

# Lawyers at NCAT

s45 Civil & Administrative Tribunal Act (NSW) 2013

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I have previously appeared as counsel at the NSW Civil & Administrative Tribunal (NCAT) and its predecessor the Consumer Trader & Tenancy Tribunal (CTTT). Other lawyers are often surprised to hear this as they wrongly believe that lawyers cannot appear in that jurisdiction. This article aims to assist legal practitioners seeking leave to appear at NCAT.

## Representation of Parties

Representation is covered under s45 of the Act.<sup>1</sup> The default position is that parties have the carriage of their own case and are not entitled to be represented by any person. However, the section goes on to provide that the party can be represented by another person if the Tribunal grants leave.

The Tribunal can grant leave to any person – not just a legal practitioner. So a party to a strata matter may seek to be represented by a strata manager and a party to a tenancy dispute may seek to be represented by their real estate agent.

## Applying for Leave

The application can be made orally or in writing at any stage of the proceeding.<sup>2</sup> Clause 32(1)(a) provides that in dealing with the application the Tribunal is to have regard to:<sup>3</sup>

- (a) *such of the following circumstances as it considers are relevant to the proceedings:*
  - (i) *whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal,*
  - (ii) *whether the proposed representative has the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings,*
  - (iii) *whether the proposed representative is vested with sufficient authority to bind the party, and*
- (b) *any other circumstances that it considers relevant.*

A legal practitioner should have no difficulty satisfying sub-clause (a) and sub-clause (b) provides a loop-hole through which you should be able to drive a horse and cart. However, should you require inspiration, it can be found in clause 14 of the previous CTTT Rules which is annexed to this article. Sub-clauses 14 (o) through (r) are particularly broad. Please note those rules have been replaced and are provided as a guide only.

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<sup>1</sup> s45 Civil & Administrative Tribunal Act 2013

<sup>2</sup> s31(1) Civil & Administrative Tribunal Rules 2014

<sup>3</sup> s32(1)(a) Civil & Administrative Tribunal Rules 2014

## Sample Submissions

The submissions will start by giving the Tribunal a summary of the facts emphasizing what makes this matter different from the ordinary matter where parties are unrepresented. The submission would go something like this:

*I am a legal practitioner and I make an application under s45 of the Act for leave to appear for the applicant. I submit that I have sufficient knowledge of the issues in dispute to effectively represent the party. Furthermore, I have the ability to deal fairly and honestly with the Tribunal and other parties.*

### **[Summary of the Facts that make this matter special]**

*I submit that leave should be granted as a matter of necessity due to the likelihood that complex issues of law or fact will arise in the proceedings. In addition, I note that the other party is a government agency / corporation that is represented by a legal practitioner. I submit that my client would be placed at a disadvantage if not represented at the hearing.*

## If Leave is Refused

Should the Tribunal spurn your offer of assistance, all is not lost. It simply means that you won't have a speaking role in the proceedings. You can still settle the client's statement and draft his submissions on the facts and the law. In fact, you could even attend the Tribunal and provide assistance as a 'McKenzie friend'.<sup>4</sup>

Should you have any interesting issues, I am available every day.

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<sup>4</sup> McKenzie v McKenzie [1970] 3 All ER 1034

## **Consumer, Trader and Tenancy Tribunal Regulation 2009 (Repealed)**

### **14 Circumstances in which application may be made**

For the purposes of section 36 (2) of the Act, an application by a party for permission to be represented in any proceedings may be made in any one or more of the following circumstances only:

- (a) if the proceedings are to be heard in the Home Building Division and involve a claim or dispute for an amount exceeding \$30,000,
- (b) if the party is a body corporate and the body corporate is to be represented by one of its officers,
- (c) if the party is an owners corporation constituted under the [Strata Schemes Management Act 1996](#) and the corporation is to be represented by the owner or, if there is more than one owner, by one of the owners constituting the corporation, or by the strata managing agent,
- (d) if the party is a community association constituted under the [Community Land Development Act 1989](#) and the association is to be represented by the proprietor of each development lot in the relevant community plan or, if there is more than one proprietor, by one of the proprietors who is a member of the association, or by the managing agent,
- (e) if the party is a body registered under the [Co-operatives Act 1992](#) and the body is to be represented by one of its officers,
- (f) if the party is a firm and the firm is to be represented by one of its partners,
- (g) if the party is an incorporated association registered under the [Associations Incorporation Act 1984](#) and the association is to be represented by one of its officers,
- (h) if the party is an unincorporated body of persons and the body is to be represented by:
  - (i) a secretary or treasurer of the body, or
  - (ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body,
- (i) if the party has a trustee for the management of his or her estate and the person is to be represented by the trustee,
- (j) if the party is a government agency and is to be represented by an officer of that or any other government agency,
- (k) if the party is a landlord of property involved in the proceedings and is to be represented by the managing agent of the property,
- (l) if the party is the owner of a residential park involved in the proceedings and is to be represented by the park manager,
- (m) if the party is the operator of a retirement village involved in the proceedings and is to be represented by an employee or agent (other than an Australian legal practitioner) of the operator,
- (n) if the party is a resident of a retirement village who is to be represented by:
  - (i) a nominated resident of the retirement village in accordance with section 122 of the [Retirement Villages Act 1999](#), or
  - (ii) the Residents Committee of the retirement village in accordance with the regulations under that Act,
- (o) if another party in the proceedings is, or is to be represented by, an Australian legal practitioner,
- (p) if another party in the proceedings is a government agency,
- (q) if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing,
- (r) if the Tribunal is of the opinion that representation should be permitted as a matter of necessity due to the likelihood that complex issues of law or fact will arise in the proceedings.
- (s) if the proceedings relate to a tenancy (within the meaning of the [Agricultural Tenancies Act 1990](#)) and involve a claim or dispute for an amount exceeding \$30,000.