



**NTCAT**

Northern Territory  
Civil and Administrative Tribunal

# **NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL**

## **ANNUAL REPORT 2014 - 2015**



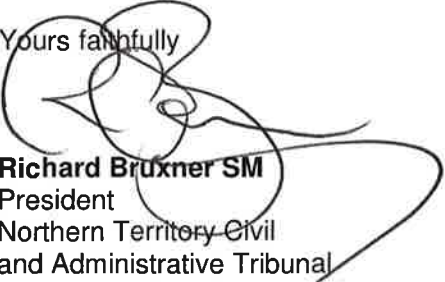
**NTCAT**  
Northern Territory  
Civil and Administrative Tribunal

The Honourable John Elferink MLA  
Attorney-General and Minister for Justice  
GPO Box 3146  
DARWIN NT 0801

Dear Attorney-General

In accordance with section 151 of the *Northern Territory Civil and Administrative Tribunal Act, 1999*, I have pleasure in submitting for your attention the Northern Territory Civil and Administrative Tribunal's annual report for the period 1 July 2014 to 30 June 2015.

Yours faithfully



**Richard Bruxner SM**  
President  
Northern Territory Civil  
and Administrative Tribunal

25 September 2015

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## INTRODUCTORY

1. This is the annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2014-2015 financial year. The preparation of an annual report is required by section 151 of the *Northern Territory Civil and Administrative Tribunal Act* (NT) ('NTCAT Act'), which is in these terms:

### **151 Annual report**

- (1) The President must prepare and give to the Minister a report on the administration and operation of the Tribunal during each financial year.
  - (2) The report must contain information about:
    - (a) the number, nature and outcome of matters that have come before the Tribunal; and
    - (b) the number and nature of matters that are outstanding; and
    - (c) any trends or special problems that may have emerged; and
    - (d) in relation to the matters that have come before the Tribunal – the level of compliance by decision makers with requirements to:
      - (i) notify persons of reviewable decisions and their rights to seek review; and
      - (ii) provide written reasons for reviewable decisions when requested to do so; and
    - (e) forecasts of the workload of the Tribunal in the next financial year; and
    - (f) any proposals for improving the administration and operation of the Tribunal.
  - (3) The report must not contain information in relation to the evidence given in closed hearings or other confidential matters.
  - (4) The report must be given to the Minister within 3 months after the end of the financial year or such other period as the Minister determines.
  - (5) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the report.
2. The matters listed in section 151(2)(a) – (f) are addressed below under separate headings, following some general observations.

## GENERAL

3. This is NTCAT's first annual report. It relates to the first nine months of NTCAT's existence, the NTCAT Act having commenced operation on 6 October 2014.

4. That nine months was a period of establishment and consolidation, during which a necessary focus was upon putting in place and refining the infrastructure and systems that will support and sustain NTCAT in its early operations.
5. NTCAT also commenced actively managing and hearing matters from 1 January 2015. Whilst this posed challenges for a tribunal that was still very much in its formative stages, it also provided experience and insights that proved invaluable in the early shaping of NTCAT.

## NTCAT'S JURISDICTIONS

6. The majority of NTCAT's hearings for its first six months were in the residential tenancies jurisdiction (which did not formally transfer to NTCAT until 1 June 2015, but was managed throughout by NTCAT).
7. Apart from residential tenancies matters, NTCAT conducted several reviews of decisions by government officers and authorities (in relation to planning, liquor licensing and crime victims compensation).
8. The President of NTCAT also holds an appointment as President of the Mental Health Review Tribunal ('MHRT'). The jurisdiction of the MHRT (which accounts for between 10 and 15 hearings per week) is likely to transfer to NTCAT in 2015-2016; however, NTCAT has since 1 January 2015 managed the administrative and quasi-judicial responsibilities of that tribunal under the *Mental Health and Related Services Act* (NT).
9. As at 30 June 2015 jurisdiction had been conferred upon NTCAT under the following Acts:
  - *Births Deaths and Marriages Registration Act*
  - *Building Act*
  - *Caravan Parks Act*
  - *Control of Roads Act*
  - *Darwin Waterfront Corporation Act*
  - *Energy Pipelines Act*
  - *Fences Act*
  - *Gaming Control Act*
  - *Gaming Machine Act*
  - *Geothermal Energy Act*
  - *Health Practitioner Regulation (National Uniform Legislation) Act*
  - *Health Practitioners Act*
  - *Heritage Act*
  - *Kava Management Act*
  - *Lands Acquisition Act*
  - *Licensing Act*
  - *Liquor Act*
  - *Local Government Act*
  - *Mineral Titles Act*

- *Northern Territory Civil and Administrative Tribunal (Conferral of Jurisdiction for Native Title Matters) Act*
- *Pastoral Land Act*
- *Petroleum Act*
- *Planning Act*
- *Poppy Regulation Act*
- *Private Security Act*
- *Prostitution Regulation Act*
- *Residential Tenancies Act*
- *Tobacco Control Act*
- *Totaliser Licensing and Regulation Act*
- *Termination of Units Plans and Unit Titles Schemes Act 2014*
- *Victims of Crimes Assistance Act*

## STAFFING

10. At the time of its commencement, NTCAT had a permanent staff of three - the President (Richard Bruxner), the Senior Member (Andrew Macrides) and the Registrar (Jim Laouris). Recruitment in the ensuing months saw them joined by seven administrative officers (six based in Darwin and one in Alice Springs). John Birch SM, a magistrate based in Alice Springs also agreed to appointment as NTCAT's Vice President, however the appointment was not finalised in the reporting period.
11. The President, Senior Member and Registrar (who is able to constitute the Tribunal for certain matters) have had the conduct of the majority of the caseload of NTCAT since 1 January 2015. From 12 May 2015 NTCAT has also had available to it the services of 13 legally qualified sessional members (10 in Darwin and three in Alice Springs) who were appointed following an expressions of interest process that led to recommendations by the President to the Attorney General. Although the quasi-judicial nature of NTCAT's role meant that the early focus for sessional member recruitment was upon establishing a legally experienced core, there was also the need to recruit people with 'jurisdiction-specific' skill sets. Sessional members with qualifications relevant to NTCAT's health practitioner disciplinary jurisdiction were appointed in June 2015 and recruitment in respect of other jurisdictions will continue.
12. The following were appointed as sessional members of NTCAT during the reporting period:

Legally qualified members (s 16(2)(a) of the NTCAT Act):

Ms Sonia Brownhill SC  
 Ms Nardine Collier  
 Mr Terence Coulehan (former Master of the Supreme Court)  
 Ms Sally Gearin  
 Ms Gabrielle Martin  
 Prof. Les McCrimmon  
 Mr Alasdair McGregor (former Stipendiary Magistrate)

Mr Ben O'Loughlin  
His Honour Mr Tom Pauling AO QC (former Solicitor-General for the Northern Territory, former Administrator of the Northern Territory)  
Mr John Stewart  
Mr John Stirk  
Her Honour Ms Sally Thomas (former Judge of the Supreme Court of the Northern Territory and former Administrator of the Northern Territory)  
Mr Anthony Whitelum

Other members (s 16(2)(b) of the NTCAT Act):

Kathleen Blair  
Dr Timothy Carey  
Dr Kerry Eupene  
Dr Dana Fitzsimmons  
Dr Rodney Omond  
Louise O'Riordan  
Dr Diane Szarkowicz  
Dr Anita Toth

## FACILITIES

13. During the reporting period NTCAT has established registries in Darwin (Casuarina) and Alice Springs. In addition, it has made arrangements with the Local Court under which NTCAT documentation is able to be lodged at Local Court registries in remote centres.
14. NTCAT's Darwin and Alice Springs premises were formerly occupied by the Alcohol and Other Drugs Tribunal and each included a hearing room. By January 2015, the two hearing rooms were refurbished and, in Darwin, a second hearing room was established. All three NTCAT hearing rooms are fully equipped for video conferencing and teleconferencing. NTCAT's Darwin and Alice Springs premises also include facilities for the conduct of mediations.

## PROCEDURES AND SYSTEMS

15. NTCAT's rules and forms were first published in October 2014. Consistently with NTCAT's intention to deliver justice in a modern and accessible forum, the rules and forms are written in plain English and are intended to be easy to understand and use.
16. The rules emphasise that, wherever possible, NTCAT encourages parties to take advantage of electronic means of communication. There is a similar emphasis in the NTCAT registry, which maintains electronic files for all NTCAT matters.
17. In order to strike a balance between the simplicity of NTCAT's rules and forms and the variety of matters with which the Tribunal deals, all matters are closely case-managed from the time they are commenced. All but the most straightforward NTCAT matters are the

subject of a directions hearing within a few weeks of commencement. This 'hands-on' approach not only ensures that parties focus upon the issues but also means that prospects and opportunities for alternative dispute resolution (an important facet of NTCAT's operations) can be identified and explored at an early stage.

## STAKEHOLDER ENGAGEMENT

18. From August 2014 to June 2015 NTCAT was actively engaged in increasing stakeholder awareness regarding its establishment and role. The President, Senior Member and Registrar presented a total of 12 seminars to a variety of audiences that included the legal and real estate professions, community groups, NTG Agency CEOs, the Law Society Executive, the Ministerial Advisory Council for Disability Reform and the Australian Courts Administration Group. Seminars were conducted in Darwin, Palmerston and Katherine, and by videoconference to Alice Springs.

## RESOURCES

19. According to present budgetary allocations, NTCAT is funded for the 2014-15 and 2015-16 financial years only.
20. Caseloads for the reporting period and forecast caseloads for 2015-16 suggest that the present allocation is sufficient for those years; however, it is also clear that there will be the need for substantial additional financial resources by the time NTCAT is operating at full capacity. Projections prepared at the time of writing this report suggest that NTCAT's eventual caseload may reach 4500-5000 matters per year and that this will require a threefold increase in existing staffing levels as well as a substantial increase in funding for members (whether sessional, full time or a mixture of both).

## MATTERS IN SECTION 151(2) OF THE NTCAT ACT

21. The following paragraphs address the matters listed in section 151(2) of the NTCAT Act.

## 'THE NUMBER, NATURE AND OUTCOME OF MATTERS THAT HAVE COME BEFORE THE TRIBUNAL' - s 151(2)(a)

22. These are summarised in **Appendix 1**. In order to appropriately reflect NTCAT's workload and turnaround rates, the summary includes details of all matters dealt with by NTCAT between 1 January 2015 and 30 June 2015. These include matters that were commenced in the residential tenancies jurisdiction before NTCAT formally took over that jurisdiction on 1 June 2015 and matters heard by the MHRT since it came under NTCAT's oversight.



## 'THE NUMBER AND NATURE OF MATTERS THAT ARE OUTSTANDING' - s 151(2)(b)

23. It is assumed that 'outstanding' in section 151(2)(b) refers to matters that were commenced in the 2014-2015 year but which had not been brought to completion by 30 June 2015.
24. The number of matters of that description is identified in **Appendix 1**.
25. NTCAT intends developing criteria for the purpose of monitoring the rate of progress of matters from commencement to completion. These criteria, which are likely to vary across NTCAT's jurisdictions, should mean that 'outstanding' matters are able to be broken down into categories that are more statistically useful.

## 'ANY TRENDS OR SPECIAL PROBLEMS THAT MAY HAVE EMERGED' - s 151(2)(c)

### Jurisdictional inconsistency

26. NTCAT was created with the statutory objective of providing a forum for dispute resolution that is fair, uncomplicated, expeditious and inexpensive. In order to fulfil that objective, the NTCAT Act (supplemented by NTCAT's rules and forms) equips NTCAT with a broad range of duties, powers and discretions. Generally speaking, those duties, powers and discretions are sufficient *in themselves* to enable NTCAT to effectively exercise jurisdiction that may be conferred upon it by other legislation - whether in the nature of jurisdiction to review administrative decisions or jurisdiction in respect of civil disputes.
27. Not only are the duties, powers and discretions *sufficient*, they are an important facet of NTCAT's ability to conduct itself in a way that is *efficient*. NTCAT will be best placed to fulfil its statutory objective if it is able to approach matters according to principles and procedures that are consistent and predictable. On the other hand, that ability will be hampered if, by reason of unnecessary inconsistency between jurisdictions, the tribunal is forced to conduct itself according to different rules in different contexts.
28. It has therefore been a source of frustration in the early stages of NTCAT's operations that there has been a lack of consistency in the way in which NTCAT's existing and proposed jurisdictions have been configured.
29. The *Planning Act* (NT), for example, gives NTCAT review jurisdiction in relation to decisions of the Development Consent Authority. Instead of simply allowing such reviews to be determined according to NTCAT's dispositive powers in section 50 of the NTCAT Act, the *Planning Act* makes separate provision (for similar but not identical powers) in section 130(4). In addition, by section 130(7), the *Planning Act* purports to limit NTCAT's jurisdiction in a review proceeding by requiring it to also be satisfied of certain 'manifest' failures by the consent authority.
30. Other examples include provisions:

- directing the manner in which the Tribunal is to be constituted in particular jurisdictions (both as to the number and qualification of members) rather than allowing that to be determined according to section 22 of the NTCAT Act - see for example section 63 of the *Health Practitioners Act* (NT); and
- requiring a grant of leave for legal representation in NTCAT proceedings, as appears to be proposed for NTCAT's small claims jurisdiction (compare section 130(1) of the NTCAT Act by which this is a party's right).

### Membership – depth

31. For each matter that comes before NTCAT it is necessary to determine the member or members who will constitute the Tribunal for that matter (see section 22 of the NTCAT Act). That determination involves consideration of the issues raised in the matter and the need for members with particular skills to ensure that those issues are properly ventilated. In order to justly and effectively discharge its responsibilities across the broad range of its existing and proposed jurisdictions, NTCAT will therefore need to have at its disposal the services of members with relevant experience in a wide variety of professional, vocational and social contexts.
32. At the same time, the combination of the diversity of NTCAT's jurisdictions and the relatively small population of the Northern Territory, means that there may never, or rarely, be any need for members with particular qualifications.
33. A dilemma this presents is whether NTCAT should attempt to 'cover all bases' by establishing a store of sessional members of sufficient breadth to deal with any matter that might come before it, or whether the emphasis should instead be upon ensuring that there is a core membership group sufficient to meet NTCAT's likely requirements in the majority of its jurisdictions.
34. From a budgetary perspective, it is true that sessional members are only paid as and when involved in Tribunal duties, and this might be seen as a reason for a broad approach to member recruitment. On the other hand, recruitment is itself a resource intensive and expensive process. In addition, there is an administrative cost to NTCAT (in management terms and in terms of training obligations under the NTCAT Act) that will vary according to the number of members. On the other hand again, the process for appointment of a member under section 16 of the NTCAT Act is quite formal and time-consuming, with the consequence that an *ad hoc*, or 'as needed', approach to appointments is unlikely to be practicable (particularly in contexts where there is an urgent need for NTCAT to deal with a matter).
35. For the moment, NTCAT's membership base is considered adequate to deal with jurisdictions that have already been conferred upon the Tribunal; however, the matters raised above are likely to assume significance as additional jurisdictions are conferred.
36. Possible solutions that NTCAT may be pursuing involve amendments to the NTCAT Act:

- to include provision for short-term, matter-specific, appointments by the President; or
- to provide that a person who is a relevantly qualified member of an interstate 'Super Tribunal' may sit as a member of NTCAT in circumstances where there is no relevantly qualified member of NTCAT available to do so.

### Membership – economics

37. In order to manage its caseload as it acquires new jurisdictions, NTCAT will become increasingly dependent upon the services of members other than the President and the Senior Member.
38. In terms of NTCAT's Darwin based operations, it is not yet possible to forecast whether the additional need will be able to be met economically through the deployment of sessional members or whether some of the resources available for that purpose ought to be devoted to the engagement of an additional full-time member.
39. In terms of NTCAT's Alice Springs based operations, it is already relatively clear that NTCAT will need in the near future to have available to it the services of an 'on-call' member. Presently, all Alice Springs matters are heard from Darwin by means of videoconferencing. That is not ideal, but is a necessary consequence of the relatively small present caseload. That caseload will increase substantially when NTCAT acquires the small claims, adult guardianship and mental health review jurisdictions. One possibility is that the increased demand can be met through the services of an Alice Springs based magistrate also holding appointment as NTCAT's Deputy President; however, it is far from clear that such an arrangement would be administratively workable. Ideally, the need would be met by the appointment of a full time Alice Springs based member. To the extent fluctuations in the Alice Springs case load meant that the member was not always fully occupied by local work, he or she could be deployed in the conduct of matters by videoconference to Darwin.

### 'IN RELATION TO THE MATTERS THAT HAVE COME BEFORE THE TRIBUNAL - THE LEVEL OF COMPLIANCE BY DECISION MAKERS WITH REQUIREMENTS TO... NOTIFY PERSONS OF REVIEWABLE DECISIONS AND THEIR RIGHTS TO SEEK REVIEW' - s 151(2)(d)(i))

40. In the matters that NTCAT dealt with in its review jurisdiction during the reporting period, no concerns arose regarding decision-makers' compliance with requirements either to notify reviewable decisions or review rights in respect of such decisions.

### 'IN RELATION TO THE MATTERS THAT HAVE COME BEFORE THE TRIBUNAL - THE LEVEL OF COMPLIANCE BY DECISION MAKERS WITH REQUIREMENTS TO... PROVIDE WRITTEN REASONS FOR REVIEWABLE DECISIONS WHEN REQUESTED TO DO SO' - s 151(2)(d)(ii)

41. In the matters that NTCAT dealt with in its review jurisdiction during the reporting period, no concerns arose regarding decision-makers' compliance with requirements to provide written reasons for decision.

#### 'FORECASTS OF THE WORKLOAD OF THE TRIBUNAL IN THE NEXT FINANCIAL YEAR' - s 151(2)(e)

42. These are set out in **Appendix 2**. The reliability of the forecasts is affected by uncertainty as to when legislation conferring additional jurisdictions upon NTCAT will come into effect.

#### 'ANY PROPOSALS FOR IMPROVING THE ADMINISTRATION AND OPERATION OF THE TRIBUNAL' - s 151(2)(f)

43. NTCAT remains in its formative stages and adjustments are constantly being made to the way in which it is administered and operates. Firm proposals for improvements in those respects would be premature; however, some particular observations are possible.

#### Members' Manual and Code of Practice

44. NTCAT intends in the 2015-16 year to develop a members' manual and code of practice.

#### Alternative Dispute Resolution

45. The NTCAT Act requires that NTCAT's approach to matters that come before it should involve a focus upon the possibility of resolving or at least refining disputes by means of alternative dispute resolution ('ADR') processes. In order to establish capacity to give effect to its ADR objectives and obligations NTCAT has established a list of approved mediators under section 117 of the NTCAT Act (see **Appendix 3**) as well as recruiting a number of sessional members who have extensive mediation experience. In addition, the Senior Member and the Registrar both undertook mediation training during the reporting period.
46. During the reporting period, opportunities for NTCAT to develop its ADR practice were limited by the fact that the main 'volume' jurisdiction in which approaches to ADR could be tested and refined, namely residential tenancies, did not commence until 1 June 2015. In the 2015-16 year, a major focus for NTCAT will be the integration of ADR processes into its everyday operations. It is expected that the principal challenge in this regard will be developing a model for ADR that is fair and proportionate whilst also remaining cost effective. Doing so will especially be a challenge in NTCAT's volume jurisdictions where the amounts at stake are often relatively modest.

## APPENDIX 1 – SECTIONS 151(2)(a) & (b)

### The number, nature and outcome of matters that have come before the Tribunal – s 151(2)(a)

	From 1 January 2015 to 30 June 2015		
Jurisdiction by Act	Cases lodged	Cases Heard	Cases Finalised (*)
<i>Residential Tenancies Act</i> <sup>1</sup>	480	592 <sup>2</sup>	554
<i>Mental Health Review</i> <sup>3</sup>	408 <sup>4</sup>	218 <sup>5</sup>	408
<i>Victims of Crime Assistance Act</i>	8	7	4
<i>Planning Act</i>	5	2	2 <sup>6</sup>
<i>Fences Act</i>	1	0	1

(\*) Cases finalised includes where the matter is settled, withdrawn or discontinued. A case is otherwise not regarded as finalised until a decision is made.

### The number and nature of matters that are outstanding - s 151(2)(b)

In total there were 45 matters outstanding at the end of the reporting period, comprising the following:

- (a) 38 *Residential Tenancies Act* matters;
- (b) 4 *Victims of Crime Assistance Act* matters; and
- (c) 3 *Planning Act* matters.

<sup>1</sup> Includes matters dealt with by NTCAT on behalf of the Commissioner of Tenancies.

<sup>2</sup> NTCAT cases heard is greater than cases lodged due to the fact that from 1 January 2015 NTCAT began hearing matters already lodged and processed by the Office of Consumer Affairs on behalf of the Commissioner of Tenancies prior to 1 January 2015.

<sup>3</sup> NTCAT does not formally have jurisdiction under the *Mental Health and Related Services Act*, but has had the management of the Mental Health Review Tribunal since January 2015.

<sup>4</sup> Reported as 488 cases lodged in the Department of the Attorney-General and Justice 2014/15 Annual Report. 408 cases lodged is the revised figure established after a data cleansing process was undertaken.

<sup>5</sup> A significant number of cases in the mental health review jurisdiction are withdrawn before hearing due to the changing needs or circumstances of patients.

<sup>6</sup> Three *Planning Act* matters, which were consolidated into one proceeding, were not finalised prior to 30 June 2015.

## APPENDIX 2 - 'FORECASTS OF THE WORKLOAD OF THE TRIBUNAL IN THE NEXT FINANCIAL YEAR' - s 151(2)(e)

It is difficult to provide a forecast of the future workload of the Tribunal as a number of jurisdictions are yet to be transferred to NTCAT. The jurisdictions to be transferred and the timing of their transfer are outside the Tribunal's control and subject to the Northern Territory Government's legislative programme.

The following table sets out projected case volumes for jurisdictions that are already exercised or (in the case of Mental Health Review) managed by NTCAT.

Jurisdiction	Projected NTCAT Cases
Mental Health Review	1117
Residential Tenancies	947
Discrimination	5
Occupational Licensing	10
Administrative Reviews (Appeals)	20
Other	5
<b>TOTAL:</b>	<b>2104</b>

The following table sets out projected annual case volumes in relation to jurisdictions that are not presently exercised by NTCAT but are expected to be transferred to NTCAT. The majority of these jurisdictions are expected to commence next financial year.

Jurisdiction	Projected NTCAT Cases
Adult Guardianship	1085
Small Claims	1400
Other Occupational Licensing jurisdictions	42
Other Administrative Review jurisdictions (Appeals)	30
Other	15
<b>TOTAL:</b>	<b>2572</b>

## APPENDIX 3 – APPROVED MEDIATORS

The following are NTCAT's approved mediators for the purposes of section 117 of the NTCAT Act:

- Mr David Alderman
- Prof. Ned Aughterson
- Mr Terry Coulehan
- Mr Patrick McIntyre
- Mr John Stewart
- Mr Alistair Wyvill SC
- Mr Tony Young<sup>7</sup>
- Mr John Brears
- Ms Nardine Collier

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<sup>7</sup> Mr Young was removed from the list in September 2015 following appointment to the Federal Circuit Court.