



23 July 2021

Law Reform Commissioner
Nsw_lrc@justice.nsw.gov.au

Dear Commissioner

**Open Justice: Court and Tribunal information: access, disclosure and publication
Response to draft recommendations**

NCAT acknowledges that the Commission has recognised that the Tribunal has a different operating model to the mainstream courts, particularly that a large proportion of its litigants are unrepresented, and that the rules of evidence are not strictly applied in most types of matters decided in the Tribunal.

The NCAT Rule Committee will review the Civil and Administrative Tribunal Rules 2014 to see what can be practically aligned to fit within the NCAT context once any legislation is enacted for courts.

I comment on one of the recommendations that directly impacts NCAT, as follows.

Proposal 6.9

This proposal is to amend s 64 of the *Civil and Administrative Tribunal Act 2013* to make all non-publication and suppression orders time limited.


I do not support this proposal for NCAT. It appears to be largely applicable to courts, particularly in jury trials where an order might be during a trial to avoid prejudice but after the verdict that order is no longer needed. This does not apply to NCAT.

The types of matters NCAT deals with generally have orders that need to be in place indefinitely. The most usual categories of matters where orders are made are:

- Guardianship
- Child Welfare
- Victims in occupational disciplinary matters (eg complaint of sexual assault of a patient by a doctor).

The necessity of an indefinite order would generally be considered by the Tribunal as part of the final decision in the proceedings before it. If a party or a third party wants such an order lifted, that party can already apply to NCAT in that respect. If orders were time limited, either NCAT would have to have a system in place to keep remaking the orders or parties would have to remember to reapply.

Yours faithfully


The Hon Justice Lea ARMSTRONG
President