



## INFORMATION SHEET – CHALLENGING AN NTCAT DECISION

*Apart from the general information in this factsheet, NTCAT cannot advise you whether to challenge a decision, or how to do so. Unfortunately the legal position can be complicated, so, if possible, you should obtain independent legal advice when you are considering the options described below.*

If you were a party to a proceeding before NTCAT and disagree with its decision, there are several ways in which you may be able to challenge the decision.

The alternatives depend on the type of decision and the basis upon which you wish to challenge it.

There are three main options.

### INTERNAL REVIEW

Most\* final decisions made by NTCAT in its original jurisdiction are subject to review within NTCAT by a member or members not involved in hearing the original matter. The front page of the decision will usually indicate whether it is made in NTCAT's original jurisdiction. This type of review is referred to as an 'internal review' under section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.

A party seeking an internal review will need to complete and file with NTCAT a [Form 1 – Initiating Application](#).

There is a time limit of 28 days from the date of the decision to apply for an internal review (although it can be extended in some circumstances). An application fee applies.

(\*There are some decisions in NTCAT's original jurisdiction for which there is no right to seek an internal review under section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014*. Presently these are: decisions in NTCAT's health practitioner disciplinary jurisdiction; and some decisions under the *Unit Titles Schemes Act 2009* (see section 98A). For those decisions, the options below should be considered.)

### APPEAL TO SUPREME COURT

Under section 141 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, there is a limited right of appeal to the Supreme Court of the Northern Territory against NTCAT decisions. Such an appeal may only be made on a question of law and there is also a requirement for the Supreme Court to grant leave to appeal.

Although there is nothing to prevent a party seeking leave to appeal to the Supreme Court under section 141 against a decision in NTCAT's original jurisdiction, one possibility in those circumstances is that the Supreme Court would refuse leave on the basis that the party should first seek an internal review of the decision under section 140.

Apart from section 141 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, the Act that gives NTCAT jurisdiction in a matter may itself create a right of appeal to the Supreme Court to the Northern Territory. If so, then the nature and scope of the right of appeal will be governed by the other Act and may be broader or more narrow than the right under section 141.

For example, under section 106 of the *Anti-Discrimination Act 1992* a party has the right to appeal to the Supreme Court against a tribunal decision (in original or review jurisdiction) on a question of fact or law and without any requirement of leave.

More information about Supreme Court process, including forms, time frames and fees for appeals, can be found at [www.supremecourt.nt.gov.au](http://www.supremecourt.nt.gov.au) or by contacting the Supreme Court Registry.

### **REOPENING A PROCEEDING**

In some cases, where a party to an NTCAT proceeding did not participate in a hearing, or consented to an order, that party may apply to have the proceeding re-opened under section 80 of the Act.

NTCAT may reopen a proceeding if it is satisfied that the party had a reasonable excuse for not participating at a hearing, or if their consent to an order was improperly obtained. If a proceeding is reopened, NTCAT will usually proceed to deal with the matter as if the original hearing and order had not occurred. Depending on the circumstances, the parties may be required to participate in a compulsory conference before the matter again proceeds to a hearing.

A party seeking to reopen a proceeding will need to file a [Form 3 – Ordinary Application](#). There is a time limit of 28 days after the decision to apply to have a proceeding reopened (although it can be extended in some circumstances). No fee applies for this type of application.

### **IMPORTANT INFORMATION - STAYS**

The filing of an application for internal review, an appeal to the Supreme Court or an application to reopen a proceeding, does not affect the operation of the decision.

**A party wishing to challenge an NTCAT decision will need to obtain a stay of that decision if they wish to prevent the other party from taking steps to enforce the decision.**

A stay may be granted by NTCAT itself, or, in the case of appeals to the Supreme Court, by that Court. If an NTCAT order has been registered with the Local Court (see separate NTCAT fact sheet - *ENFORCING AN NTCAT ORDER*) then a stay will need to be obtained from that Court in order to prevent further enforcement.

Even when a stay is sought, there is no guarantee it will be granted. An applicant for a stay will need to demonstrate that there are good reasons why the other party should not have the benefit of an NTCAT decision until the challenge to the decision is determined.