

NEW ARRANGEMENTS FOR SMALL CLAIMS MATTERS



Commencement of the Small Claims Jurisdiction in NTCAT

The *Small Claims Bill 2015* and *Justice Legislation Amendments (Small Claims and Other Matters) Bill 2016* were passed by the NT Legislative Assembly on 10 February 2016. The Acts will commence on 1 May 2016, which means that NTCAT will have jurisdiction over small claims matters from that date.

Transitional arrangements

Any small claims proceedings, including appeals, commenced **prior to 1 May 2016** that have not been finally determined will remain with the Local Court for determination.

Forms and other materials relating to small claims matters should be lodged with NTCAT, either electronically (by e-mail to agd.ntcat@nt.gov.au which is the preferred method) or at its Casuarina or Alice Springs registries. Documentation will also be accepted by regional Local Court registries and forwarded to NTCAT for processing.

What is a Small Claim?

Section 6 of the *Small Claims Act* provides that NTCAT has original jurisdiction to deal with a claim for any of the following:

- (a) the recovery of an amount that does not exceed the small claims limit;
- (b) the performance of work, to a value that does not exceed the small claims limit;
- (c) the return of an amount of money that does not exceed the small claims limit; or
- (d) the return or replacement of goods, to a value that does not exceed the small claims limit.

Note: section 5 of the *Small Claims Act* provides **the small claims limit is \$25,000** (exclusive of any costs or interest that may be awarded by NTCAT).

When does a Court have jurisdiction?

Under new section 99A of the NTCAT Act, the President of NTCAT may make an order transferring a matter to the Local Court or Supreme Court if satisfied that:

- (a) the matter is not within NTCAT's jurisdiction; or
- (b) because of the circumstances of the case, the proceeding would be more appropriately heard by the recipient court.

Some examples of circumstances are set out in the note to section 99A(2)(b) of the NTCAT Act and include complexity, difficulty/novelty of issues or unsuitability of NTCAT's powers for dealing with the matter.

New section 14A of the *Local Court Act* provides that the Local Court has jurisdiction to hear and determine a small claim:

- (a) if the matter is transferred to it by NTCAT under section 99A of the NTCAT Act; or
- (b) if part of the claim is a small claim and the court is hearing and determining another part of the claim.

What Are The Main Changes?

The following is summary of the main changes in the small claims jurisdiction from 1 May 2016:

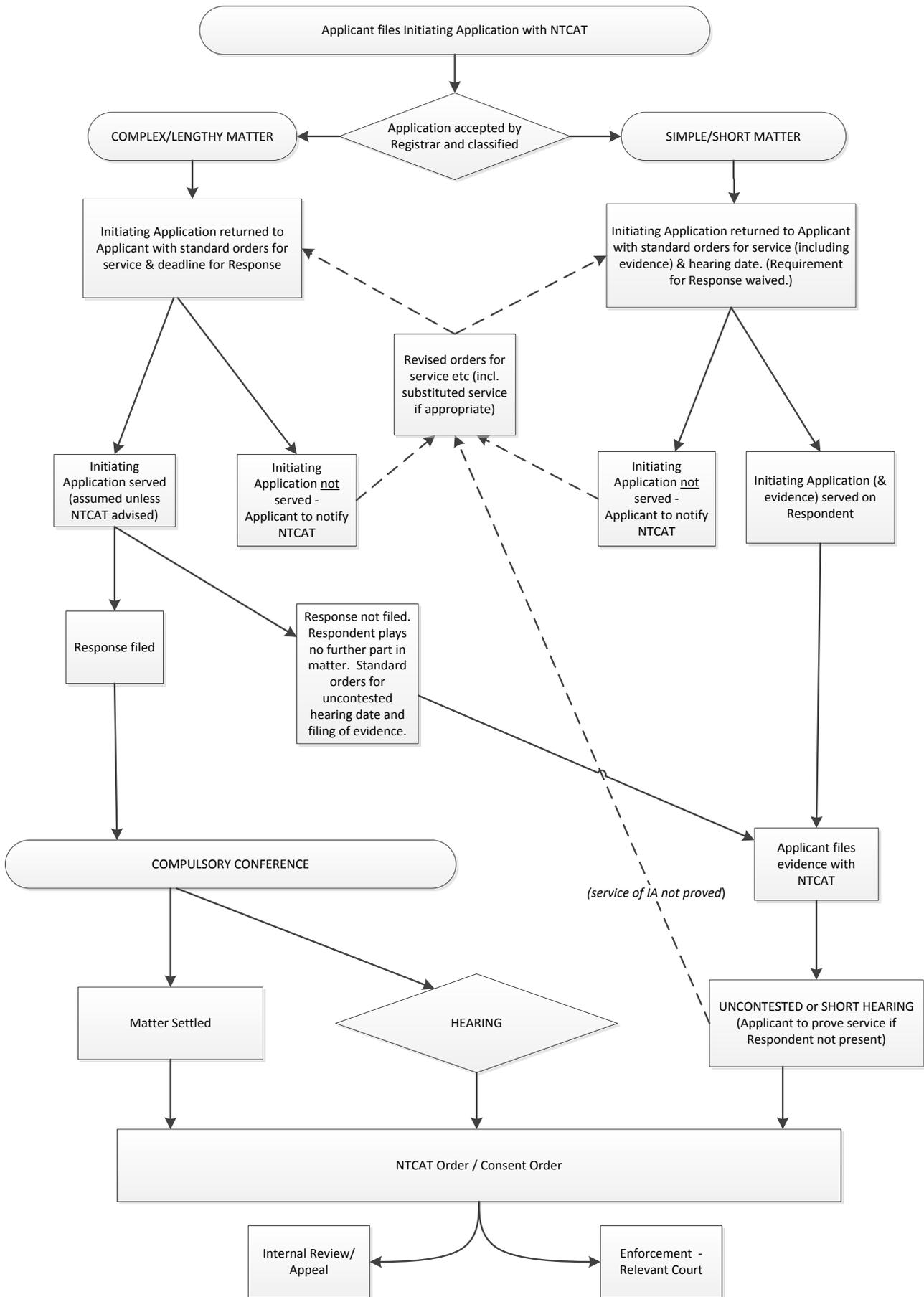
- small claims matters **must** be commenced with NTCAT;
- the commencement fee for small claims matters varies depending on the debt amount (refer to NTCAT fee's on our website);
- the jurisdictional limit for a small claim is \$25,000;
- the previous *Small Claims Act*, Regulations and Rules have no effect in relation to small claims matters commenced on or after 1 May 2016;
- forms and process will be in accordance with NTCAT's rules and procedures;
- service of initiating applications will be in accordance with the NTCAT Rules;
- there will be no default judgments (however a pathway for simple/short or uncontested matters has been devised and is explained in this document);
- legal representation is only permitted with leave of NTCAT;
- electronic filing of forms and evidence will be the approach preferred by NTCAT;
- there will be an emphasis on the speedy consideration of matters, including (for many matters) compulsory alternative dispute resolution; and
- flexible hearing arrangements (especially in regional/remote areas) will be permitted for parties unable to attend hearings in person.

How will small claims matters be dealt with by NTCAT?

NTCAT's approach to small claims matters will involve significant changes to the approach currently taken in the Local Court.

A flowchart broadly setting out the way NTCAT will manage small claims matters is set out on the next page.

It is important to note that many of the steps in the flowchart will be internally administered by NTCAT. From the parties' point of view, the process will be simple and straightforward.



Commencing a Small Claim

The form for **commencing** a small claims matter (as with most other types of NTCAT matters) is the **NTCAT Form 1 – Initiating Application**. The form may be downloaded from the NTCAT website at www.ntcat.nt.gov.au/publications.

When an Initiating Application is filed with NTCAT and accepted by the Registrar, the Initiating Application will be sealed and returned to the applicant with orders attached to it.

The orders will set out what the next steps in the process will be. This is determined according to a 'simple/short' or 'complex/lengthy' classification of the matter that is made by NTCAT.

The applicant must then serve the Initiating Application and the orders on the respondent (see 'Service' below).

For all matters other than short/simple matters, the respondent **must** then file a Response with NTCAT and provide a copy to the applicant. The Form 2 – Response can be downloaded from the NTCAT website at www.ntcat.nt.gov.au/publications.

The Response has two purposes:

1. it is taken to be notification to NTCAT that the respondent intends participating in the proceeding; and
2. it will set out the basis (if any) upon which the respondent opposes the claims made in the Initiating Application, including in an appropriate case any cross claim.

If a respondent does not file a Response in a complex/lengthy matter, NTCAT will assume the respondent does not intend playing a role in the proceeding. In addition, the matter will then proceed down the simple/short matter pathway to an uncontested hearing.

A more detailed explanation of the different pathways is set out later in this document.

Service

Rule 3 of the NTCAT Rules (which can be viewed on the 'Rules and Practice Directions' page of the NTCAT website – see <http://www.ntcat.nt.gov.au/directions.shtml>) identifies the ways in which a party may be served.

Service of the Initiating Application is critical – an NTCAT proceeding will not continue unless the other party has been served. The general principle is that a party must take reasonable steps to bring the document to the attention of the other party. NTCAT will require evidence of service in cases where the respondent does not file a Response.

If an applicant has made reasonable efforts to serve an Initiating Application but has been unsuccessful, NTCAT will make orders as to how the document is to be served (for example by publication of a notice in a newspaper).

For more information on the issue of service, please see the 'Serving NTCAT Documents'

publication on the NTCAT website at www.ntcat.nt.gov.au/publications.

Simple/Short Matters

Simple/short matters are those expected to be more easily and quickly determined by NTCAT. For example, it is likely that straightforward debt recovery matters (such as failure to pay local council rates or failure to pay an electricity bill) will be dealt with in this pathway.

For such matters the orders attached to the Initiating Application will set out the following requirements and timeframes:

- the applicant must serve on the respondent the Initiating Application and the orders, along with the evidence on which they will be relying at the hearing, by no later than 1 week from the date of the orders;
- the respondent is not required to provide a Response;
- the applicant must give NTCAT an electronic copy of the evidence they will rely on at the hearing no later than 4 days before the hearing date; and
- the matter is listed for a hearing approximately 2 weeks from the date the Initiating Application was accepted by NTCAT.

The applicant must be able (if necessary) to prove at the hearing that they have effected service. If they are unable to do so, the hearing will not proceed and further orders will be made regarding service and a revised hearing timetable.

Uncontested Matters

For uncontested complex/lengthy matters (i.e. where the respondent has been served and has not filed a Response) orders will be made for the matter to proceed along the simple/short matter pathway.

The matter will be listed for hearing approximately 2 weeks from the date a response should have been filed. Orders will also be made for the provision of an electronic copy of the applicant's evidence to be provided to NTCAT.

Complex/lengthy matters

For those matters that are classified by NTCAT as complex/long, the orders attached to the initiating application will set out the following requirements and timeframes:

- the applicant must effect service of the Initiating Application and the orders by no later than 1 week from the date of the orders;
- the applicant must advise NTCAT if they have not served the respondent by the relevant date (in which cases further orders may be made as to service);
- the respondent must file a Response and serve it on the applicant by no later than 2 weeks from the date of the Orders;

- if the respondent files a Response within the required time the proceeding will be listed for a compulsory conference on a date to be advised by NTCAT to the parties; and
- if the respondent does not file a Response, NTCAT will make orders for an uncontested hearing on a date to be advised by NTCAT to the applicant.

Compulsory Conference

Compulsory conferences are a hybrid directions hearing and dispute resolution process.

As the names suggest they are mandatory and failure to attend (without good reason) may result in an order that a party pay any costs or expenses wasted by the other party as a result.

A fact sheet that sets out more detailed information about compulsory conferences can be downloaded from the Forms and Publications page on the NTCAT website.

The member conducting the compulsory conference will first make directions about the future steps in the proceeding (provision and exchange of evidentiary material and submissions etc) on the assumption a settlement is not later achieved in the mediation phase.

If a settlement is achieved, the NTCAT proceeding concludes. Depending on what is agreed, NTCAT may make consent orders giving effect to the settlement.

Hearing

Small/short matters or uncontested hearings will be listed in time blocks on specific days of the week.

NTCAT may in suitable cases deal with matters 'on the papers' (ie. without a requirement for parties to attend the hearing).

For long/complex matters (where the compulsory conference has not resulted in a settlement) the matter will proceed to a hearing according to the directions made at the start of the compulsory conference. In most cases up to 2 hours will be allocated for the hearings.

For more information about NTCAT hearings see the publication "*How NTCAT Will Deal With Your Matter*" which can be downloaded from www.ntcat.nt.gov.au/publications.

Enforcement of NTCAT Orders

Although disobedience of an NTCAT order can be an offence or may amount to contempt, NTCAT does not have the power to enforce its orders.

NTCAT orders can however be registered in a relevant court (which, for small claims matters, will likely be the Local Court).

Once registered with a Court the NTCAT order is enforceable as if an order of that Court.

NTCAT Rules and Forms

Parties in NTCAT matters should familiarise themselves with the NTCAT Rules.

The Rules and Forms can be found on the NTCAT website at www.ntcat.nt.gov.au.

Information and Assistance

All enquiries about process or procedure in relation to should be directed to NTCAT. NTCAT staff are unable to provide legal advice.

It is also recommended that users and prospective users of NTCAT should also see the publication "*How NTCAT Will Deal With Your Matter*" which can be downloaded from www.ntcat.nt.gov.au/publications.