

NSW Government Response

to the

**Standing Committee on Law and Justice
Inquiry into Opportunities to consolidate
tribunals in NSW**

October 2012

NSW Civil and Administrative Tribunal (NCAT)

Tribunals are an integral component of the justice system. They should provide timely, efficient and flexible points of access for citizens seeking review of executive action or to resolve private disputes. They also provide arms-length supervision of occupations and ensure that complaints are dealt with independently and that public protection is the primary consideration.

The Standing Committee on Law and Justice recommended that the NSW Government pursue the establishment of a new tribunal to consolidate existing tribunals, where it is appropriate and promotes access to justice. After careful consideration, the NSW Government has decided to establish the NSW Civil and Administrative Tribunal (NCAT).

1. Better decision making and more accessible services for our community

The NSW Government is committed to providing users with a simple, quick and effective process for resolving disputes and reviewing executive action. Integrating existing tribunals into NCAT will improve the quality of tribunal services for the people of NSW by:

- enhancing accessibility for tribunal users through a single gateway for tribunal services, consistent client service standards and broader geographical reach;
- improving efficiencies through developing economies of scale; and
- increasing accountability, transparency and quality of decision-making through consistency in standards, processes and professional development.

Accessibility	Efficiency	Accountability
<ul style="list-style-type: none"> • Greater visibility and increased access for the community through a single contact point for tribunal services (one phone number, one website) • Greater access to rural and regional locations • Equitable access for culturally and linguistically diverse people and other high-needs groups • Reduced red tape for business and individuals when accessing tribunals • Consistent client service standards • Certainty for users through enhanced quality of decision-making. 	<ul style="list-style-type: none"> • Economies of scale will create efficiencies (integration of back-end services, bulk ordering) • Common platforms, processes and infrastructure (co-ordinated training initiatives, shared technology resources) • Common branding on websites and other publicity • Better use of human resources • Consistency of appointments and conditions 	<ul style="list-style-type: none"> • Improved decision-making through consistent professional development and training opportunities • Improved transparency and consistency of processes • Greater independence from Government, reducing the potential for perception of conflict of interests • Enhanced public confidence in the tribunal system • Consistent appeal rights and processes • Training and professional development opportunities for members and staff • Promotion of a collegiate culture • Improved resources for data collection

2. Which tribunals will be consolidated?

NSW currently has around 30 separate tribunals or other bodies exercising tribunal-like functions. The Standing Committee noted that tribunal users found the current system of tribunals in NSW complex and bewildering. NCAT will reduce the proliferation of ad hoc tribunals by creating a streamlined framework for administrative and civil justice.

All existing NSW tribunals will be integrated into NCAT, unless there are exceptional circumstances or a potential conflict of interest that would make integration impractical or inappropriate.

The following tribunals will form the foundation of NCAT:

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| <ul style="list-style-type: none">• Aboriginal and Torres Strait Islander Health Practice Tribunal• Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal• Administrative Decisions Tribunal• Charity Referees• Chinese Medicine Tribunal• Chiropractors Tribunal• Consumer, Trader and Tenancy Tribunal• Dental Tribunal• Guardianship Tribunal• Local Government Pecuniary Interest and Disciplinary Tribunal | <ul style="list-style-type: none">• Local Land Boards• Medical Radiation Practice Tribunal• Medical Tribunal• Nursing and Midwifery Tribunal• Occupation Therapy Tribunal• Optometry Tribunal• Osteopathy Tribunal• Pharmacy Tribunal• Physiotherapy Tribunal• Podiatry Tribunal• Psychology Tribunal• Vocational Training Appeals Panel• Victims Compensation Tribunal |
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The amalgamation of these separate bodies will promote a consistent approach to decision-making and establish a single gateway for all tribunal users. NCAT will also be able to incorporate emerging jurisdictions in future, creating efficiencies for government and tribunal users alike.

Only a small number of bodies will not be consolidated at this time, although some of these bodies may be considered for consolidation in future:

- Independent Liquor and Gaming Authority
- Industrial Relations Commission
- Mental Health Review Tribunal
- Motor Accidents Authority
- Racing Appeals Tribunal
- Remuneration Tribunals
- Workers Compensation Commission

3. NCAT Structure and Governance Arrangements – sharing the best features of existing tribunals and harnessing existing expertise

The NSW Government acknowledges and values the high level of expertise and knowledge held by existing tribunals. To ensure that these features are maintained, NCAT will be structured to preserve existing specialties and ensure that a ‘one size fits all’ approach is not taken. A draft organisation chart is at **Annexure 1**.

NCAT will not seek to replicate the ‘super tribunals’ established in other states. Instead, NCAT will be tailored to meet the needs of tribunal users in NSW. NCAT will have five divisions:

Consumer and Commercial	Administrative & Equal Opportunity	Occupational & Regulatory	Guardianship	Victims Support
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The President of NCAT will be a Supreme Court judge, preferably with experience in administrative law and commercial dispute resolution. The presence of judicial members will guarantee the independence of NCAT and ensure that the tribunal is not subject to the direction or control of the Executive.

Each division will be headed by a Deputy President with experience relevant to the subject matter of that division. Each Deputy President will be responsible for the day-to-day running of the division, including the allocation of members to hear matters.

Each division will have subdivisions (or lists) to ensure that further specialisation can occur where needed. Where the Deputy President does not have the professional or technical expertise to head a subdivision, a Senior Member may be appointed to manage that subdivision.

Consumer and Commercial	Administrative & Equal Opportunity	Occupational & Regulatory	Guardianship	Victims Support
<p>↓</p> <p>Consumer Claims</p> <p>Commercial</p> <p>Home Building</p> <p>Motor Vehicles</p> <p>Residential Parks</p> <p>Retirement Villages</p> <p>Social Housing</p> <p>Strata & Community Schemes</p> <p>Tenancy</p> <p>Retail Leases</p> <p>Local Land Boards</p>	<p>↓</p> <p>Community Services</p> <p>Revenue</p> <p>Licensing</p> <p>Privacy and GIPA</p> <p>Charity Referees</p> <p>Equal Opportunity</p>	<p>↓</p> <p>Health</p> <p>Legal Services</p> <p>Other Occupational</p> <p>Pecuniary Interests and Discipline</p>	<p>↓</p> <p>Guardianship</p>	<p>↓</p> <p>Victims Support</p>

Whereas other jurisdictions have combined their Administrative and Disciplinary Divisions, NCAT will maintain a separate Occupational & Regulatory Division. This will emphasise the distinct nature of matters in the Occupational & Regulatory Division, which has a stronger public protection focus.

NCAT will not have jurisdiction over planning and development matters. In NSW, the Land and Environment Court deals with such matters and it is appropriate that this remain the case.

Regulatory Standards

The Attorney General will administer the legislation establishing NCAT. However, regulatory standards will continue to be set in legislation administered by responsible Departments and Ministers. For example, legislation setting out the rights and remedies of consumers will continue to be the responsibility of the Minister for Fair Trading. The Minister for Health will continue to administer health standards legislation.

Preserving the specialist features of existing tribunals

The NSW Government recognises that many of the unique and essential features of existing tribunals should be preserved. To ensure that this occurs, divisions will retain distinct specialist members. Minimum composition requirements for professional members will also be preserved for those tribunals with existing requirements (for example, the health professional tribunals).

Tribunal registries hold a high level of expertise, and many have evolved specialised practices and procedures to cater to their unique user groups (for example, the Guardianship Tribunal). Registry teams servicing each Division will maintain specialist practices and procedures where required. At the same time, all registry staff will receive the benefit of common training, technology and supplies.

Internal Appeals

An easy, timely and cost effective internal merits appeal mechanism will be established, which will result in the people of NSW for the first time enjoying equitable access to internal appeals within the tribunal framework. Specialist representation will be maintained on each appeal panel.

Existing appeal rights directly to the courts may be preserved in some circumstances (for example, professional discipline matters).

Shared Corporate Services

A shared registry and corporate services division, headed by an Executive Director, will be established to ensure that NCAT's resources and opportunities for professional development are shared equitably within divisions. This will allow economies of scale and back-office savings to be achieved, and will also allow existing centres of excellence to be rolled out across NCAT.

Appointments

The Attorney General will be responsible for the appointment of legal members. The Attorney General will consult with relevant Ministers regarding those appointments. The Attorney General will also appoint community members who do not require specific expertise. Community members may be drawn from a panel recommended by the NCAT, after a recruitment process.

Relevant Ministers will make recommendations to the Attorney regarding the appointment of professional members to divisions adjudicating matters under the legislation they administer. It is anticipated that the Health Professional Councils will retain their role in advising NCAT regarding which health professionals should sit on panels requiring specialist expertise.

4. Implementation Strategy

A Steering Committee will be established to guide the practical implementation of NCAT. A broader reference group will be convened to provide input into the Steering Committee's deliberations. This will ensure that the Steering Committee's work remains focused, while ensuring that a broad range of stakeholders have an opportunity to contribute to the implementation process.

The Steering Committee will be responsible for developing NCAT's practices and procedures. It will be asked to advise on a range of issues associated with the physical establishment of NCAT as well as the development of common service and performance standards. It is expected that specialist sub-groups will be established to develop processes for particular divisions or subdivisions, to ensure that existing procedures, expertise and centres of excellence are recognised and maintained.

Each division or, in some cases subdivisions, may maintain specific rules or procedures to ensure that its services are tailored to meet the needs of particular client groups. However, a rules committee could also be established to examine whether there are any benefits in establishing consistent rules of practice, forms and other procedures.

The Steering Committee will consider each of the recommendations of the Standing Committee on Law and Justice in relation to the design and implementation of NCAT's processes, procedures and services. This will ensure that NCAT delivers services that are easy to find, navigate and understand and that its practices and procedures are simple and consistent.

Timetable

A phased implementation timetable will be adopted to ensure an orderly and efficient transition. The Government will endeavour to introduce legislation establishing NCAT by the end of 2012. NCAT's practices and procedures will be developed by the Steering Committee, or NCAT's rules committee, who will continue their work throughout 2013.

NCAT will commence operations in January 2014.