



# Reference Group Discussion Paper 1

## 1. Legislative Strategy

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### Civil and Administrative Tribunal Bill 2012

The *Civil and Administrative Tribunal Bill 2012* (**Bill 1**) is currently before Parliament and will be passed in the first half of 2013. A copy of the Bill and the Attorney General's second reading speech can be viewed at: [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au).

Bill 1 contains provisions that are necessary to establish NCAT. For example, the Bill provides that NCAT can start operating from 1 January 2014 and contains transitional provisions that are needed to abolish existing tribunals on that date. It also provides for the appointment of NCAT's members, including its President and Deputy Presidents, and sets up the Tribunal's five divisions.

The Bill also provides for NCAT's Rule Committee and some other members to start work prior to the Tribunal's commencement date. This will ensure that the transition to NCAT is as smooth as possible. Transitional provisions provide that members with existing appointments will be transferred to NCAT and existing entitlements will be preserved.

### Legislative Strategy 2013

Further legislation will be required to give NCAT jurisdiction, and to set the powers and functions the Tribunal needs to operate effectively. Two Bills are scheduled for introduction into Parliament in 2013 (**Bill 2** and **Bill 3**).

#### ***Bill 2 – Budget Session 2013***

Bill 2 will set NCAT's jurisdiction (including primary, administrative review and appeal decision-making). Bill 2 will also set essential powers and functions, including in relation to:

- Representation of parties,
- Hearings and evidence,
- Costs,
- Alternative dispute resolution,
- Constitution of panels (where special provisions are not required), and
- Appeals

Legislation scheduled for introduction in Budget Session 2013 must be approved by Cabinet no later than the week commencing 20 May 2013.

#### ***Bill 3 – Spring Session 2013***

The <sup>third</sup> ~~second~~ Bill will set the content of divisional schedules where special requirements are needed (e.g. in professional discipline and guardianship matters). It will also contain further transitional and miscellaneous provisions, including recommendations that might be made by NCAT's Project Team. Consequential amendments to existing Acts will also be required.



## 2. Drafting Strategy – Bill 2

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The NCAT Project Team has reviewed establishing legislation in other States and Territories that have established consolidated tribunals, including Queensland, Victoria, Western Australia and the ACT. Generally, legislation for those tribunals tends to be prescriptive and therefore lengthy. In fact, legislation to establish the Queensland Civil and Administrative Tribunal (QCAT) was one of the largest Bills ever introduced into Queensland Parliament.

The Government is establishing NCAT to make tribunal services more accessible and more efficient for users. The NCAT Steering Committee has agreed that if NCAT is to achieve this goal, legislation will need to take a concise, 'principles-based', approach. This means that legislation will:

- Use plain language,
- Include only essential powers and functions, and
- Enable the Government, or the Tribunal, to set detailed procedure through the use of regulations, rules and practice directions wherever possible.

Enabling the Tribunal to set its own practice and procedure will ensure that the Tribunal has the flexibility it needs to respond to the needs of different tribunal users. At the same time, ensuring that essential rights are protected by statute will provide certainty and guidance to the Tribunal in the exercise of its functions.

However, this does not mean that essential elements of the legislation will be left out or overlooked. In addition to governance provisions already contained in Bill 1, Bill 2 will contain provisions that are needed for the Tribunal to operate effectively, including:

- The objectives of the NCAT Act
- How proceedings are to be commenced
- Who will have standing to appear before NCAT
- Whether parties may be represented
- How NCAT may award costs
- How hearings are to be conducted and how evidence may be taken
- What alternative dispute resolution procedures NCAT should have
- Enforcement and compliance powers
- The powers of members (to dismiss, remit, reinstate, confirm, etc.)
- How panels are to be constituted
- Jurisdiction (including primary, administrative review and external appeal decision-making), and
- Internal appeals structures.

<b>2.1 Have any essential elements been overlooked that should be included in the NCAT Act?</b>
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<b>2.2 Do Reference Group members have any advice or suggestions regarding the best way to ensure that the NCAT Act is concise and user-friendly?</b>
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### 3. The role of the NCAT Reference Group

The NCAT Reference Group will be asked to review and comment on the policy issues listed above. Members are encouraged to provide any feedback or ideas at Reference Group meetings, or may provide written comments if they prefer.

Feedback and advice received from the NCAT Reference Group will be used to inform drafting instructions sent to Parliamentary Counsel, and will be considered by the Steering Committee when making decisions regarding legislative content. An exposure draft of the legislation will be circulated to the Reference Group when drafting is at a more advanced stage.

Discussion papers will be prepared by the NCAT Project Team to provide background for the Reference Group and to direct discussion. The NCAT Project Team will circulate discussion papers to Reference Group members via email. The next discussion paper will be circulated in the week of 11 February 2013. It will cover:

- Objectives of the Act,
- Representation of parties, and
- The use of assessors

Other issues will be allocated to each Reference Group meeting, with discussion papers circulated at least one week prior to each meeting. Where Reference Group members have a particular interest in certain topics (for example, administrative review decision-making), members may be asked to form sub-groups to focus on those issues. A draft timetable is provided below:

Bill 2 – For introduction Budget Session 2013		
Meeting	Date	Topics
1	7 Feb 2013	Legislative strategy
2	TBA – mid/late Feb	Objectives of NCAT Act Representation of parties Use of assessors
3	TBA – early March	Appeals Primary decision-making Default constitution of panels Costs
4	TBA – late March	Standing Commencing proceedings Administrative review decision-making Alternative Dispute Resolution
5	TBA – mid April	Hearings/Evidence Enforcement/Compliance Additional items suggested by RG
6	TBA – early May	Review exposure draft of legislation

