement them for the betterment of the property industry.

2. Federal Jurisdiction Issue

On 10 July 2019, REINSW provided, by way of a submission, feedback to NCAT in relation to the statutory review of the *Civil and Administrative Tribunal Act 2013* (NSW) **(Statutory Review Submission).** One of the matters raised in REINSW's submission was the federal jurisdiction issue; an issue which REINSW has long been lobbying for, given the confusion and potentially serious ramifications it has had on the speedy resolution of property-related

disputes. REINSW has lobbied for this issue in previous submissions too and took the initiative to proactively include this issue in its Statutory Review Submission, even though the Discussion Paper didn't include the topic, because it continues to have serious consequences for consumers by remaining unaddressed.

The background to this issue is explained at length at paragraph 2.1 of the Statutory Review Submission, which we **enclose** as annexure A. However, briefly, this issue arises out of the findings of the High Court decision of *Burns v Gaynor* [2018] HCA 15 which found that NCAT could not exercise federal diversity jurisdiction under sections 75 and 76 of the Constitution and, therefore, has no jurisdiction in relation to matters of Commonwealth and Commonwealth laws. Since NCAT is a Tribunal, as opposed to a "court of the state" it does not have original jurisdiction under section 39(2) of the *Judiciary Act 1903* (Cth), in matters which the High Court has original jurisdiction, and so cannot determine matters where a party resides in a different State pursuant to section 75(iv) of the Constitution.

The implications which flow from this decision are significant for property-related matters as it means that parties who reside interstate must instead apply to the Local or District Court of NSW, rather than NCAT. Given that one of the major reasons for establishing NCAT was to provide an expeditious and cost-effective means for parties to resolve property-related disputes (and not to deplete the resources of the Local and District Courts of NSW with simple matters which could be dealt with by a Tribunal such as NCAT). However, it is not just a simple matter of applying to a Court over NCAT, rather these matters are often complex and there is a general lack of clarity around processes to be followed where one of the parties resides interstate.

The following recent example, that was brought to REINSW's attention by one of its members, highlights the complexities, and time-consuming and costly nature of this issue on parties to proceedings:

- A tenanted property was sold in NSW by a vendor who lived in Queensland.
- The tenant failed to vacate the property on 5 December 2021, the date of the termination notice.
- Completion for the sale of the property was extended so that the matter could go to NCAT because, even knowing there was a jurisdiction issue, the parties required a letter referring them to the Local Court.
- The letter from NCAT allowing the parties to apply to the Local Court was obtained on 10 January 2022.
- However, the purchaser had to settle by 24 January 2022 because they had a first Home Buyers Grant which expired on this date and would otherwise forego the grant.
- A Court hearing could not be obtained prior to 24 January 2022, nor vacant possession.

This is but one example of the ramifications of the jurisdictional issue. There are many more. REINSW's view is that the Government needs to take action on this issue as an utmost priority because, as REINSW has raised with the Department previously, it continues to have a significant impact on consumers and the industry. REINSW requests that the Department and

the Attorney General have regard to the matters raised and recommendations set out in paragraphs 2.1 (a)-(c) of our Statutory Review Submission at annexure A.

As discussed in our Statutory Review Submission in paragraph 2.1(d), REINSW recommends that this issue could be resolved by:

- Inserting into the *Civil and Administrative Tribunal Act 2013* (NSW) a provision with a similar effect to section 164(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) which makes the Tribunal a court of record; a provision which was subsequently upheld in the Queensland Court of Appeal in *Owen v Menzies* [2012] QCA 170. Such a provision would confer on it the right of federal jurisdiction; alternatively,

- An agent residing in NSW could make an application on behalf of the interstate landlord, akin to section 190(3) of the RT Act which permits an agent to apply to NCAT on the landlord's behalf.

REINSW would be happy to work with the Department and Attorney General to devise a viable solution if neither of the suggestions proposed above is suitable to Government. However, we stress that a solution needs to be reached in order to streamline the administration of justice in matters involving interstate parties, as the current position is not workable.

3. Videoconference issues

Videoconference and telephone hearings have been a good alternative to in-person hearings throughout the COVID-19 pandemic and NSW's various lockdowns. They have enabled NCAT to continue to safely hear matters, thus ensuring the continuation of the administration of justice throughout this difficult time. However, REINSW has also received repeated feedback from real estate agents who are members of the REINSW, that these methods of hearing can cause significant technological difficulties which can adversely impact the parties to, and outcomes of, proceedings.

Many agents have provided REINSW with examples of hearings where NCAT members are unable to hear one or both parties during a hearing. This has caused hearings to be delayed, or more seriously, dismissed for non-appearance – even if parties have logged on and are present in the video call.

One agent informed REINSW that their matter was dismissed for non-appearance because the NCAT member could not hear them, even though they were in the videoconference room, telling the NCAT member they were present and the microphone bar was moving. While this matter was re-listed, it caused significant delays for both parties in the finalisation of this matter. This is of significant concern where a matter is urgent or time sensitive (for example, where a party is applying for orders to vacate a property where a termination notice has not been complied with). The issue of an NCAT member being unable to hear a party who was present was a matter echoed by multiple agents, indicating that this is a widespread issue of concern. REINSW feels it important to raise awareness of these issues so that they are rectified to avoid any potential procedural unfairness.

Another agent notified REINSW that sirens in the background interrupted their videoconference hearing, so much so that it prevented them from hearing orders made by the NCAT member. When this agent received a copy of the NCAT orders, they allowed the tenant to provide further submission but did not allow the agent to respond to a $12,000 claim. When the agent raised this with NCAT, the agent was told that they would need to seek leave from the NCAT member for their additional documentation to be considered. This agent also said that, during the videoconference hearing, the line was disconnected on multiple occasions.

REINSW understands that, when hearings are conducted by videoconference, some technological issues are bound to occur. However, REINSW is concerned by:

(a) the number of agents who experienced technological issues of a similar nature (for example, NCAT members being unable to hear them) which have caused parties to incur significant time and expense; and

(b) the significant delays and issues of procedural fairness that these technological issues cause the parties. For example, a party is unable to know what is expected of them if they cannot hear the NCAT member giving orders. This is of particular concern not only for agents, who regularly appear before the Tribunal in the course of their practice as property professionals, but also for tenants who may not have a detailed understanding of NCATs processes and procedures.

Given the prevalence of such issues, REINSW recommends that NCAT consider the technological processes being used to conduct videoconference hearings and assess whether there is any way to make the hearings more user friendly. REINSW also recommends that NCAT provide clear guidance to parties about what they should do in the event that a line drops out, where they cannot hear a party or NCAT member during the course of a hearing and what steps a party can take to have a matter listed promptly in the event the matter, dismissed for non-appearance, is due to technological difficulties.

4. Notification of Hearings and Hearing Dates

REINSW is aware of circumstances in which a respondent to an NCAT application has not been notified or served with the application or hearing date by way of email. This can arise from a variety of situations, including where a respondent's email address is incorrectly entered or if the respondent has intentionally included a "fake" email address in the application.

Where a respondent is not aware that an application has been made against them or of the hearing date, REINSW is concerned that the matter may be resolved in favour of the applicant at the first hearing date as the respondent hasn't appeared. REINSW has been made aware of a real-life example of this injustice.

REINSW recommends that in circumstances where a respondent doesn't appear, the applicant should be required to show proof of having notified the respondent by email and proof of the respondent's email address (for example, the respondent's contact details on the residential tenancy agreement) so that the NCAT Member can ensure that the other party was

adequately aware of the matter before them and of the hearing date. Alternatively, REINSW recommends that NCAT consider alternative ways to address this issue, as it is important that the respondent have an opportunity to answer the case against them.

5. Electronic evidence

REINSW understands that parties to proceedings have been advised that a hard copy dossier can be submitted in relation to a hearing and that there is no other method for submitting evidence electronically. However, REINSW has recently become aware that there is a link on NCAT's website titled Submission & Evidence Filing which permits the electronic filing of evidence.

Given this readily available electronic method for submitting evidence, REINSW would like to request that NCAT make the electronic filing available to parties more generally. REINSW's view is that such a request would greatly expedite the preparation for proceedings and save time, paper and costs. It would also be particularly useful in the current environment where many hearings are conducted electronically by way of a videoconference or telephone hearing.

6. NCAT's position on section 107 of the *Residential Tenancies Act 2010* (NSW)

REINSW has been made aware of a matter which, in our respectful view, should be raised with NCAT because the NCAT Member's determination does not align with our interpretation of section 107 of the RT Act. In this matter:

- The lease in question commenced prior to the 23 March 2020 amendments and was to expire in four days when the tenant abandoned the premises, failing to provide 14 days' notice required under section 96 of the RT Act.
- The agent sought the lesser of the break lease fee (which, because the lease was signed before 23 March 2020, was four weeks) or the two weeks rent, at $400 a week, for failure to give notice.
- The NCAT Member told the agent that she was not entitled to the notice period, only to a one-week break lease fee under section 107 of the RT Act.
- The agent queried whether the one-week break lease fee should only apply to leases signed after 23 March 2020, but was unable to refer the NCAT Member to a particular section of the RT Act.
- The NCAT Member checked the transitional provisions in Schedule 2 to the RT Act, but said he couldn't find a saving provision to that effect and that the agent could appeal if he was incorrect.
- He awarded the agent a one-week break lease fee, but then deemed, as there was only four days left of the tenancy, "I'm going to pretend it's a money order just for the moment" and made an order for $228.57 on a pro-rata basis.

Given that break lease fee timeframes are important matters which regularly arise when managing tenanted property, REINSW is seeking further clarity about the application of

section 107 of the RT Act on leases entered into prior to 23 March 2020, as REINSW had taken the view that:

- Item 25 of Schedule 2 to the RT Act states: "Section 107, as substituted by the *Residential Tenancies Amendment (Review) Act 2018*, does not apply to a residential tenancy agreement entered into before the substitution of that section"; and

- as there were only four days remaining until the end of the fixed term agreement, the amount owing under the lease should have reflected the lesser of the two-week termination notice period provided for in section 96 of the RT Act or, because the lease was entered into prior to 23 March 2020 and so a previous version of the RT Act would apply, the 4-week break lease fee.

On an additional, but related matter, REINSW is also not aware of current nor previous versions of the RT Act that provide for awarding the break fee sum on a pro-rata basis as if it were a "money order". REINSW's understanding was that the break lease fee is the relevant amount provided by section 107(4) of the RT Act.

REINSW would be grateful if NCAT could please confirm its position on these two matters related to section 107 of the RT Act so that REINSW may update its members accordingly.

7. Delays arising from conciliation and hearing practices

The final area for consideration that REINSW would like to raise with the Department and Attorney General concerns delays arising from NCAT's conciliation and hearing practices.

An agent advised REINSW that they had lodged an application with NCAT for unpaid rent on 16 February 2021. The next day the applicant was given a "notice of conciliation and hearing" which included directions about how to prepare for the conciliation/hearing on 9 March 2021. These directions also stated that "the application will be listed for 15 minutes for the purpose of conciliation/hearing. If not settled or finalised, the case may be adjourned for formal hearing".

On 9 March 2021, the NCAT Member attempted to conciliate the matter and, when the conciliation was unsuccessful, adjourned the matter for formal hearing. On 21 April 2021, six weeks after the initial hearing, the parties received a notice of contested hearing listed for 8 June 2021. This occurred in circumstances where the tenant had paid no rent towards the property but continued to occupy it.

REINSW has the following concerns about this practice:

(a) There is a four-month delay between the date on which the NCAT application was lodged and the date of hearing. REINSW is of the view that this delay is too long, particularly in circumstances where no rent has been paid and the landlord has been financially prejudiced.

(b) NCAT has informed REINSW in the past that it would prioritise hearings for non-payment of rent – but the timeline above does not appear to support this.

(c) It appears that the initial conciliation/hearing date is mainly for conciliation purposes, rather than a formal hearing and that the matter is only heard on this date if the matter can be finalised as a matter of process (for example, if one party doesn't appear, rather than if the hearing is contested). However, REINSW frequently receives complaints from agents about this NCAT practice because, if the conciliation is unsuccessful, the matter needs to be re-listed which causes the parties significant delays. This is particularly of concern for urgent matters, such as the above example which relates to outstanding rental arrears. REINSW's view is that the delay between the conciliation and formal hearing could be reduced by one of the following practices:

i. list a matter for conciliation prior to the hearing date so that the matter could be expedited; or

ii. list the matter for conciliation/hearing as a matter of process (so that the matter can still be finalised, if necessary) but consecutively list the matter for formal hearing shortly after so that if conciliation is unsuccessful the parties do not have to wait six weeks to have it re-listed; or

iii. where a mediation is unsuccessful, the parties can have the matter heard immediately.

While not specific to this example, REINSW would like to raise with NCAT the following additional matters relating to conciliation practices, which we feel are important to note:

(a) The conciliation process is supposed to be confidential and so, if the conciliator was the same NCAT Member who hears the matter at final hearing, there may be conflict of interest related concerns. REINSW recommends, if such a practice has not already been implemented, that where an NCAT Member conducts a conciliation which is unsuccessful, that they not be re-allocated the matter again for formal hearing for confidentiality and conflict reasons.

(b) In this regard, REINSW requests confirmation that NCAT Members are, in fact, trained conciliators.

(c) As an ancillary issue, REINSW has also been told by agents that apparently NCAT Members do not appear to have read the file prior to the commencement of the hearing. REINSW requests that this be brought to the attention of NCAT Members because, as they are aware, it is important that the decision maker adequately understands the facts and issues of the dispute before adjudicating the matter.

REINSW requests that NCAT consider these matters, bring them to the attention of NCAT Members and, where necessary, update their internal processes to address and improve these areas.

8. Summary

In summary, REINSW makes the following recommendations:

- The Department and Attorney General have regard to the matters raised, and recommendations set out in REINSW's Statutory Review Submission on the federal jurisdiction issue and take steps to resolve this matter because, as evidenced by the example provided above in paragraph 2, this matter is causing significant issues for the cost-effective and timely resolution of property disputes where one or more parties reside interstate.

- The Department consider the technological processes being used to conduct videoconference hearings and assess whether there is any way to make virtual hearings more user friendly and reliable.

- The Department provide clear guidance to parties about what they should do in the event that a line drops out, where they cannot hear someone during the course of a hearing or what steps a party can take to have the matter listed promptly in the event that a matter, dismissed for non-appearance, is due to technological difficulties.

- The Department consider implementing a procedure whereby, if the respondent does not appear at a hearing, an NCAT Member should request evidence from the applicant that they have notified the respondent of the application and hearing date as well as proof of the respondent's contact details (for example, the contact details on the residential tenancy agreement). Alternatively, REINSW requests that the Department consider other means by which this issue could be resolved.

- The Department make the link to NCAT's electronic filing portal widely available as an easy and cost-effective way for parties to submit evidence in an NCAT matter.

- The Department confirm its position regarding the application of section 107 of the RT Act so that REINSW can update our members accordingly.

- The Department consider the three suggestions raised by REINSW in paragraph 7 above in order to reduce delays between a matter going to conciliation and formal hearing.

- The Department consider implementing a practice, if not already adopted, whereby the NCAT Member who conciliates a matter is not re-allocated the same matter for final hearing.

- The Department consider the additional issues raised by REINSW in paragraph 7 above in relation to conciliation practices and improve NCAT's internal processes and/or bring these matters to the attention of NCAT Members, as necessary.

9. Conclusion

REINSW raises these areas for consideration with the Department as they are important matters which significantly impact the timely, cost-effective, and fair resolution of property-related proceedings within NSW. REINSW hopes that by bringing these areas of concern to the attention of the Department, the Department will be able to take steps to address them for the betterment of the property industry.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

Nicole Unger
General Counsel

Annexure A

The following pages include REINSW's letter to NCAT's President dated 21 March 2017.

REINSW | for members since 1910

[redacted]

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Annexure B

The following pages include REINSW's submission in response to the statutory review of the *Civil and Administrative Tribunal Act 2013.*

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Review of the *Civil and Administrative Tribunal Act 2013* (NSW)

The Real Estate Institute of New South Wales Limited

Submission

10 July 2019

To: The Director
Courts Strategy
Department of Justice

By email: [redacted]

1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the call for submissions by the Department of Justice (**Department**) as part of its statutory review of the *Civil and Administrative Tribunal Act 2013* (NSW) (**NCAT Act**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This Submission has been prepared with the assistance of the REINSW Property Management Chapter Committee. These members are licenced real estate professionals with experience and expertise in their field. Accordingly, the REINSW Property Management Chapter Committee feels it necessary to provide the Department with feedback on the operation of the NCAT Act by way of this Submission.

REINSW would like the Department to consider the following matters, which are discussed in more detail throughout this Submission:

(a) REINSW recommends a solution to the federal jurisdictional issue; and

(b) NCAT's operational issues and limited resources and how REINSW's recommendations can help improve those issues and increase those resources.

2. REINSW FEEDBACK ON NCAT ACT

2.1 Federal Jurisdictional Issue

The statutory review Factsheet issued by the Department states that the review will not re-examine the issue of whether the New South Wales Administrative and Appeals Tribunal (**NCAT**) is a tribunal or a court of the State on the basis that recent court decisions have confirmed it is a tribunal.

In no way is REINSW questioning these court decisions and agrees that, based on the current legislation, NCAT is a tribunal. However, REINSW respectfully disagrees with the Department's position not to consider the issue as part of this review. REINSW believes that it is a perfect opportunity to rectify the situation so as to minimise the consequential negative, daily impacts it is having on consumers.

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REINSW strongly urges the Department to amend the NCAT Act so that NCAT is a court of record (refer to paragraph 2.1(d) below for further details). It is the Parliament that has the power to make this change. This is because the Parliament can define jurisdiction by investing any court of a State with federal jurisdiction (s77(iii) of the *Commonwealth of Australia Constitution Act 1900* (Cth) (**Constitution**)). By making this amendment to the NCAT Act, the Parliament would allow the Judiciary to make future decisions based on a more appropriate and practical piece of legislation.

(a) Background

The High Court handed down its decision in April 2018 in *Burns v Gaynor* [2018] HCA 15 finding that sections 75 and 76 of the Constitution prohibits NCAT from exercising federal diversity jurisdiction. This means that NCAT has no jurisdiction to consider matters that involve the Commonwealth and Commonwealth laws.

As the Department would be aware, Chapter III of the Constitution (specifically, section 77) creates a power that is conferred onto Parliament to make laws defining the jurisdiction of both State and Federal courts. Section 39(2) of the *Judiciary Act 1903* (Cth) allows original jurisdiction to be conferred onto a court in "*all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38...*". Since no exception in section 38 applies, State Courts can hold federal jurisdiction in all matters "*...between residents of different States...*", as per section 75(iv) of the Constitution.

However, the problem that consumers are faced with is that NCAT has not been held to be a 'court of the State'.

The decision in *Burns v Gaynor* currently affects landlords and tenants alike as the ability to have a case heard before NCAT where one party resides interstate is not a power that is conferred to NCAT. Instead, parties need to have their matter heard in the Local or District Courts.

REINSW is of the view that this precedent decision adversely affects the very purpose of NCAT and the NCAT Act, which establishes the tribunal. The purpose of the NCAT Act is to provide a streamlined administrative tribunal service that is prompt, accessible, economically viable and equipped to deal with a broad range of issues. In most cases, NCAT resolves disputes quickly, cheaply and fairly.

This Submission addresses why the jurisdictional issue negates the purpose and objectives of NCAT, unfortunately detrimentally impacting on consumers (including, landlords, tenants and property managers).

(b) Consequences of the Jurisdictional Issue

With respect to the affected cases following the decision in *Burns v Gaynor*, REINSW is concerned that the current position fails to uphold an effective administrative process as it creates a plethora of burdens on the parties and appears to negate the purposes of NCAT. Landlords and tenants remain uncertain of where their case can

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be heard as there are usually no other options besides seeking resolution through the tribunal.

In addition to these disadvantages, if no action is taken by the Department to rectify the issue then consumers will continue to be exposed to the following significant risks (without intending to be an exhaustive list):

(i) Undermining the purpose of NCAT to provide a low-cost alternative dispute resolution avenue with a $50 administration fee, as opposed to costly legal representation and court administration fees within the court system, rendering the court avenue prohibitive to consumers (refer to paragraph 2.1(c)(i) for more detail on these costly court fees).

(ii) Limiting the ease of process and creating more timely processes that prohibit a just and quick resolution for the applicant.

(iii) Substantial market risks - if NCAT is unable to hear the dispute, owners could potentially be prompted to withdraw their investment properties which would cause a disruption to the private rental market and, as a negative result, cause rent prices to rise.

(iv) Exposure to financial loss for both tenants and landlords.

(v) Potential risk for an applicant to register their address in a different State to avoid a tribunal hearing – REINSW is aware of tenants who have registered as their home address a relative's address that is outside of New South Wales so that their case cannot be heard by NCAT.

(vi) Extensive waiting periods that could result in financial loss for the landlord, as they may not be able to terminate the relevant tenancy agreement, deal with bond disputes, rental arrears, etc.

(vii) Limitations and confusion with respect to representation at court – for further detail on this please refer to paragraph 2.1(c)(iii)).

(viii) REINSW also queries how the court process will match the current NCAT process when it comes to matters initiated in the tribunal but subsequently referred to the court for resolution. For instance, REINSW questions if the court will treat tenancy matters as a priority in the same was as NCAT does and whether the court will adopt NCAT's efficiencies including, without limitation, with respect to the rules of evidence, cost savings (ie. the $50 NCAT application fee), party representation and the opportunity for conciliation. Further, REINSW is aware of alternative dispute resolution services that parties are encouraged by NCAT to pursue prior to a hearing (including conciliation and mediation), however, these services are only optional and not promoted by the Local Court to the detriment of parties who initially apply to NCAT. There are also other services provided to the parties in NCAT that are free of charge but are provided at a cost in the Local Court. For example, NCAT offers a free translation service whereas a party needs to organise and pay for this service in the Local Court independently.

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(ix) While tribunal members consider the facts of the case on the evidence appearing before them, they are still bound by the legal precedent of a higher court. For this reason, REINSW questions how effectively NCAT will follow matters that are factually similar (minus the jurisdictional issue) to those that have been heard in the Local or District Court. REINSW queries whether NCAT has any processes or guidelines in place to effectively ensure that its decisions in these types of matters are consistent with the precedent decisions of the courts.

(c) Consequences of Jurisdictional Issue in Further Detail

(i) Financial Loss

It is the landlord who suffers financial loss due to the effect of the current provisions.

Further to the point made in paragraph 2.1(b)(i), REINSW is aware of the fee disparity between NCAT and the court system. NCAT currently charges a standard fee for the lodgement of a general application in residential proceedings, being $50 as per Schedule 2 to the *Civil and Administrative Tribunal Regulation 2013* (NSW). On the other hand, filing an originating process:

(a) in the Local Court under Part 3 of the *Local Court Act 2007* carries a standard fee of $249, as per Part 4 of Schedule 1 to the *Civil Procedure Regulation 2017* (NSW) (**CP Regulation**);

(b) in the District Court carries a standard fee of $681, pursuant to Part 3 of Schedule 1 to the CP Regulation;

(c) attracts other miscellaneous court fees as set out in Part 5 of Schedule 1 to the CP Regulation; and

(d) is accompanied with legal representation fees.

REINSW considers the associated court fees to be prohibitive when compared to those of NCAT. It believes that these court fees will place landlords and managing agents at a significant financial loss. Further, REINSW fears that the fees and increased difficulty of process may represent a roadblock for applicants to pursue their matter in the Local Court. If NCAT had jurisdiction to hear these types of cases, then only the $50 fee would apply to lodge the general application, and NCAT as an avenue for justice would be available to applicants in these circumstances.

REINSW takes notice of a case that went through the Orange Local Court, which further outlines the financial burden of NCAT's lack of jurisdiction to hear matters where one party resides interstate. In this case, the delay proved quite

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costly to the applicant who was urged to pay their legal fees upfront and to spend thousands of dollars in Local Court fees. To make matters worse, there was no guarantee that they would regain their lost funds, which included rental arrears, locksmith charges and sheriff fees.

REINSW sees no fairness in the parties being subject to a loss where there is no cost-effective dispute resolution process to pursue.

(ii) Extensive Waiting Periods

The current process requires the applicant to first apply to NCAT so that it can determine whether the matter is permissible under its jurisdiction. If it is determined that NCAT cannot hear the matter, then NCAT issues a notice to the applicant to that effect and it is the applicant's responsibility to initiate proceedings by providing the notice and supporting documentation to the Local Court Registrar. The applicant not only has to take the time to prepare and lodge these documents with the Local Court Registry, but they must also wait for a hearing date before their matter can progress. Parties have often found that the Local Court has not considered their matter to be urgent, therefore agents and parties alike are waiting in the courthouse all day, in order for their matter to be heard.

The Department will appreciate that rent may not be paid or, in another circumstance, damage to the premises may continue to be made, during these delays.

REINSW believes that this process brings with it extensive waiting periods which cause not only financial loss to landlords but also emotional distress for all parties involved, which is far from ideal.

(iii) Limitations on Representation

NCAT allows for an applicant to be represented by their property manager but REINSW is aware of conflicting opinions in the market on whether a property manager can represent their client in the Local Court or whether a legal representative must do so. This has caused confusion as to the process and fees involved in having matters heard in the Local Court.

REINSW has received the **enclosed** email from the Local and District Court Registry dated 30 May 2019 confirming that parties may only be represented by a legal representative in Local Court proceedings. This means that a property manager will no longer be allowed to represent their client with such matters and the avenue is left open for parties to represent themselves or acquire costly legal representation.

However, REINSW conducted further research on the issue of representation and found that an applicant may file a Summons seeking leave to be represented by a non-legal representative during their court proceeding, as per

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the **enclosed** Summons Form 4B. The Registrar will then determine the outcome of this request to be represented by an agent.

What is certain is that the jurisdictional issue creates a strenuous and confusing process for applicants because the market is unsure of who can represent applicants in proceedings.

(iv) Discrimination

REINSW sees no reason why landlords should be penalised because of the State in which they choose to reside or must reside. Further, tenants cannot bring an action against a landlord if the landlord resides interstate. Many landlords in New South Wales relocate interstate for various reasons but, in particular, due to their job circumstances. This includes, for example, men and women who are part of the Australian Defence Force and are constantly subject to relocation. REINSW is of the view that this jurisdictional issue discriminates on those people who choose or are compelled to live interstate and on tenants who cannot bring actions against landlords who live interstate.

(v) Economic Risk

REINSW believes that there is a large risk to the market due to the lack of certainty in the current resolution process. If NCAT cannot hear these types of matters, then landlords will likely invest in assets other than in the housing market, which will increase rents and cause the property market to drop. The Department needs to consider that this is a large avoidable economic market risk.

(d) Solution to the Problem

REINSW acknowledges the limitations of the legislature in not providing an adequate provision in the NCAT Act appropriately dealing with the jurisdictional issue.

Accordingly, REINSW recommends a legislative change that would solve the whole problem. It is for the legislature to amend the NCAT Act so that it includes a provision equivalent to section 164(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). This section was applied and upheld in *Owen v Menzies* [2012] QCA where the court found that the Queensland Civil and Administrative Tribunal is a court of record as ordained by the legislature, because the tribunal contains elements of implementing a judicial process that is of impartiality, formally processing and implementing judgement orders. REINSW proposes that NCAT could operate in the same way by adjusting its operations and processes accordingly.

This amendment to the NCAT Act will not confer any further powers onto NCAT, besides the right of federal jurisdiction. The outcome for the parties will remain the same as if the matter was heard in the Local Court.

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As an alternative solution, REINSW recommends that the Department consider the possibility of matters being heard by NCAT if a party's real estate agent is domiciled in New South Wales as opposed to the party itself. This concept is already permissible in practice as per section 190(3) of the *Residential Tenancies Act 2010* (NSW) whereby a landlord's agent may make an application to NCAT on behalf of a landlord.

REINSW urges the Department to take one of its recommended courses of action to avoid the disadvantages outlined above (including cost, time and market damage), which ultimately creates a lack of proper administration of justice. Instead, the recommended solutions will honour NCAT's purpose for which it was established and see benefits for consumers and the market, which is a win-win solution.

2.2 NCAT's Operational Issues

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

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

REINSW is of the opinion that determining whether NCAT is the right body to resolve legal issues is only easy for consumers that have been properly trained and guided through its processes. For this reason, REINSW recommends that users of NCAT receive mandatory training prior to having their matter heard.

To implement this mandatory training requirement, REINSW suggests an addition to the application form whereby the applicant declares whether or not they have received training with the tribunal. Following receipt of this information and when issuing a Hearing Notice, NCAT could also send alongside that notice a link to an online forum with training webinars on topics the parties can choose from to best suit their needs. For this reason, REINSW also proposes that NCAT should partner with REINSW, and provide REINSW with the relevant funding for the purpose of training agents, as better trained agents will assist with the efficient administration of justice and transparency for all parties involved in NCAT dealings.

This mandatory training process will provide consumers with an informed knowledge of how NCAT's services work, and to best access the resources that it offers. REINSW is of the view that with more accessible training and more relevant and regular production of fact sheets, consumers will be better informed of NCAT's processes and policies with a better understanding of detailed areas of consideration. REINSW calls for more fact sheets issued by NCAT to provide ongoing education to practitioners and consumers on matters relating to the Consumer and Commercial Division. Consequently,

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NCAT will provide smoother results that create a timelier process because the parties will be better educated on NCAT's processes, including with respect to case management, notices and listings, conciliation, the hearing and the orders.

(b) Is NCAT accessible and responsive to its users' needs?

While REINSW appreciates the high level of competency of the tribunal, it would like to comment on how the tribunal operates inconsistently among these main areas of consideration:

I. REINSW is aware that consumers find it difficult to access decisions of the tribunal mainly because they are not categorised in a user-friendly way. To overcome this issue, REINSW recommends that NCAT's types of cases on its website be broadened to contain an extensive list of categories (for instance, rental arrears, termination of leases, break fees, etc) and for NCAT's decisions and orders to be published and categorised in accordance with these case types. The aim of this is to create easier accessibility for the consumer, to keep them educated and well informed and to minimise potential delays.

   Further, and with respect, REINSW also suggests that NCAT update its decisions more regularly and consistently across its locations so that all decisions are more readily accessible.

II. With respect to certain tribunal locations, there are safety and security concerns when appearing before NCAT. REINSW notes that in some tribunal locations there is a lack of security officers, working metal detectors and mandatory checking of prohibited items in bags when entering the tribunal. This is particularly so in rural locations and the consequence is often that a party is scared for their safety, particularly where there is threatening behaviour from the other party in serious rental dispute matters. Since consumer safety is paramount, REINSW suggests that NCAT be consistent with the level of security across all tribunal locations.

III. REINSW has been notified that parties, agents and witnesses are often not sworn in or affirmed during their hearing. This inconsistency provides a lack of quality for the consumer and is likely to taint what is being said in the room and, therefore, the ultimate judgement. REINSW would like to reinforce that the proper processes must be adhered to and that NCAT remain consistent across all tribunal locations by ensuring that all participants are appropriately sworn in or affirmed (as appropriate).

IV. With the rapid increase in high density in New South Wales, REINSW has been notified that there is a lack of resources NCAT provides and this is particularly so across certain regional locations, resulting in conciliators being unavailable. The absence of this

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resource, in some circumstances, negates the purpose of the tribunal in providing an impartial and objective facilitator. Without conciliators, consumers are left with the question of why their matter is being heard in front of a member at the tribunal if there is no certainty of their matter being safeguarded under the benefit of impartiality that a conciliator provides (refer to paragraph 2.3 for more on the need for, yet inconsistent availability of, conciliators).

REINSW refers to the letter from NCAT to REINSW's President dated 13 May 2019 in relation to NCAT's proposal to increase access to conciliators for dispute resolution purposes. As a way to implement this proposal, REINSW welcomes and supports the proposed amendments to the sitting pattern for group lists so that parties can seek conciliation before proceeding to hearing (where conciliation is unsuccessful or if only one party appears). While REINSW believes that this initiative will resolve various key issues and is a step in the right direction, the issue of being under-resourced has vastly affected the consumer and remains to be resolved.

(c) *Does NCAT resolve legal disputes quickly, cheaply and fairly?*

REINSW has been informed by practitioners that the time NCAT allots to each hearing appears to be too short, resulting in either adjournments or the parties not having enough time to put forward their case. While REINSW considers that the service offered by NCAT is quicker for consumers than the court system, industry professionals have noted upon their experience that often there are too many matters listed in one session. The result of this is that a large number of matters are being adjourned.

Whilst REINSW has no issue with adjourning matters of a trivial nature or nominal amount, REINSW submits that there are certain types of disputes that should not be adjourned, such as those involving rental arrears. These types of disputes should not be adjourned and should be heard before the tribunal as a matter of urgency to mitigate loss and to uphold the nature of NCAT providing a fair and quick service.

In addition to this, in recent times NCAT has omitted from its application form the option for applicants to specify times and days which do not suit to have their matters heard. This change has caused consumers difficulties because if the hearing is set for a day which the applicant cannot attend, they are compelled to seek an adjournment and their reason for non-attendance is considered at the discretion of the Registrar. With respect, this lack of flexibility awarded to the applicant demonstrates that NCAT has added another layer of burden onto consumers which goes against its ethos of providing a consumer friendly, just, quick and fair service.

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

REINSW submits that while there are many benefits to having a matter resolved purely on its application to uphold a quick and easy process, REINSW needs to better understand the process suggested by NCAT. For instance, will the parties be required to provide evidence under oath perhaps by way of a statutory declaration or otherwise? REINSW insists that all evidence provided in this manner must be given under oath.

REINSW is concerned that NCAT resolving matters without a hearing would not empower parties to have their matter heard and would not afford parties the opportunity to provide all the requisite information and to respond to the submissions of the other side. While REINSW understands that matters are often dealt with and resolved outside of the tribunal, it is concerned of the danger of members determining matters without a hearing because they could make assumptions about the nature and seriousness of a party's position without those assumptions being valid. The proposal of resolving matters without a hearing requires NCAT to further consider the anti-ambush doctrine where a party has the right to reply. This could result in a lengthy process that would require extra administration work and due diligence to ensure that the parties' rights are adhered to. Having the decision made purely on documents submitted by the parties without a hearing limits the chance for a consumer to appropriately respond and provide increasingly relevant information regarding their application or defence.

(e) Does NCAT need additional powers to be able to enforce its decisions?

REINSW is aware that the current process of enforcing orders is too time-consuming and needs to be quicker, particularly where a tenant fails to comply with orders to vacate. REINSW would also like to stress that this is contributed to by the impact of the various delays during the whole process of the dealings with NCAT (including, without limitation, with respect to adjournments).

REINSW understands that the process involves the landlord or agent delivering the orders to the tenant on the same day of the decision, or it is emailed or posted within a few days. During this time period, the delay in postage, particularly if the tenant has not listed their email address on the NCAT application form, causes a substantial delay in executing the NCAT orders and this is particularly so if a tenant is to be removed from the property. If the tenant is present at the tribunal, they may retrieve a copy of the orders at that time. However, REINSW submits that an enforcement issue occurs during the delay of time when the tenant has not complied with NCAT's order to vacate the premises. Once the landlord has been

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made aware of such failure, the landlord or landlord's agent may apply to NCAT for a warrant for possession of the premises, which may be collected from the tribunal in a sealed document if present, or otherwise posted via mail. The warrant for possession then needs to be given to the Sherriff's Office, and a time is scheduled for when this warrant can be executed, removing the tenant from the property. This constitutes a lengthy process which is quite unreasonable for the landlord who is forced to suffer financial hardship through no fault of their own.

To add to the delay of enforcement, due to their limited resources, Sheriff Officers are often unavailable or cannot comply with the timeframes ordered by NCAT. This creates a greater problem especially if the dispute is in a rural or regional area, in which the Sheriff's Office may not receive the sealed orders for quite some time because of the post. Due to the lack of resources, the Sheriff's Officer may not be able to execute the warrant for possession of the property within a timeframe that upholds the rights of the landlord, especially in disputes dealing with rental arrears. This, coupled with the delays as mentioned in paragraph 2.2(c) above, not only lengthens the process but creates one that is unnecessarily and unreasonably costly, particularly where a tenant is not paying rent.

In an effort to resolve the resulting delays and frustration in the enforcement process, REINSW recommends that NCAT implement a streamlined automated process that allows it to directly inform the Sheriff's Office of the orders and provide the orders to them electronically. This will no doubt improve the enforcement process and limit slow hardcopy mail service.

2.3 Other Important Matters for Consideration

(a) As abovementioned, REINSW would like to see NCAT offer a consistent conciliation service particularly in regional areas as part of its dispute resolution process. For instance, REINSW is aware that there are no conciliators present at NCAT's Wagga Wagga and Wollongong tribunal locations. REINSW submits that the lack of regional resources extends NCAT's inability to provide a service that upholds the purpose of a consumer considering using the tribunal. Without intending to be an exhaustive list, the benefits of having a conciliator include increasing the likelihood of settlements, reducing the number of matters heard by members and reducing adjournments. With no conciliator, consumers run into potential problems such as a reduced chance of accessing NCAT or facing a costly and time-consuming court process if they are urgently searching for an impartial and objective platform.

(b) REINSW requests NCAT to question the appropriateness of, and need for, parties participating in the NSW Fair Trading dispute resolution process. Parties that elect to go through this process may reach an agreement which may not be honoured or adhered to by a party post-agreement. Subsequently, one of the parties may apply to NCAT to have the same matter resolved

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through NCAT's dispute resolution process. This ultimately replicates NSW Fair Trading's process with the important exception that NCAT has the power to create orders. With this in mind, REINSW questions why the Government wastes so much time and resources in NSW Fair Trading's dispute resolution process when parties ultimately end up in NCAT anyway to resolve their disputes.

(c) REINSW queries how NCAT is now dealing with, or intends to deal with, matters heard prior to the decision of *Burns v Gaynor*. Before this decision, where the tribunal made determinations in matters where a party resides interstate the question arises whether those decisions are invalid now that it has been determined that NCAT is not a court of record and has no jurisdiction to hear those matters. REINSW also queries whether NCAT is planning to review its decisions in these matters and advise the relevant parties accordingly. REINSW is further concerned that NCAT continues to hear matters without an enquiry regarding the location of the parties. There is no process of discovery in place to ensure that NCAT has jurisdiction to determine the matter on the grounds that the parties reside in New South Wales. *Burns v Gaynor* has created a heavy administrative and judicial burden for NCAT, further creating confusion for parties seeking a cheap, fair and low-cost outcome from the tribunal.

3. CONCLUSION

REINSW considers NCAT to be a vital forum where consumers can resolve their disputes efficiently, fairly, cost-effectively and objectively. However, like all forms of dispute resolution, REINSW recognises that NCAT has its limitations. In support of improving the tribunal's operations and procedures, REINSW embraces this statutory review.

Importantly, REINSW feels that the current federal jurisdiction issue hinders the right of consumers to have their case heard in a tribunal that was established for their very benefit. This issue creates a high level of confusion as applicants are often unaware of the jurisdiction of the tribunal and unsure of whether their matter can be heard, and to what extent the jurisdictional issue will impact them financially. REINSW has therefore prepared this Submission in an effort to minimise the current and potential confusion in the market and increase consumer benefit by ensuring equal access to NCAT regardless of where a party resides.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer

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Form 4B (version 4)
UCPR 6.2

SUMMONS

COURT DETAILS

Court	Local Court
#Division	General Division
#List	Federal Proceedings (part 3A *Civil and Administrative Tribunal Act* 2013)
Registry	
Case number	

TITLE OF PROCEEDINGS

[First] plaintiff	**[name]**
#Second plaintiff #Number of plaintiffs (if more than two)	[#name #number Refer to Party Details at rear for full list of parties]
[First] defendant	**[name]**
#Second defendant #Number of defendants (if more than two)	[#name #number Refer to Party Details at rear for full list of parties]
#Additional information	[eg Estate of (name), Adoption of (child's name)]

FILING DETAILS

Filed for	**[name]** plaintiff[s]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

HEARING DETAILS

This summons is listed at [time, date and place to be inserted by the registry].

TYPE OF CLAIM

Federal Jurisdiction

RELIEF CLAIMED

1 Leave is sought to commence proceedings in the Local Court pursuant to **section 34B** of the *Civil and Administrative Tribunal Act 2013.*

2 Seek orders to be made by the Court as per the application made to NCAT on **[insert date of application]**. Orders sought:

a. [order sought]

b. [order sought]

c. [order sought]

d. [order sought]

3 **[If leave sought to be represented by non-legal representative i.e. a managing agent – otherwise, delete this paragraph]** Seek leave for [insert name, position, company] who is my [relationship to plaintiff] to represent me in these proceedings as my non-legal representative pursuant to **section 34C(4)(e)(iii)** of the *Civil and Administrative Tribunal Act 2013.*

SIGNATURE

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity [eg authorised officer, role of party]

Date of signature

NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.

- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address

Postal address

Telephone

[on separate page]

#PARTY DETAILS

[Include only if more than two plaintiffs and/or more than two defendants.]

PARTIES TO THE PROCEEDINGS

Plaintiff[s]	**Defendant[s]**
[name] [role of party eg first plaintiff]	[name] [role of party eg first defendant]
[repeat as required for each additional plaintiff]	[repeat as required for each additional defendant]

FURTHER DETAILS ABOUT PLAINTIFF[S]

[First] plaintiff

Name

Address
[The filing party must give the party's address.]

#[unit/level number] #[building name]
[street number] [street name] [street type]
[suburb/city] [state/territory] [postcode]
#[country (if not Australia)]

#Frequent user identifier [include if the plaintiff is a registered frequent user]

[repeat the above information as required for the second and each additional plaintiff]

Contact details for plaintiff acting in person or by authorised officer

#Name of authorised officer

#Capacity to act for plaintiff

Address for service
[The filing party must give an address for service. This must be an address in NSW unless the exceptions listed in UCPR 4.5(3) apply. State "as above" if the filing party's address for service is the same as the filing party's address stated above.]

#as above
#[unit/level number] #[building name]
[street number] [street name] [street type]
[suburb/city] [state/territory] [postcode]

Telephone

#Fax

Email

DETAILS ABOUT DEFENDANT[S]

[First] defendant

Name

Address

#[unit/level number] #[building name]
[street number] [street name] [street type]
[suburb/city] [state/territory] [postcode]
#[country (if not Australia)]

[repeat the above information as required for the second and each additional defendant]

[redacted]

From: [redacted]
Sent: Thursday, 30 May 2019 3:11 PM
To: [redacted]
Subject: RE: Case number: general enquiry

Dear [redacted] Parties can only be represented by Solicitors in the Local Courtt

Kind Regards

[redacted]
Local and District Court Clerk | NSW Courts and Tribunal Services
Level 4, John Maddison Tower | 86 – 90 Goulburn St, Sydney NSW 2000

From: [redacted]
Sent: Thursday, 23 May 2019 2:42 PM
To: [redacted]
Subject: RE: Case number: general enquiry

Dear Sydney Civil Registry,

Unfortunately the information provided below does not answer my query. Could you please provide details of where this information can be specifically located in Austlii? I am after specific statute or procedural notes.

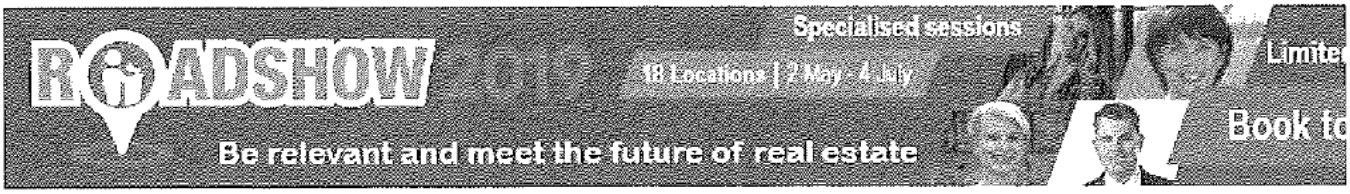
The question originally given to the Local Court via phone was:

Due to jurisdictional issues, landlord's that have moved interstate can not access NCAT if a tenancy dispute arises and therefore will need to have their matter heard in the local court. *Can a landlord be represented in court by an agent?* (Tribunal Legislation allows for agents to represent clients in the tribunal, but I could not locate any Local Court Rules stating the equivalent).

Thank you in advance,

Kind regards,

[redacted]
Real Estate Institute of New South Wales
30-32 Wentworth Avenue, Sydney NSW 2000
T: (02) 8267 0570
www.reinsw.com.au



From: [redacted]
Sent: Thursday, 23 May 2019 1:50 PM
To: [redacted]
Subject: Case number: general enquiry

Good Afternoon,

In response to the referral received from the NSW Courts Service Centre regarding your request to clarify an act or legislation:

Please note that legal information can be found on AustLII. For your information their website is : www.austlii.edu.au

Thank you.

[redacted]
Email: [redacted] Phone: 1300 679 272
Sydney Civil Registry, John Madison Tower, Level 4, 86-90 Goulburn St, Sydney
PO Box K1026, Haymarket 2000