

The answers I refer to are my own experience with NCAT NSW, on two separate applications about the same Faulty New Car;

MV [REDACTED] Applicant Carolyn Anne Stoltenberg

Respondent [REDACTED]

Date of application 26.6.17

MV [REDACTED] Applicant Carolyn Anne Stoltenberg

Respondent [REDACTED]
[REDACTED]

Date of application 3.4.18

I know my cases are both over and done with, but I felt I needed to have some input in your review, as I found both of my experiences with NCAT quite daunting, and a little confusing as a consumer with a faulty new motor vehicle. Nearly two years it took me to get a refund for my car.

I had a [REDACTED], that surged constantly at 50 klms per hour.

[REDACTED] eventually brought it back off me after lodging with NCAT against them, though they did not appear nor provide any paperwork as requested by NCAT.

Hoping my answers help you a little with your review, sorry if they sound Sour Grapes, but they are answered as my own personal consumer experience with your organisation.

I actually feel NCAT handles Tenancy Tribunal quite well, vehicles are more complex.

Written submissions should be sent to: The Director, Courts Strategy, Department of Justice, GPO Box 31, Sydney NSW 2001 or by email to policy@justice.nsw.gov.au

What will the review look at? We expect to receive submissions on a broad range of issues relating to the operation of the Civil and Administrative Tribunal Act 2013. However, you may wish to consider the following questions:

• Is it easy or difficult for people to work out whether NCAT is the right body to resolve their legal issue?

Unsure, I lodged with Fair Trading initially, they did contact the Motor Vehicle Dealer who confirmed that they would take back faulty vehicle and refund money. This did not happen, so I called Fair Trading NSW who then told me that they could not enforce, and I would need to apply to NCAT, which I did. So in reality NSW Fair Trading referred me NCAT NSW.

• Is NCAT accessible and responsive to its users' needs?

Yes, website does have form for application.

And No,

I produced evidence both parties, Motor Vehicle dealership and Manufacturer provided nothing.

I was a little confused about "Expert Witness" documentation.

• Are there things that NCAT could do to make it easier for people appearing in the Tribunal to understand the process and participate?

Possibly, as I thought the first hearing was going to discuss and make a judgement.

"Conciliation Hearing", whereas I understand parties involved meet to discuss a resolution. Motor Vehicle Dealership did not attend the Conciliation Hearing.

In the second application made against [REDACTED] again the respondent did not appear.

(Also I provided a lot of evidence with my application and actually had to provide another 3 copies after the conciliation, so maybe I didn't need so much information with the application ?)

On both occasions I was emailed the following orders,

██████████ CASE

Carolyn Anne Stoltenberg ██████████

File No: ██████████ Quote in all enquiries eNumber: ██████████

Application to the Tribunal concerning CAROLYN ANNE STOLTENBERG - ██████████
██████████

Applicant: Carolyn Anne Stoltenberg Respondent: ██████████

On 25-Jul-2017 the following orders were made:

1. By Determination of member, on 25 July 2017 the hearing was adjourned to a date to be fixed by the Registrar.
2. The respondent's name ██████████, is amended to ██████████.
3. The applicant shall provide to the respondent and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the applicant intends to rely at the hearing by 08-Aug-2017.
4. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the respondent intends to rely at the hearing by 22-Aug-2017.

IMPORTANT NOTE: For the purpose of these directions "document" means: - Witness statements / statutory declarations or affidavits - Expert reports - Photographs - Accounts or receipts - Quotations - Any other document to be relied upon And all documents must be legible and in colour (if the original is in colour).

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

(a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or (b) If the party causing the disadvantage is not the applicant: (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

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ccdtamworth@ncat.nsw.gov.au Ph: 5776 5496 Fax: 5776 5401 www.ncat.nsw.gov.au

██████████ CASE ██████████ File No: ██████████ Quote in all enquiries
eNumber: ██████████

Application to the Tribunal concerning CAROLYN ANNE STOLTENBERG - ██████████
██████████

Applicant: Carolyn Anne Stoltenberg Respondent: ██████████

On 26-Jun-2018 the following orders were made:

a By Determination of member, on 26 June 2018 the hearing was adjourned to a date to be fixed by the Registrar.

2. The applicant shall provide to the respondent and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the applicant intends to rely at the hearing by 10-Jul-2018.

3. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the respondent intends to rely at the hearing by 24-Jul-2018.

IMPORTANT NOTE:

For the purpose of these directions "document" means:

- Witness statements / statutory declarations or affidavits
- Expert reports
- Photographs
- Accounts or receipts
- Quotations
- Any other document to be relied upon

And all documents must be legible and in colour (if the original is in colour).

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For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at www.ncat.nsw.gov.au

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Hearing was set for Moree 21st May, 1pm but [REDACTED] asked me to adjourn 15.5.18 so I put in a request for adjournment.

Case was then listed for Hearing in Narrabri 26.6.18. I had to attend even though [REDACTED] had taken my car back for a refund 7.6.18 and I had not received any payment from [REDACTED].

• Does NCAT resolve legal disputes quickly, cheaply and fairly?

I would answer NO this question, because the first application against Motor Vehicle Dealership, I produced many documents, I went to the Conciliation hearing, dealer did not turn up. I was ordered to:

3. The applicant shall provide to the respondent and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the applicant intends to rely at the hearing by 08-Aug-2017.

4. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the respondent intends to rely at the hearing by 22-Aug-2017.

IMPORTANT NOTE: For the purpose of these directions "document" means: - Witness statements / statutory declarations or affidavits - Expert reports - Photographs - Accounts or receipts - Quotations - Any other document to be relied upon And all documents must be legible and in colour (if the original is in colour).

Case then proceeded to a hearing. I provided all copies as requested, one copy to NCAT, one copy to Motor Vehicle Dealership and one copy for myself, all in colour as requested.

The dealership had been given a time frame to provide their evidence, the dealership produced none. At the hearing it was all verbal questions from Member and answers from the Dealership Principal.

In my documents I had quite clearly, showed that the dealership knew there was a problem with my car, and did nothing to rectify. They also wrote that they had contacted manufacturer [REDACTED] and that [REDACTED] had said that they would take my car back, this also did not happen.

My case was dismissed due to myself having no evidence of the mechanical problem with my car, apart from a mechanic's view (that I did not wish to name as he contracts his business with the Motor Vehicle Dealership, and I was unwilling to compromise that for the mechanic) Yet,,,, the Motor Vehicle Dealership confirms in multiple emails that they knew there was a problem with my vehicle.

Motor Vehicle Dealership are the mechanical knowledge not the consumer.

As I said before I was very confused in what "Expert Witness" meant.

Maybe clarify that a little more on your website to make it more consumer friendly.

File No: [REDACTED] Quote in all enquiries eNumber: [REDACTED]

Application to the Tribunal concerning CAROLYN ANNE STOLTENBERG - [REDACTED]
[REDACTED]

Applicant: Carolyn Anne Stoltenberg Respondent: [REDACTED]

On 18-Sep-2017 the following orders were made:

1. The application is dismissed because:

- Having considered the material placed before it, the Tribunal is not satisfied (at the civil standard of proof) that the grounds required to make the orders sought have been established.

Further reasons

2. This matter was heard at Narrabri on 18 Sep 2017. The applicant appeared on her own behalf, unrepresented, and the respondent company appeared by it's director, [REDACTED], also unrepresented.

3. The matter involved an application lodged by the applicant on 27 June 2017 in relation to a motor vehicle, a [REDACTED] which it was agreed had been purchased by the applicant from the respondent on or about 22 Aug 2016. The applicant alleged that the vehicle exhibited a fault by frequent surging of power when attaining approximately 50 kph.

4. The respondent disputed the claim and asserted that any surge was related to the vehicle being a sports model and that the vehicle changes gears as it is meant to. No evidence was submitted by the respondent and it relied upon submissions to the effect that the applicant had not proved her case.

5. The applicant tendered a substantial bundle of documents. These documents were however of little assistance to the Tribunal as there was no independent or other third party report or opinion in acceptable form attesting to the vehicle having any problem. There was no mechanic's report or other expert report, or any report of any type. The applicant did refer in her chronology to statements by other persons, including an unnamed mechanic, but no weight was given to this evidence.

Section 62 (2) of the Civil and Administrative Tribunal Act 2013 provides the following: Any party may, within 28 days of being given notice of a decision, request the Tribunal provide a written statement of reasons for its decision. The request should be, in writing, addressed to the Registrar.

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www.ncat.nsw.gov.au

6. The applicant has therefore failed to prove her case to the civil standard of proof and the application must fail.

[REDACTED] Tribunal Member 18/09/17

In the second case that I applied, same vehicle, against the manufacturer [REDACTED], Conciliation Hearing, [REDACTED] did not show at court. I was given an order via email:

4. The respondent shall provide to the applicant and the Tribunal, either in person or by post, a copy of all documents (see note below), on which the respondent intends to rely at the hearing by 24-Jul-2018.

IMPORTANT NOTE:

For the purpose of these directions "document" means:

- Witness statements / statutory declarations or affidavits
- Expert reports
- Photographs
- Accounts or receipts
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- Any other document to be relied upon

And all documents must be legible and in colour (if the original is in colour).

[REDACTED] took possession of my car 3 weeks prior to the hearing. I had to sign a release form. But at the time of the hearing they had not refunded my money. As the release form was essentially a 'Gag' order I was not allowed to discuss in public. On the day of the hearing, Member asked if anything had been resolved, I said "sort of but I am not allowed to discuss in public, so I have put what has happened in writing for your perusal". Member then addressed the tenancy cases that had been resolved. Member called me up and I gave him the above paperwork and said again I can not discuss this publicly. He then asked me what it was that I wanted. I then said "They [REDACTED] took my car back for refund 3 weeks ago and have not paid me". Member said there's not much he can do about that, and that he would forward decision/order (can't remember what it was called). Member gave me back the paperwork I had given him.

I received that information when I returned home. I don't have a copy of what was sent, all I remember is that my solicitor contacted [REDACTED] to let them know I had been to the Hearing at Narrabri 26.6.18 and [REDACTED] asked me to formally withdraw my NCAT case which I did after I was finally paid my refund on the 30.6.18.

• Should NCAT resolve some matters just by looking at the documents submitted by the parties, without a hearing in person?

YES, I submitted in both cases about my vehicle, documents proving that my vehicle had a problem, and nothing was being done by either the Motor Vehicle Dealership or the Manufacturer to find out what was wrong with vehicle. Perhaps Member for NCAT could have ordered test results that were done on my car? Or requested tests to be done? For proof of failure. Not sure how to answer this one, as no tests were ever carried out on my vehicle.

• Does NCAT need additional powers to be able to enforce its decisions?

YES,

My paperwork covered everything, it proved I had a faulty vehicle, and that the Motor Vehicle Dealership and the Manufacturer both knew, and both did nothing for me.

Fair Trading NSW were told that the car would be returned to the manufacturer. Sadly, Fair Trading NSW does not have the power to enforce either, which is why I was directed to NCAT NSW.

I provided in the first case against the Motor Vehicle Dealership, documents that proved they were aware that my car had a problem.

I provided in the second case against the Manufacturer 3 independent mechanical reports that proved beyond a doubt that my car was faulty, and or unsafe.

(It turned out to be a too sensitive throttle that could cause intentional acceleration)

I think NCAT in my case could have enforced perhaps the ACCC explanation of What is a major problem?

What is a major problem?

A product or good has a major problem when:

- it has a problem that would have stopped someone from buying it if they'd known about it
- it is significantly different from the sample or description
- it is substantially unfit for its common purpose and can't easily be fixed within a reasonable time
- it doesn't do what you asked for and can't easily be fixed within a reasonable time; or
- it is unsafe.

A service has a major problem when:

- it has a problem that would have stopped someone from buying it if they'd known about it
- it is substantially unfit for its common purpose and can't easily be fixed within a reasonable time

- it does not meet the specific purpose you asked for and cannot easily be fixed within a reasonable time
- it creates an unsafe situation.

Also, in my case, after the first NCAT got dismissed due to lack of evidence, I went back to the dealership and the new Manager told me “We didn’t make the car, fight [REDACTED]”. This was documented in my application against [REDACTED].

The ACCC clearly states:

The **retailer** can’t refuse to help you by sending you to the manufacturer or importer.

From the NCAT WEBSITE

NCAT deals with consumer claims about motor vehicles that are used primarily for private use under Part 6A of the *Fair Trading Act 1987*.

In my first NCAT against the Motor Vehicle Dealership, why could Member enforce, 79N item (b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates,

Division 3 Orders of Tribunal

79N Orders in favour of claimant

(cf CC Act 1998, s 8 (1))

In determining a consumer claim wholly or partly in favour of a claimant, the Tribunal may, subject to this Division, make any one or more of the following orders that it considers appropriate:

- (a) an order that requires a respondent to pay to the claimant a specified amount of money,
- (b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates,
- (c) an order that requires a respondent to supply to the claimant specified services other than work,
- (d) in the case of a claim for relief from payment of money—an order declaring that a specified amount of money is not due or owing by the claimant to a respondent,
- (e) an order that requires a respondent to deliver to the claimant goods of a specified description,
- (f) an order that requires a respondent to return to the claimant specified goods which are in the possession or under the control of that respondent, whether the property in the goods has passed or not,
- (g) an order that requires a respondent to replace goods to which the claim relates,
- (h) an order that requires a respondent to refund all or part of the purchase price of specified goods that are in the possession (or under the control) of the claimant and the claimant to return all or part of those goods to the respondent (whether the property in the goods has passed or not).

NCAT also deals with disputes between dealers and manufacturers about unfair motor vehicle supply contracts or unjust conduct relating to a supply contract under the *Motor Dealers and Repairers Act 2013*.

Motor Dealers and Repairs Act 2013

Motor Dealers and Repairers Act 2013 No 107

Current version for 28 February 2019 to date (accessed 12 June 2019 at 11:24)

[Part 4 Division 4 Section 68](#)

68 Dealer guarantee for defective vehicles

- (1) **Dealer guarantee** A motor dealer must, at the motor dealer's own expense, repair or make good a motor vehicle sold by the motor dealer, if it is a defective vehicle, so as to place the motor vehicle in a reasonable condition having regard to its age.

Note.

Any repairs must be carried out by the holder of a tradesperson's certificate (see section 16).

- (2) The following persons have the benefit of the dealer guarantee:
- (a) the purchaser of the motor vehicle from the motor dealer,
 - (b) any subsequent owner of the motor vehicle, but only if the motor vehicle was not a second-hand motor vehicle when sold by the motor dealer liable for the dealer guarantee.
- (3) A motor dealer ceases to be liable for the dealer guarantee for a motor vehicle if the motor vehicle is at any time acquired by the motor dealer or another motor dealer.
- (4) The dealer guarantee does not apply to a motor vehicle if no limitation period is specified for the motor vehicle under this Division.

Thanks for your perusal of my answers

Carolyn Anne Stoltenberg

[REDACTED]

[REDACTED]

[REDACTED]