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Dear Dr Buckley

Northern Territory Civil and Administrative Tribunal Amendment Bill 2018

Law Society Northern Territory (the Society) welcomes the opportunity to respond to the comments provided by the Department of Attorney-General and Justice (DAGJ) on the draft legislation amending the Northern Territory Civil and Administrative Tribunal Amendment Bill (Bill).

The Society considers the response provided by DAGJ to be inadequate.

Service of documents

The Society again reiterates its position that it does not support the provision in the Bill for the making of default judgements without the need for evidence of service and proof of, for example, the debt. The Society notes that during the consultation process no evidence was presented to show that there was a pressing need for changes to the NTCAT powers to make default judgements. For example, information was not produced to show a large number of debt matters where no response had been given which in turn were clogging up the system with hearings being required to deal with these matters. Even if this was the case, it would be a resourcing issue that should not be addressed by cutting corners and significantly impacting on a person's right to due process and justice.

DGAJ's response to question 1b. refers to QCAT Rule 39 and the methods of 'giving' an application. However this rule only relates to the giving of 'other documents' and not the initiating application – Rule 39 is subject to Rule 38 which for minor debt claims requires the giving of an application by delivering it personally and in the way provided for in QCAT PD 8 of 2009¹

DAGJ relies on the NTCAT Rules in its response to question 1c. However, Rule 2 of NTCAT Rules provides that the Tribunal may at any time dispense with a requirement of these Rules. Further s.53 (3) of the Act allows the Tribunal to accept into evidence any document despite any non-compliance with a requirement under the Act relating to the document or service of the document. The Society considers the Bill needs to provide more rigorous safeguards (like

¹ http://www.qcat.qld.gov.au/data/assets/pdf_file/0009/101250/Practice-Direction-2009-8-amended.pdf

personal service where possible) due to the impact these changes could have on the marginalised and remote residents of the Northern Territory.

Default decisions

Queensland is one of few jurisdictions that provides for default decisions. However, getting a default decision in QCAT is a twostep process. In relation to question 2. DAGJ categorically states 'An initiating process (whether in a Court or NTCAT) *should never include a requirement for evidence...*' but this does not align with the position in other jurisdictions, in particular Queensland. In this regard we refer the committee to QCAT and the prescribed application form for minor civil debts² and the prescribed form for a decision by default³. QCAT's initiating application requires the person to provide as much information as possible and to attach evidence where possible. NTCATs initiating process only requires a summary which is limited to one page. A quick comparison between QCATs forms and NTCATs forms should be all that is required to show the inadequacy in the proposed amendments.

In response to question 2a. DAGJ refers to QCAT Rule 10 as *merely* requiring a statement as to the amount claimed and how it came to be owing. However, the requirements for an application for a decision by default are dealt with by QCAT Rules 60 and 60A and when read in conjunction with Rule 10 it becomes clear that evidence of the basis of the claim is required.

Given the limited time the Society has had to consider the response from DAGJ, we would be more than happy to expand on any of our concerns if offered a further opportunity.

Yours faithfully



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http://www.qcat.qld.gov.au/_data/assets/pdf_file/0019/100855/Application_for_minor_civil_dispute_FI_NAL.pdf

³ http://www.qcat.qld.gov.au/_data/assets/pdf_file/0005/100859/form-06-req-for-decision-by-default-mcd.pdf