INFORMATION FOR NORTHERN TERRITORY GOVERNMENT AGENCIES

NTCAT
Northern Territory
Civil and Administrative Tribunal

Purpose of this Factsheet

The Northern Territory Civil and Administrative Tribunal (NTCAT) was recently created by the *Northern Territory Civil and Administrative Tribunal Act*. The purpose of this factsheet is to provide information about how Government agencies may be affected by the work of NTCAT and to summarise important obligations imposed by the Act upon administrative decision makers.

What is NTCAT?

NTCAT is a new 'super' tribunal which will be a one stop shop for resolving certain civil disputes and reviewing a wide range of administrative decisions. In addition, NTCAT will have jurisdiction in areas relating to regulation of professions and protection of civil rights.

The NTCAT Act requires NTCAT to:

(a) promote the best principles of public administration; and

(b) be accessible to the public by being easy to find and easy to access; and

(c) be responsive to parties, especially to people with special needs; and

(d) ensure that proceedings are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures when appropriate; and

(e) keep costs to parties involved in a proceeding to a minimum insofar as is just and appropriate; and

(f) use straightforward language and procedures; and

(g) act with as little formality and technicality as possible; and

(h) be flexible in the way in which it conducts its business and adjust its procedures to best fit the circumstances of a particular proceeding or a particular jurisdiction.

Jurisdiction of NTCAT

One of the main reasons for the creation of NTCAT was to provide a prompt, inexpensive and responsive process for seeking a review of the merits of Government decisions..

This review right does not automatically apply to every Government decision. NTCAT can only review a decision if the legislation under which the decision was made permits it to do so.

For example, the *Poppy Regulation Act* establishes the Poppy Licensing Authority which can grant opium poppy licences. The Authority can also renew, amend, cancel or suspend such licences. Section 13 of the *Poppy Regulation Act* confers a right to seek review of such decisions by NTCAT.

Review of Decisions and Possible Outcomes

Reviews of administrative decisions by NTCAT are by way of rehearing. These are generally held in public.

A person who wants NTCAT to conduct a review of a decision is required to lodge an application and pay the relevant commencement fee. If the application is accepted by the Registrar (and it is not frivolous, vexatious, malicious or out of time), the applicant will be required to serve it on the decision maker.

The time limit for making a review application is within 28 days from when the original decision was made or 28 days from when the person is provided with reasons for decision (if the person has applied for them). NTCAT can extend the time limits.

The NTCAT Act provides in section 42 that decisions not made within a certain time are **deemed** to have been made adversely to a person entitled to seek review.

When an application for review is commenced, the original decision maker cannot vary, set aside or substitute the original decision. Also, the original decision continues to apply (unless otherwise ordered by NTCAT) until NTCAT makes its decision on the review application.

The objective of a rehearing is to produce the correct or preferable decision. In a review proceeding NTCAT will:

- conduct an examination of the evidence or material before the original decision maker; and
- consider any further evidence or material that NTCAT decides to admit for rehearing.

NTCAT will also consider the reasons for decision provided by the original decision maker and the particular matters raised by an applicant, but these do not restrict NTCAT in its approach to the rehearing.

Section 47 of the NTCAT Act provides that the original decision maker is required to assist NTCAT so that it can make its decision. This may mean that information can be requested from the decision maker in writing or the decision maker may be asked to attend the relevant hearing to provide evidence. Section 41 also provides that the decision maker must give NTCAT the written reasons for decision and other relevant documents and material in the decision maker's possession or control.

In review proceedings, NTCAT:

- has the power at any time to invite the decision maker to reconsider the decision (ie. confirm, vary or set aside);

- following a hearing, may confirm or vary the decision, or set it aside and either substitute its own decision or send the matter back to the decision maker for reconsideration; or
- may make some other decision if this is permitted by the Act under which the reviewable decision was made.

Section 51 of the NTCAT Act provides that at the conclusion of a review proceeding and where NTCAT has made a decision:

- if the decision is to confirm the original decision, no further review can be sought by the same person or any other person;
- if the decision is to vary or substitute the original decision, the new decision is taken to be the decision of the original decision maker and has effect from the time when the original decision would have had effect.

Parties can appeal on questions of law to the Supreme Court against decisions of NTCAT exercising its review jurisdiction.

Obligations of Decision Makers

The following part of the factsheet deals with obligations imposed by the NTCAT Act upon Government officers who make reviewable decisions. A 'reviewable decision' is a decision that can be reviewed by NTCAT because jurisdiction has been conferred on NTCAT to do so.

Sections 34 and 35 of the NTCAT Act require decision makers to:

- give notice of their decision to each person with a right to seek review of the decision;
- advise the person that they have a right to have the decision reviewed; and
- advise the person that they have a right to request a statement of reasons for the decision.

Requests for a statement of reasons must be in writing and made within 28 days after notice of the decision.

If providing a statement of reasons would lead to disclosure of information that it is not in, the public interest to disclose, decision makers should refer to sections 37 to 40 of the NTCAT Act.

Section 35(5) of the NTCAT Act provides that a decision maker's written reasons for decision must:

1. contain the reasons for decision; and
2. any findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.

Reasons for Decision

This section of the factsheet is particularly aimed at assisting decision makers in complying with a request under s 35 of the NTCAT Act to provide a statement of reasons. Although it is concerned with the structure and content of written reasons for decision - and therefore the 'end' of the decision making process - the ability to provide cogent reasons reflects back upon the decision making process itself.

The main purpose of giving a person written reasons for decision is so that the person affected by the decision can understand why the decision was made and (in the case of reviewable decisions) decide whether to seek a review of the decision.

It is important then, that (as far as possible) reasons for decision are written in a plain English style using a logical, easy to understand structure. Where the person affected speaks a language other than English it may be necessary to have the written reasons for decision translated through the Interpreter and Translator Service of the Northern Territory.

There is no set format or template for reasons for decision. The format, style and length will change according to the nature of the decision and the intended recipient. The length and detail of reasons for decision should reflect the complexity and importance of the matter being decided

Maintaining a careful record of the decision making process will help ensure that if written reasons for decision are requested, it is a relatively straightforward exercise to produce them. It is good administrative practice to make contemporaneous notes of the findings on material questions of fact that lead to a decision, referring to the evidence or other material on which those findings are based.

The main components of written reasons for decision are as follows:

1. The Decision

The issue or matter being resolved by the decision should be identified.

A concise and accurate statement of the actual decision should be set out. Where the decision was made under legislation, the relevant legislative provisions should be referred to and where appropriate quoted (rather than paraphrased).

The decision maker should be clearly identified (i.e. name, position, agency) as well as their legal authority to make the decision. If the decision maker is a delegate this should be stated.

2. The Process

There should be a description of the broad process that was followed in making the decision. This should include identification of the main categories of documents or information that were considered by the decision maker, who was consulted (e.g. Department officers, other agencies, experts) and any relevant government policy (if it was considered).

3. Findings of Material facts

Material facts affect the outcome of a decision; they are the key facts upon which a decision turns. These can be self-evident (eg. the possession of a specific qualification, a person's marital status etc.) and unchallenged or be the subject of conflicting views. In cases where there are conflicting views, these should be presented and an explanation provided as to why one view is accepted over the other.

It may also be necessary to draw an inference from the facts (e.g. the viability of a proposal or forming a view about a person's competence). When a finding of fact is inferred, the reasons for decision should set out the fact and the process of drawing the inference.

In all cases, the material facts (whether apparent or inferred) should be set out in the reasons for decision.

4. The Evidence

Findings of material facts should be based on evidence. The specific evidence should be referred to in relation to each material fact.

For example a material fact may be that MR X is the father of a child. The evidence upon which it could be based may be a DNA test or a statutory declaration provided by the mother of the child confirming paternity.

It is usually not necessary to quote or reproduce the evidence in the reasons for decision. The evidence can be identified by stating its source or nature. If evidence is conflicting, the reasons for decision should identify which evidence was accepted or rejected and why.

5. The Reasons

The reasons link the decision to the facts.

The reasons should explain in a logical and clear manner why the decision has been reached. The aim should be that the reader understands how the decision was reached.

Where there is more than one element to a decision, or the decision involves consideration of a range of factors, each element or factor should be addressed separately.

Where there is a range of decisions that could be reached, the reason why those decisions were rejected or taken should be explained.

6. Review Rights

The written reasons for a reviewable decision should contain a statement regarding the right to seek a review of the decision by NTCAT.