

Federal jurisdiction

Does your matter involve an exercise of federal jurisdiction of the kind referred to in section 75 or 76 of the Commonwealth Constitution? If so, NCAT will not be able to determine your matter.

What types of matters involve federal jurisdiction?

In *Burns v Corbett* [2018] HCA 15, the High Court of Australia decided that NCAT is not able to exercise jurisdiction of the kind referred to in section 75 or 76 of the Commonwealth Constitution (commonly called 'federal jurisdiction').

It is a complicated question to decide which matters might be affected

Types of matters affected

There are multiple situations where federal jurisdiction can arise. Examples include the following types of matters.

Where parties live in different states

If, at the time of lodging an application at NCAT, one party is a permanent resident of one State and the opposing party a resident of a different State, NCAT will not be able to determine the matter.

However, there is no 'federal jurisdiction' problem if one of the parties is:

- a corporation
- a NSW government agency
- a resident of a Territory
- a non-permanent resident of a different State, or
- a party who resides overseas.

This issue commonly arises in residential proceedings such as when the landlord resides interstate.

There is no problem if the matter does not involve NCAT exercising judicial power, for example administrative review matters in the Administrative and Equal Opportunity or Occupational Divisions.

Matters involving the Commonwealth

NCAT is unable to determine matters involving the Commonwealth and Commonwealth laws.

For example, where the matter arises under any treaty, affecting consuls or other representatives of other countries or where the Commonwealth is a party or the matter arises under the Commonwealth Constitution or involves its jurisdiction or arises under any laws made by the Commonwealth Parliament, such as the *Disability Discrimination Act 1992* (Cth).

This can also include where Commonwealth legislation is raised as a defence to a matter.

Air carriage and maritime matters

NCAT is unable to determine matters involving:

- International and domestic carriage by air falling within the scope of the *Civil Aviation (Carriers' Liability) Act 1959* (Cth)
- Claims relating to contracts for the carriage of goods by sea, as they fall under the *Admiralty Act 1998* (Cth).

What happens if there is a 'federal jurisdiction' problem?

You still apply to NCAT and we will help you come to an agreed settlement with the other party.

However, if you do not settle your dispute or you want to have the agreed settlement registered and enforced, you will need to go to the Local or District Court, depending on the size of the claim. The court is able to make the same orders that NCAT could have made.



Going to court after NCAT

If you go to the Local or District Court you will need to take the following documents with you:

- A copy of the letter from NCAT that tells you that NCAT declines to hear your matter.
- A copy of the application or appeal you lodged at NCAT.
- If settlement reached, a copy of the agreed settlement.

You will also need to complete the relevant court Summons and Affidavit. There is a link to these documents on the NCAT website.

Further information can be found in Part 3A of the *Civil and Administrative Tribunal Act 2013*.

Can I go to court directly?

If an Act of Parliament says that NCAT is the only body which can deal with your matter (for example, the *Anti-Discrimination Act 1977* or section 119 of the *Residential Tenancies Act 2010*) - no. For those matters, the Local or District Court can grant leave for the application or appeal to be made to the court only if it is satisfied that the application or appeal was first made to NCAT.

If a court as well as NCAT can determine your matter – yes, you can go directly to the court. However you should consider seeking legal advice before taking this action – refer to ‘Getting help’ information below.

Will I have to pay additional fees?

In most cases, you will not need to pay any additional fees. An additional fee may be payable if there is a significant change compared to the application or appeal originally lodged with NCAT.

Where can I get more information?

If you want more information about how the court will deal with your matter, go to Part 3A, Federal Proceedings, of the *Civil and Administrative Tribunal Act 2013*.

Getting help

LawAccess NSW

Phone: 1300 888 529

Website: www.lawaccess.nsw.gov.au

For free legal information and referrals to other services that provide legal advice and assistance.

NCAT Consumer and Commercial Division

Phone: 1300 006 228

Website: www.ncat.nsw.gov.au

For information and assistance about the Tribunal’s processes or procedures.