



NTCAT
Northern Territory
Civil and Administrative Tribunal

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

GENERAL INFORMATION – HOW NTCAT WILL DEAL WITH YOUR MATTER

The information in this publication is intended to assist users of NTCAT and should not be regarded as definitive advice about NTCAT's processes and procedures. The Tribunal's jurisdiction, powers and procedures are set out in the NTCAT Act, other authorising laws and NTCAT's Rules, processes and procedure may vary depending on the nature of a matter before NTCAT.

MAKING AN APPLICATION

Before making an application a person will need to check that NTCAT has jurisdiction to deal with the matter they wish to raise.

A publication on the NTCAT website called 'NTCAT jurisdictions' (which can be found at <http://www.ntcat.nt.gov.au/jurisdiction.shtml>) sets out a summary of the legislation that confers jurisdiction on NTCAT. A person should check the relevant legislation and consider obtaining legal advice if uncertain whether their matter can be dealt with by NTCAT¹.

Most applications are made using Form 1 – Initiating Application, which can be downloaded from the NTCAT website (in the Publications and Forms page at www.ntcat.nt.gov.au/publications.shtml).

A person making an application is 'the applicant' and the person who the action is against is 'the respondent'.

The applicant should fill in the appropriate areas in the Form 1 and make sure they enter enough information for NTCAT and the respondent to understand what they are seeking from NTCAT and why. Broad statements such as 'I am claiming compensation' are unhelpful unless the applicant also sets out a summary of the circumstances or facts they rely on.

Time limits may apply for certain applications. An applicant should ensure that they file the Initiating Application within the applicable time limit. If the application is outside the time limit an extension of time may sometimes be obtained (see below).

The applicant should also carefully identify the respondent (or respondents) and make sure that they are a legal entity (that is, a person or a corporation and not, for example, a business name).

FILING AN APPLICATION OR OTHER DOCUMENTS WITH NTCAT

NTCAT prefers, where possible, to receive forms and documents in electronic format. They should be sent via email to AGD.ntact@nt.gov.au or (for large volume materials) can also be provided through FTP (File Transfer Protocol²). For people that do not have the means to provide materials electronically, NTCAT will also accept hard copies at its offices or by post.

¹ NTCAT staff provide information about procedure and general information about jurisdictions NTCAT deals with but they are unable to provide legal advice.

² For large volume evidentiary materials which are too large to send via e-mail please contact the NTCAT registry to arrange an FTP transfer process.

Northern Territory Local Court registries will also accept NTCAT Initiating Applications and forward them to NTCAT for processing.

FEES AND FEE WAIVERS

NTCAT will not process an Initiating Application unless the relevant fee (if one is payable) is paid. Please refer to the 'Fees' page of the NTCAT website for the fees payable in relation to the various applications that can be made. Fees also apply to other matters (for example obtaining copies of documents from NTCAT files). See <http://www.ntcat.nt.gov.au/fees.shtml>.

Fees can be paid by credit card, cash (at an NTCAT office) or by a solicitors trust account cheque (made out to R.T.M.).

The electronic payment form can also be downloaded on the 'Publications and Forms' page (at <http://www.ntcat.nt.gov.au/publications.shtml>) of the NTCAT website.

An application fee is non-refundable (this includes where the applicant decides to withdraw or discontinue an application after the NTCAT case has been commenced).

The NTCAT Registrar may waive payment of a fee if it is considered that payment of the fee would cause financial hardship to the person who must pay the fee.

A person applying for a fee waiver should provide a statement to the Registrar setting out the reasons why payment of the fee would cause financial hardship. Supporting evidence, such as bank statements, evidence of Centrelink pension/benefits etc. should be supplied. The Registrar may ask for more information.

NTCAT LOCATIONS

NTCAT has offices in Casuarina and Alice Springs.

Casuarina Office

The Met Building
CASCOM Building 5,
Casuarina Village
Level 1, 13-17
Scaturchio Street
CASUARINA NT 0811

Alice Springs Office

Westpoint Building
1 Stott Terrace
ALICE SPRINGS NT 0870

Email us at: AGD.ntcat@nt.gov.au

Phone: (08) 8944 8720 or Free call: 1800 604 622

Hearings are conducted in hearing rooms at these locations.

Hearings may also be held in other locations in the Northern Territory, usually in court facilities.



NTCAT hearing rooms



Compulsory conferences or mediations are conducted in conference rooms at the NTCAT premises.

WHAT HAPPENS AFTER AN INITIATING APPLICATION IS FILED?

NTCAT proceedings are not commenced until the Registrar accepts the Initiating Application.

The Registrar must refuse to accept an application if it is made by a person not entitled to make it, if it is made after the relevant time limit or if it does not otherwise comply with the relevant Act³.

If insufficient information is contained in the application an applicant may be requested by NTCAT to provide further information.

When an Initiating Application is accepted, NTCAT will add important information to it, including:

- information about service (ie. when the Initiating Application must be served on the other party); and
- information and directions about the next steps to be taken in the proceeding (e.g. times at which the parties will be expected to attend at NTCAT and steps they may need to take beforehand – for example exchanging their evidence).

The Initiating Application will then be returned to the applicant who must serve the Initiating Application on the respondent.

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>) provides for the ways in which a party may be served.

Service of the Initiating Application is absolutely 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 and its contents to the attention of the other party. NTCAT will require evidence of service in cases where the other party fails to participate in the proceeding.

RESPONSE AND CROSS-CLAIMS

³ Section 95(3) of the *Northern Territory Civil and Administrative Tribunal Act*

When a respondent is served with an Initiating Application they will usually be required to file with NTCAT and serve on the applicant a Response (see NTCAT Rule 6). The deadline for doing so will be set out in orders attached to the Initiating Application.

If there is no requirement to file and serve a Response, this will be made clear on orders attached to the Initiating Application.

Except where NTCAT orders that no Response is required, ***a respondent must file a Response if he or she wishes to participate in an NTCAT proceeding.*** If a respondent does not file a Response, NTCAT will proceed to deal with the applicant's claim by way of an uncontested hearing.

The Response form (Form 2) can be found on the NTCAT website in the 'Publications and Forms Page' (<http://www.ntcat.nt.gov.au/publications.shtml>).

The Response is the respondent's opportunity to set out their answer to matters claimed in the Initiating Application.

If there are claims that the respondent wishes to make against the applicant (cross-claims), these may be able to be raised in the Response (although NTCAT may require the respondent to raise such matters in a separate proceeding if they are not sufficiently connected to the issues raised by the applicant).

COMMUNICATIONS WITH NTCAT

It is important, to preserve transparency and fairness in NTCAT proceedings, that all parties to a matter are kept aware of communications between a party and the NTCAT registry. Any communication that in any way relates to the dispute between the parties should involve not only NTCAT but any other party as well.

For example, a party sending an email to NTCAT about their matter should make sure that the email is also copied to the other party (or parties).

DIRECTIONS HEARING

Directions hearings – which usually happen at the same time as the compulsory conference (see below) – are held for the purpose of identifying and clarifying the issues in a proceeding, determining the specific matters that are in dispute between the parties, identifying the evidentiary materials and/or written submissions that are required to be filed and exchanged by the parties and setting a time table for doing so.

The purpose of directions hearings is to make sure that if a final hearing becomes necessary the parties and NTCAT have advance notice of the issues in dispute and the evidence relating to those issues.

NTCAT regards compliance with directions about those matters as *extremely important*. A party who fails to comply with a direction, for example by producing evidence for the first time at a hearing, faces serious consequences – such as a costs order if the hearing must be adjourned, or being refused permission to rely on the undisclosed evidence.

Directions hearings usually take between 15 and 30 minutes. Directions hearings are not intended to be a detailed examination/discussion of the matter.

After the directions hearing, parties will receive from NTCAT a written order setting out the specific directions made.

COMPULSORY CONFERENCE

A compulsory conference is a dispute resolution process primarily aimed at exploring the possibility of settlement. They are usually held immediately after a directions hearing.

As the name suggests parties must attend a compulsory conference and failure to attend (without good reason) may result in an order to pay any costs or expenses wasted by the other party as a result.

A fact sheet that sets out more detailed information about what to expect at compulsory conferences can be downloaded from the Forms and Publications page - see www.ntcat.nt.gov.au/publications.shtml on the NTCAT website.

If a settlement cannot be achieved at a compulsory conference the matter will proceed to a hearing.

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

WITHDRAWING AN APPLICATION

An applicant can withdraw a proceeding at any time with leave granted by NTCAT.⁴

When an applicant seeks leave to withdraw a proceeding NTCAT will ask them to provide evidence that the respondent has agreed to the withdrawal.

Upon receiving that evidence a consent order will usually be issued by NTCAT granting leave to withdraw the application.

If the respondent does not agree to the withdrawal, the matter will be referred to a Tribunal Member for consideration.

THE HEARING

A hearing is for the purpose of NTCAT making a final decision about the case.

All parties should arrive at least 15 minutes prior to the start time of their hearing.

At the commencement of the hearing the presiding member will introduce themselves and ask all parties to introduce themselves and advise in what capacity they appear.

Hearings are electronically recorded and open to the public (unless there is a good reason the

⁴ Section 100 NTCAT Act

hearing should be closed).

By the time of the hearing the parties will have exchanged and provided to NTCAT the evidence they intend relying on. They should bring copies of that material to the hearing in case it needs to be referred to. Parties should also ensure that they have prepared for the hearing by making notes about matters they wish to emphasise. It will often be of great assistance to NTCAT if a party can supply a brief 'chronology' setting out the key events in date order.

The member conducting the hearing will manage the proceeding and ensure that each party is given the opportunity to put their case forward and to respond to the other party's submissions.

NTCAT will usually take an 'inquisitorial' approach at the hearing. This means that the member hearing the matter may ask a number of questions of the parties and may direct their attention to particular legal and factual issues.

At a hearing NTCAT may 'inform itself' in any way it considers appropriate and is not bound by the rules of evidence⁵. This means that NTCAT may rely on evidence other than evidence put forward by the parties (but it will only do so after giving the parties the opportunity to respond to such evidence).

If a party does not understand what is happening at a proceeding they should ask the presiding member to provide an explanation. NTCAT aims to conduct its proceedings with as little technicality and formality as the matter permits.

The parties or their witnesses may be asked to give evidence under oath⁶.

The length of the hearing will depend on the complexity of the matter.

ATTENDING A HEARING

Parties are expected to appear at NTCAT directions hearings, compulsory conferences and hearings in person unless there is a good reason why they cannot. Parties who expect some difficulty in attending should contact the NTCAT registry well in advance of the hearing and advise their reasons for not being able to attend in person. In some cases a person will be permitted to appear by telephone or audiovisual link.

If a party does not appear at a hearing, findings and orders may be made in their absence.

REQUESTING AN ADJOURNMENT

A party should have a good reason for requesting the adjournment of a hearing. Parties should not leave it to immediately prior to the hearing to ask for an adjournment.

⁵ Section 53(2)(b) of the NTCAT Act

⁶ Section 118 of the NT *Criminal Code Act* provides that it is a crime to give false statements in statements required to be under oath with the maximum penalty being imprisonment for 7 years.

A party wanting an adjournment should first contact the other party and seek their consent in writing (e-mail is acceptable) to the adjournment. If consent is provided this should be provided to NTCAT which may then reschedule the hearing.

If consent is not provided, the party seeking an adjournment should set out their reasons for an adjournment in writing to the NTCAT registry.

It should be noted work or study commitments are generally not accepted as a reason for being unable to attend a hearing.

NTCAT is obliged to act with as much speed as the requirements of the NTCAT Act and the relevant matter permit. Accordingly a strict approach is taken in deciding whether to adjourn a matter.

PROTOCOLS AT HEARINGS

While NTCAT generally acts with as little formality as possible, parties are asked to address the member at a hearing by their surname eg. 'Ms Smith'. A nameplate will be placed on the bench in front of the presiding member.

At NTCAT hearings parties should:

- be clear and to the point (and try to avoid issues that are not relevant to the proceeding);
- be organised;
- not interrupt another party or the presiding member (every party will be given a fair opportunity to have their say; and
- be respectful of the presiding member and answer his or her questions.

Some additional matters to note about hearings:

➤ Appearance/Clothing

NTCAT does not have a dress code. Proceedings are meant to be informal and there is no need, for example, to wear a suit or tie. Parties should, however, try to be neat and tidy and have appropriate footwear.

➤ Recorders & Cameras

Recording devices and cameras are not permitted in any NTCAT hearing or conference. NTCAT does however make audio recordings of its hearings and parties may obtain access to the recordings by arrangement with NTCAT's registry.

➤ Weapons or Other Dangerous/Offensive Items

No weapons or dangerous/offensive items of any kind are permitted in the NTCAT premises although special rules apply to police officers.

➤ Mobile Phones

Mobile phones should be switched off whilst in NTCAT hearings and conferences unless the member permits otherwise.

➤ Food & drink

Food & drinks are not permitted in any hearing or conference room. Water is supplied and hearings that run for more than two hours will include adjournments for refreshment breaks.

➤ What if English is not my first language or I am hearing impaired?

Interpreter services are available for non-English speaking parties. For more information contact the NTCAT registry well before the hearing. However, please note it is usually the responsibility of the party requiring the interpreter to make the necessary arrangements.

People with hearing impairments should also contact the NTCAT registry well in advance of the hearing date.

➤ Security

If there are specific security concerns about a matter (for example regarding the safety of a party or witness) the NTCAT registry should be advised well before the hearing so that any necessary security measures may be taken.

NTCAT is deemed to be a court under the *Court Security Act*. Accordingly persons attending NTCAT may be required to comply with requests including search and identification made by an authorised security officer.

CAN SOMEONE ATTEND THE HEARING ON MY BEHALF?

A party to a proceeding is entitled to appear personally, be represented by a legal practitioner or (with the permission of NTCAT) by another representative⁷.

A person appearing at a hearing on behalf of someone else (including for example a co-tenant in a residential tenancy who wishes to speak on behalf of the other tenant as well) should be in a position to demonstrate that they have authority to do so.

A party attending the hearing in person can bring a support person with them. The support person will only be permitted to speak on a party's behalf if this is approved by the presiding member at the hearing.

WHAT HAPPENS AFTER A HEARING?

At the conclusion of a hearing the presiding member may announce his or her decision and orders. In such cases written reasons for the decision and a formal NTCAT order will usually be published soon afterwards (often on the same day).

⁷ Section 130 of the NTCAT Act

If the presiding member needs more time to consider the matter, his or her decision may be reserved and the decision and orders will be provided to the parties at a later date.

Selected NTCAT decisions are published on the legal information website known as Austlii – see <http://www.austlii.edu.au/au/cases/nt/NTCAT/>.

Once an NTCAT matter is finalised, NTCAT cannot enter into any communications with the parties about the decision or orders. If aggrieved by the decision, parties have review rights which can be exercised (see below).

REVIEW OF NTCAT DECISIONS

The NTCAT Act provides two options:

Internal review

A person aggrieved by a decision of NTCAT in the exercise of its original jurisdiction may apply for a review of the decision⁸.

The party seeking the review will need to fill out Form 1 – Initiating Application and state that a review of the decision is sought and why. An application fee must also be paid.

If accepted, the review is conducted by a member (or members) of NTCAT other than the member who heard the original matter. There is a time limit of 28 days for review applications.

Appeal to Supreme Court

A party to a proceeding may appeal by leave to the Supreme Court against a decision of NTCAT on a question of law⁹.

Any party wishing to do so should consult with the Supreme Court registry as specific forms, time limits and fees apply.

REOPENING A HEARING

In some cases where a party did not participate at a hearing, and NTCAT has made a decision, the party may be able to apply to have the proceeding reopened.

NTCAT may reopen a proceeding if it is satisfied the party had a reasonable excuse for not attending or being represented. If a proceeding is reopened, NTCAT will take the steps necessary to ensure that the issues between the parties are properly considered.

To apply to reopen a hearing, a party should use Form 3 – Ordinary Application, which can be downloaded from the ‘Forms and Publications’ page of the NTCAT website. No fee is payable for these applications.

⁸ Section 140 of the NTCAT Act

⁹ Section 141 of the NTCAT Act

HOW DO I ENFORCE AN NTCAT ORDER?

Although disobedience of an NTCAT may be an offence, NTCAT does not have the power to enforce its orders.

NTCAT orders can however be registered in a relevant court (eg. the Local Court).

Once registered with a Court the NTCAT order is deemed to be an order of that Court and the various enforcement mechanisms and remedies available in that Court can be utilised.

COSTS

Generally parties bear their own costs in NTCAT proceedings.

NTCAT may however make a costs order in some limited circumstances. The party seeking a cost order may apply for that order either in their Initiating Application, Response or at the hearing.

In the NTCAT case of *Dos Santos -v- Gallwey* [No.2] [2015] NTCAT 9 (which can be found www.austlii.edu.au/au/cases/nt/NTCAT) the President of NTCAT noted that, *'something more than success or failure in an ordinarily conducted NTCAT proceeding will need to be established by a party seeking a costs order under section. In NTCAT proceedings - in contrast to the usual position in Courts - costs do not 'follow the event.'*

It was further noted that, *'a party seeking a costs order will need to demonstrate that there is some feature of the case justifying a departure from the basic rule under section 131 of the NTCAT Act. Such a feature may be one that puts the outcome of the proceeding into a special light. An applicant may, for example, have been unsuccessful in a proceeding because his/her case was hopeless, or was wholly misconceived. Alternatively, a successful applicant may be able to demonstrate that an NTCAT proceeding was only necessary because the respondent unreasonably refused an offer of settlement.'*

Another case where some costs may be recoverable is where an applicant has incurred extra expense due to specific requirements imposed by NTCAT for an applicant to serve an Initiating Application (eg. advertising a public notice in the local newspaper).