



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: JD:CM:707899
Direct line: 02 9926 0218

24 April 2013

NCAT Project Team
Department of Attorney General and Justice
Level 14, 10 Spring Street
SYDNEY NSW 2000

By email: ncat@agd.nsw.gov.au

Dear Sir/Madam

Discussion paper 5(b) – Compliance and enforcement

Following consultation with the relevant policy committees, the Law Society of New South Wales is pleased to provide the comments below regarding discussion paper 5(b) which relates to compliance and enforcement.

The NCAT Act should contain the following offences:

- **Wilful contravention or failure to comply with an order of the Tribunal**
- **Failure to comply with the requirements of a summons without lawful excuse**
- **Providing false or misleading information in a material respect**
- **Publishing or broadcasting the name of any person in relation to community welfare or guardianship matters without the consent of the Tribunal**
- **Improper disclosure of information.**

Should the NCAT Act contain any other offences?

The proposed list of offences appears to be adequate. The offence of failure to comply with an order of the Tribunal should not include interlocutory orders or directions.

That the maximum penalties be set as follows:

- **Failure to comply with order of Tribunal – 100 penalty units or imprisonment for 6 months, or both**
- **Failure to comply with the requirements of a summons – 100 penalty units**
- **Providing false or misleading information – 50 penalty units or imprisonment for 6 months, or both**
- **Publishing or broadcasting the name of any person in connection with community welfare or guardianship matters without consent – 50 penalty units or imprisonment for 12 months, or both**
- **Improper disclosure of information – 100 penalty units or imprisonment for 6 months, or both**

Should offence provisions be strengthened?

It is noted that the proposed penalties are inconsistent in terms of equating the number of penalty units with the length of imprisonment. For example:

- 100 penalty units equates to 6 months imprisonment for failure to comply with an order and improper disclosure of information
- 50 penalty units equates to 6 months imprisonment for providing false or misleading information
- 50 penalty units equates to 12 months imprisonment for publishing or broadcasting the name of any person in connection with community welfare or guardianship matter.

Consideration could be given to adopting a more consistent regime, for example:

- 200 penalty units equates to 12 months imprisonment
- 100 penalty units equates to 6 months imprisonment
- 50 penalty units equates to 3 months imprisonment

Contempt provisions should reflect the current position in the CTTT Act.

The proposal to adopt the CTTT Act contempt provisions is supported. All other forms of contempt should be reportable to the Supreme Court. NCAT should also have the power to refer contempt matters directly to the Supreme Court.

Is a separate offence of failing to comply with an order of the Tribunal necessary if the conduct can be characterised as contempt?

A separate offence of failing to comply with an order of the Tribunal may be useful in the following circumstances:

- Where the order is procedural,
- Where the order is of small value.

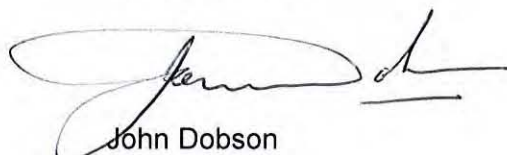
Are any of the recommended offences suitable for a civil penalty?

The following offences may be suitable for a civil penalty:

- Failure to comply with a summons, and
- Failure to comply with an order (where the order is procedural or of small value).

If you have any questions in relation to this letter please contact Chelly Milliken, Legal Policy Advisor, on 9926 0218 or chelly.milliken@lawsociety.com.au

Yours sincerely



John Dobson
President