

INFORMATION SHEET – COSTS

The usual rule.

Although NTCAT does have the power to award costs, the usual rule in NTCAT proceedings is that the “parties bear their own costs in a proceeding before the Tribunal” as reflected in section 131 of the *Northern Territory Civil and Administrative Tribunal Act*.

This sets NTCAT apart from the Courts, where the usual rule is that costs ‘follow the event’ – in other words, the successful party will usually recover some or all of its costs.

Generally speaking, a party seeking a costs order from NTCAT will need to demonstrate that there are exceptional circumstances justifying such an order.¹

A new exception to the usual rule.

However, amendments to the *Northern Territory Civil and Administrative Tribunal Act*, which came into effect on 3 December 2018, mean that a successful party can now usually expect to recover certain unavoidable costs associated with NTCAT proceedings, in particular: application fees, service fees and search fees that are necessary and reasonable for the conduct of the proceeding (see section 132(2)(ba)).

A successful party who claims such costs and provides proof they were incurred can generally expect that NTCAT will order that the unsuccessful party pay those costs.

Parties should note that these changes apply only to limited categories of costs. They otherwise have no effect on the usual rule. In particular, they have no effect on the circumstances in which NTCAT would make an order that one party pay another party’s costs of legal representation.

¹ See NTCAT’s decision in *Dos Santos -v- Gallwey* [No.2] [2015] NTCAT 9. The outcome in that case (which was about the recoverability of filing and service fees) would now be affected by the exception in section 132(2)(ba) of the *Northern Territory Civil and Administrative Tribunal Act* (see above); however, the principles considered at paragraphs [30] to [39] remain applicable to the usual rule as to costs in NTCAT proceedings.