



New South Wales

Civil and Administrative Tribunal Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish a Civil and Administrative Tribunal of New South Wales (also called *NCAT*) to replace various existing tribunals and to provide for its membership and functions.

Summary of operation of this Bill

NCAT, on its establishment, will replace each of the following tribunals (the *existing tribunals*):

- (a) the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal established under the *Aboriginal Land Rights Act 1983*,
- (b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997*,
- (c) the Charity Referees constituted as provided by section 5 of the *Dormant Funds Act 1942*,
- (d) the Consumer, Trader and Tenancy Tribunal of New South Wales established under the *Consumer, Trader and Tenancy Tribunal Act 2001*,
- (e) the Guardianship Tribunal constituted under the *Guardianship Act 1987*,

- (f) each of the following Tribunals established under section 165 of the *Health Practitioner Regulation National Law (NSW)*:
 - (i) the Aboriginal and Torres Strait Islander Health Practice Tribunal of New South Wales,
 - (ii) the Chinese Medicine Tribunal of New South Wales,
 - (iii) the Chiropractic Tribunal of New South Wales,
 - (iv) the Dental Tribunal of New South Wales,
 - (v) the Medical Radiation Practice Tribunal of New South Wales,
 - (vi) the Medical Tribunal of New South Wales,
 - (vii) the Nursing and Midwifery Tribunal of New South Wales,
 - (viii) the Occupational Therapy Tribunal of New South Wales,
 - (ix) the Optometry Tribunal of New South Wales,
 - (x) the Osteopathy Tribunal of New South Wales,
 - (xi) the Pharmacy Tribunal of New South Wales,
 - (xii) the Physiotherapy Tribunal of New South Wales,
 - (xiii) the Podiatry Tribunal of New South Wales,
 - (xiv) the Psychology Tribunal of New South Wales,
- (g) the Local Government Pecuniary Interest and Disciplinary Tribunal established under the *Local Government Act 1993*,
- (h) each local land board constituted under the *Crown Lands Act 1989*,
- (i) the Victims Compensation Tribunal constituted under the *Victims Support and Rehabilitation Act 1996*.

This Bill is the first stage in the process of abolishing the existing tribunals and transferring their functions to NCAT. The principal focus of this Bill is to provide for the establishment of NCAT. Substantive functions will be conferred on NCAT in the second stage in the process of abolishing the existing tribunals.

The second stage in the process of abolishing the existing tribunals, which will occur in 2013, will involve the enactment of legislation:

- (a) to amend the proposed Act to add additional provisions concerning the constitution and functions of NCAT, and
- (b) to repeal and amend certain other Acts and statutory rules so as to transfer jurisdiction from the existing tribunals to NCAT.

This Bill provides for NCAT to be established on 1 January 2014 or, if required, on a later date appointed by proclamation of the Governor.

This Bill includes provisions that will enable the President of NCAT and other members to be appointed in anticipation of NCAT's establishment. The President, when appointed, will have the function of facilitating the establishment of NCAT (including by developing practice notes and Tribunal rules for use by NCAT on its establishment). This Bill will also enable the Rule Committee of NCAT to be

constituted and to exercise its functions before the establishment of NCAT to develop Tribunal rules.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 sets out the object of the proposed Act.

Clause 4 defines certain terms and expressions used in the proposed Act.

In particular, the term *enabling legislation* is defined to mean legislation (other than the proposed Act or any statutory rules made under the proposed Act) that:

- (a) provides for applications or appeals to be made to the Tribunal with respect to a specified matter or class of matters, or
- (b) otherwise enables the Tribunal to exercise functions with respect to a specified matter or class of matters.

Clause 5 provides that notes included in the proposed Act do not form part of the proposed Act.

Clause 6 defines what the term *application* to the Tribunal means for the purposes of the proposed Act.

Part 2 Establishment of Tribunal

Division 1 Establishment and membership

Division 1 provides for the establishment of NCAT and its membership.

NCAT will be established on 1 January 2014 or, if required, on a later date appointed by proclamation of the Governor (referred to in the proposed Act as the *establishment day*).

The Division permits the President and other members of NCAT (including Division Heads) to be appointed before the establishment day to facilitate the process of establishing NCAT. Provision is also made for the Rule Committee of NCAT to be constituted before the establishment day to make Tribunal rules in anticipation of the establishment of NCAT.

NCAT will consist of the following members:

- (a) the President (who must be a Judge of the Supreme Court),
- (b) Deputy Presidents,
- (c) principal members,

- (d) senior members,
- (e) general members.

Members (other than acting members) will be appointed as either term members or occasional members.

A *term member* is a member who is appointed for a term. The President will be required to be appointed as a term member, as will each Division Head for the Divisions of the Tribunal. A term member may be appointed on a full-time or part-time basis. The President will be appointed on a full-time basis.

An *occasional member* is a member who has been appointed to be a member for the purposes of specified proceedings before NCAT.

Division 2 Divisions of Tribunal

Division 2 provides that the functions of NCAT are to be allocated and exercised in the following Divisions of the Tribunal:

- (a) the Administrative and Equal Opportunity Division,
- (b) the Consumer and Commercial Division,
- (c) the Occupational and Regulatory Division,
- (d) the Guardianship Division,
- (e) the Victims Support Division.

Division 2 provides for the assignment of members to these Divisions of the Tribunal and recognises that each Division of the Tribunal will have a Division Schedule. The *Division Schedule* for a Division of the Tribunal is the Schedule to the proposed Act that provides for the composition and functions of that Division. The provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provisions of the proposed Act.

A *Division Head* will be appointed for each Division of the Tribunal. The principal function of the Division Head of a Division of the Tribunal will be to direct the business of the Tribunal in that Division.

Division 2 also enables Division Lists to be created for Divisions of the Tribunal for the purposes of managing classes of proceedings in the Division. List Managers will be appointed to manage these Division Lists.

Division 3 Functions of members

Division 3 sets out the functions of the President, the Division Heads and other members of NCAT (including functions that may be exercised by members who are appointed before the establishment day).

Division 4 Registrar, Deputy Registrars and staff

Division 4 provides for the appointment and functions of a Registrar, Deputy Registrars and other staff to assist the Tribunal in the exercise of its functions.

Division 5 Rule Committee, Tribunal rules and practice notes

Division 5 provides for there to be a Rule Committee of NCAT to make Tribunal rules for NCAT to govern its practice and procedure. The President is also empowered to issue practice notes.

Division 6 Jurisdiction and functions of Tribunal

Division 6 provides that NCAT has such jurisdiction and functions as may be conferred or imposed on it by or under the proposed Act or any other legislation.

Part 3 Miscellaneous

Part 3 contains various provisions relating to the general operation of the proposed Act, including provisions relating to the following:

- (a) the application of the proposed Act to the Crown,
- (b) the authentication of documents of NCAT,
- (c) the giving of notices and lodgment of documents,
- (d) the making of regulations.

The Part also makes amendments to the *Judicial Officers Act 1986* that are consequential on the establishment of the office of the President of NCAT.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including provisions that provide for the abolition of the existing tribunals on the establishment day and the transfer of their members and functions to NCAT.

Schedule 2 Provisions relating to members

Schedule 2 contains additional provisions relating to members, including provisions concerning remuneration and the vacation of office.

Schedule 3 Administrative and Equal Opportunity Division

Schedule 3 will be the location of the Division Schedule for the Administrative and Equal Opportunity Division of NCAT.

The Administrative and Equal Opportunity Division of NCAT will eventually be responsible for the exercise of certain functions of NCAT transferred from the Administrative Decisions Tribunal, including functions relating to the review of

administrative decisions and equal opportunity matters (such as matters arising under anti-discrimination or community welfare legislation).

Schedule 4 Consumer and Commercial Division

Schedule 4 will be the location of the Division Schedule for the Consumer and Commercial Division of NCAT.

The Consumer and Commercial Division of NCAT will eventually be responsible for the exercise of certain functions of NCAT that will be transferred from the Consumer, Trader and Tenancy Tribunal.

Schedule 5 Occupational and Regulatory Division

Schedule 5 will be the location of the Division Schedule for the Occupational and Regulatory Division of NCAT.

The Occupational and Regulatory Division of NCAT will eventually be responsible for the exercise of certain functions of NCAT that will be transferred from various existing tribunals concerning the regulation of professions and occupations, including legal practitioners and health practitioners.

The Schedule makes provision for the establishment of a specialist Health Practitioner Division List for the management of proceedings allocated to the Division that will arise under the *Health Practitioner Regulation National Law (NSW)* after the abolition of the existing health practitioner tribunals.

Schedule 6 Guardianship Division

Schedule 6 will be the location of the Division Schedule for the Guardianship Division of NCAT.

The Guardianship Division of NCAT will eventually be responsible for the exercise of certain functions of NCAT that will be transferred from the Guardianship Tribunal.

Schedule 7 Victims Support Division

Schedule 7 will be the location of the Division Schedule for the Victims Support Division of NCAT.

The Victims Support Division of NCAT will eventually be responsible for the exercise of certain functions of NCAT that will be transferred from the Victims Compensation Tribunal.