



NTCAT
Northern Territory
Civil and Administrative Tribunal

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

ANNUAL REPORT 2017 - 2018



NTCAT
Northern Territory
Civil and Administrative Tribunal

The Honourable Natasha Fyles MLA
Attorney-General and Minister for Justice
GPO Box 3146
DARWIN NT 0801

Dear Attorney-General

NTCAT ANNUAL REPORT 2017-18

In accordance with section 151 of the *Northern Territory Civil and Administrative Tribunal Act*, I have pleasure in submitting for your attention the Northern Territory Civil and Administrative Tribunal's annual report for the period 1 July 2017 to 30 June 2018.

Yours faithfully



Judge Richard Bruxner
President
Northern Territory Civil
and Administrative Tribunal

26 September 2018

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INTRODUCTORY

1. This is the annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2017-2018 financial year. The preparation of an annual report is required by section 151 of the *Northern Territory Civil and Administrative Tribunal Act* (NT) ('NTCAT Act'), which is in these terms:

151 Annual report

- (1) The President must prepare and give to the Minister a report on the administration and operation of the Tribunal during each financial year.
 - (2) The report must contain information about:
 - (a) the number, nature and outcome of matters that have come before the Tribunal; and
 - (b) the number and nature of matters that are outstanding; and
 - (c) any trends or special problems that may have emerged; and
 - (d) in relation to the matters that have come before the Tribunal – the level of compliance by decision makers with requirements to:
 - (i) notify persons of reviewable decisions and their rights to seek review; and
 - (ii) provide written reasons for reviewable decisions when requested to do so; and
 - (e) forecasts of the workload of the Tribunal in the next financial year; and
 - (f) any proposals for improving the administration and operation of the Tribunal.
 - (3) The report must not contain information in relation to the evidence given in closed hearings or other confidential matters.
 - (4) The report must be given to the Minister within 3 months after the end of the financial year or such other period as the Minister determines.
 - (5) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the report.
2. The matters listed in section 151(2)(a) – (f) are addressed below under separate headings, following some general observations.

GENERAL

3. This is NTCAT's fourth annual report.
4. With the exception* of the mental health review jurisdiction currently exercised by the Mental Health Review Tribunal ('MHRT') under the *Mental Health and Related Services Act*, NTCAT

is now exercising all of the high volume jurisdictions that were originally planned for it at the time of its creation. (*Although the jurisdiction remains separate, NTCAT has managed the administrative and quasi-judicial responsibilities of the MHRT since early 2015.)

5. It presently appears reasonable to assume that NTCAT's current caseload (including MHRT matters) is representative of its future core business. Time will tell whether that assumption remains valid.
6. For example, the tribunal is aware of the prospect that it will acquire several new jurisdictions in the 2018-19 year, including in areas where a substantial commitment of tribunal resources may become necessary (for example in the context of the pending amendments to the *Petroleum Act* following the recommendations of the *Scientific Inquiry into Hydraulic Fracturing in the Northern Territory*).

NTCAT'S JURISDICTIONS

7. As at 30 June 2018 jurisdiction had been conferred upon NTCAT under the following Acts (*denotes commencement in the current reporting period):
 - *Administrators Pensions Act*
 - *Advance Personal Planning Act*
 - *Alcohol Harm Reduction Act**
 - *Anti-Discrimination Act*
 - *Births Deaths and Marriages Registration Act*
 - *Building Act (and Building (Resolution of Residential Building Work Disputes) Regulations)*
 - *Caravan Parks Act*
 - *Control of Roads Act*
 - *Cooperatives (National Uniform Legislation) Act*
 - *Cullen Bay Marina Act*
 - *Darwin Waterfront Corporation Act*
 - *Education Act*
 - *Energy Pipelines Act*
 - *Fences Act*
 - *Fisheries Act*
 - *Gaming Control Act*
 - *Gaming Machine Act*
 - *Geothermal Energy Act*
 - *Guardianship of Adults Act*
 - *Health Practitioner Regulation (National Uniform Legislation) Act*
 - *Health Practitioners Act*
 - *Heritage Act*
 - *Information Act*
 - *Kava Management Act*
 - *Lands Acquisition Act*

- *Legislative Assembly Members Superannuation Act*
- *Licensing Act*
- *Liquor Act*
- *Local Government Act*
- *Marine Act*
- *Mineral Titles Act*
- *Northern Territory Civil and Administrative Tribunal (Conferral of Jurisdiction for Native Title Matters) Act*
- *Pastoral Land Act*
- *Petroleum Act*
- *Planning Act*
- *Poppy Regulation Act*
- *Ports Management Act*
- *Private Security Act*
- *Prostitution Regulation Act*
- *Racing and Betting Act*
- *Residential Tenancies Act*
- *Small Claims Act*
- *Superannuation Act*
- *Termination of Units Plans and Unit Titles Schemes Act 2014*
- *Tobacco Control Act*
- *Totalisator Licensing and Regulation Act*
- *Training and Skills Development Act*
- *Unit Titles Act*
- *Unit Titles Schemes Act*
- *Victims of Crimes Assistance Act*

8. In the current reporting period 2732¹ new NTCAT matters were commenced.
9. Based upon the addresses disclosed by applicants when commencing NTCAT proceedings, approximately 85% of the tribunal's caseload originates in the greater Darwin area, followed by approximately 11% from Alice Springs and the remainder from smaller population centres and remote locations.
10. As in the last reporting period, the largest of NTCAT's jurisdictions - viewed in terms of the number of matters - remains its small claims jurisdiction, with 1451 new matters commenced.
11. The trend noted in the 2016-17 annual report of a reduction in the number of residential tenancies matters has continued in the current reporting period, with 590 matters commenced (as opposed to 674 in 2016 - 17).
12. The current reporting period is the first complete year in which NTCAT has exercised jurisdiction under the *Guardianship of Adults Act* and *Advance Personal Planning Act*. NTCAT's adult guardianship jurisdiction constitutes a steady and substantial part of the

¹ See further paragraph [52] below.

tribunal's workload. A total of 232 new guardianship proceedings were commenced in 2017-18 (an increase from 188 in 2016-17). In addition, the tribunal continued to exercise the 'rolling' jurisdiction under which existing guardianship orders are required regularly to be reassessed (in order to ensure that the guardianship arrangements remain necessary and effective). A total of 408 reassessments were commenced in the current reporting period. Dealing with a guardianship matter, whether a new application or a reassessment, will almost always require a series of listings (usually an initial oral hearing or hearings followed by later consideration 'on the papers'). The tribunal had 678 guardianship listings for the period for 1 December 2017 to 30 June 2018² which extrapolates to in excess of 1000 listings for the whole reporting period.

13. Apart from the core jurisdictions of small claims, residential tenancies and guardianship, new NTCAT proceedings were commenced during the current reporting period under the following Acts: *Alcohol Harm Reduction Act*; *Anti-Discrimination Act*; *Building Act*; *Caravan Parks Act*; *Fences Act*; *Health Practitioner Regulation (National Uniform Legislation) Act*; *Liquor Act*; *Local Government Act*; *Mineral Titles Act*; *Planning Act*; *Unit Titles Act*; *Unit Title Schemes Act* and *Victims of Crime Assistance Act*.
14. At the time of the 2016-17 annual report, the *Alcohol Harm Reduction Act*, under which the tribunal has review jurisdiction in respect of banned drinker orders, had just commenced. It was expected that the tribunal would receive a substantial number of applications under that legislation; however, that has not proved to be the case. There has been only one review application and it did not proceed to a hearing.
15. The President of NTCAT also holds an appointment as President of the MHRT. As noted above, NTCAT manages the administrative and quasi-judicial responsibilities of the MHRT under the *Mental Health and Related Services Act* (NT). The jurisdiction of the MHRT (which accounts for between 10 and 15 hearings per week, and up to one day of hearing time, spread across lists conducted on three days) was originally intended to transfer to NTCAT in 2015-2016, but this is still yet to occur.

STAFFING

Senior Staff

16. For the reporting period, NTCAT's senior staff comprised:
 - Judge Richard Bruxner - President;
 - Andrew Macrides – Senior Member;
 - Mark O'Reilly - Alice Springs Member;
 - Renata Blanch - Registrar;
 - Eleanor Poulter (née Matarazzo) – Registry Manager (resumed³ 1 February 2018);
 - Sina O'Keeffe - Acting Registry Manager (until 31 January 2018); and

² Statistics for guardianship listings are only available since the implementation of the Odyssey Case Management System on 1 December 2018 see [39].

³ See further [46] below

- Christi Hamon - Listings Coordinator (newly created position, from 18 June 2018).

17. The most significant development for NTCAT's senior staffing in the reporting period was the creation of a new position of Listings Coordinator whose role is to manage the scheduling and workflow of Tribunal proceedings across the Northern Territory. The position was a response to the increasing volume and complexity of NTCAT's workload and the resultant need for a tribunal officer with particular responsibility for ensuring (with oversight from the President and Registrar) that tribunal members are appropriately allocated to compulsory conferences and hearings. The Listings Coordinator will also play a role in building the expertise of NTCAT Registry staff through more focused training and supervision. The creation of the position (which is at an administrative level between Tribunal Coordinator and Registry Manager) also assists in succession planning.

Tribunal Coordinators

18. The senior staff were supported by eight Tribunal Coordinators - seven in Darwin and one in Alice Springs.
19. The following was noted in the 2016-17 annual report (at [19]-[21]) regarding the staffing of NTCAT's Alice Springs operations:

'Despite the tribunal's significant progress in developing its presence in Alice Springs, there is a pressing need for the appointment of a second Alice Springs based registry officer.

NTCAT is presently located at the Westpoint building, on the outer fringe of the Alice Springs CBD. Until recently, the tribunal shared back office space with other administrative officers employed (in various capacities) by the Department of Attorney General and Justice. *Ad hoc* arrangements with those officers meant that it was possible to accommodate lunch breaks and other temporary absences. The other officers have since been relocated and such arrangements are no longer possible. This has led to the need for temporary closure of NTCAT's publicly accessible facilities at times when the tribunal's one officer is out of the office, including at times when members of the public are most likely to wish to visit those facilities (for example lunch time).

The situation is incompatible with the accessibility that is one of NTCAT's most important objects.

At the time of writing this report, there is some uncertainty as to whether NTCAT's Alice Springs operations will continue to be located in the Westpoint Building. On the assumption the tribunal remains based at the Westpoint building (which presently appears likely, despite the apparent availability of space at the old Law Courts building following the relocation of the Supreme Court), the appointment of a second registry officer in Alice Springs is the obvious solution.

Although NTCAT's Alice Springs caseload does not of itself warrant such an appointment, the nature of the tribunal's approach to case management – which involves heavy emphasis upon electronic communications and avoiding a location-specific focus – means that the additional officer would be deployed in the context of the tribunal's Territory-wide operations (as indeed are all existing officers and members).'

20. There has been no change to the circumstances described above, except that it now appears relatively certain that NTCAT will remain at the Westpoint Building for the foreseeable future.

Members

21. The President, Senior Member, Alice Springs Member and Registrar (who is able to constitute the Tribunal for certain matters) have had the conduct of the majority of the caseload of NTCAT for the reporting period.
22. NTCAT also continues to rely upon the services of its sessional members, in particular those holding legal qualifications, for the conduct of compulsory conferences and for selected hearings.
23. During the reporting period, the appointments of a number of NTCAT's original sessional members expired. An expressions of interest process was conducted in late 2017 and early 2018 which led to the appointment (or reappointment) of 24 sessional members for five year terms.
24. The following were sessional members of NTCAT during the reporting period (*indicates that membership had ended by 30 June 2018):

Legally qualified members (s16(2)(a) of the NTCAT Act):

Mr David Alderman	(from 15 May 2018)
Mr David Baldry	(from 15 May 2018)
Ms Helena Blundell	(from 15 May 2018)
Ms Nardine Collier	
Mr Terence Coulehan*	(until 11 May 2018)
Ms Cassandra Ellis	(from 15 May 2018)
Ms Sally Gearin*	(until 11 May 2018)
Mr Andrew George	(from 15 May 2018)
Mr Russell Goldflam	(from 15 May 2018)
Mr Kenneth Grime	(from 15 May 2018)
Ms Lesley Hastwell	(from 15 May 2018)
Mr Ron Levy	(from 15 May 2018)
Mr Alister Lindsay	(from 15 May 2018)
Ms Gabrielle Martin*	(until 11 May 2018)
Prof. Les McCrimmon	
Mr Alasdair McGregor*	(until 11 May 2018)
Mr Ben O'Loughlin	
His Honour Mr Tom Pauling AO QC*	(until 11 May 2018)
Mr Robert Perry	(from 15 May 2018)
Mr George Roussos	(from 15 May 2018)
Mr John Stewart*	(until 11 May 2018)
Mr John Stirk*	(until 11 May 2018)
Her Honour Ms Sally Thomas*	(until 11 May 2018)
Ms Jodi Truman	(from 15 May 2018)
Mr Anthony Whitelum*	(until 11 May 2018)
Ms Jodi Mather	
Ms Kathryn Ganley	

Mr Julian Johnson

Other members (s16(2)(b) of the NTCAT Act):

Ms Kathleen Blair	
Mr John Brears	(from 15 May 2018)
Dr Anthony Brownjohn	(from 15 May 2018)
Ms Kathryn Crawley	(from 15 May 2018)
Dr Timothy Carey*	(until 29 June 2018)
Ms Barbara Curr	
Dr John Death	
Dr Kerry Eupene	
Dr Dana Fitzsimmons*	(until 29 June 2018)
Ms Jill Huck	(from 15 May 2018)
Ms Suzi Kapetas	
Dr Rodney Omond*	(until 29 June 2018)
Ms Louise O'Riordan*	(until 29 June 2018)
Mr Paul Rysavy	
Dr Diane Szarkowicz	
Dr Anita Toth*	(until 29 June 2018)

Additional full time member desirable

25. It was noted in the 2015 - 16 and 2016 - 17 annual reports that the deployment of sessional members is less cost effective for NTCAT than reliance upon the full time members - namely, the President, the Senior Member, the Alice Springs Member and, in some contexts, the Registrar.
26. As the tribunal continues to mature, the desirability of the appointment of another full-time Darwin-based member increases. Not only would a structure involving the President and three full time members mean a more efficient use of the tribunal's financial resources, it would open up new possibilities in terms of management of the tribunal's various jurisdictions (for example by the creation of divisions over which the full-time members would preside, as is the case for interstate 'super tribunals'). In addition, it would mean that the tribunal is better able to be constituted by multi-member panels in matters where that is desirable (for example matters involving the review of significant government decisions).

FACILITIES

Registries

27. During the reporting period, NTCAT has continued to maintain registries in Darwin (Casuarina) and Alice Springs. In addition, it has continued arrangements with the Local Court under which NTCAT documentation is able to be lodged at Local Court registries in remote centres.

28. NTCAT's Darwin premises for the reporting period included three hearing rooms. NTCAT also has a hearing room in Alice Springs. All of NTCAT's hearing rooms and its Darwin conference room are fully equipped for video conferencing and teleconferencing.⁴ NTCAT's Darwin and Alice Springs premises also include facilities for the conduct of mediations. By arrangement with the Local Court, hearings of NTCAT matters in places other than Darwin and Alice Springs are able to be conducted from court houses in those places. If, on a particular day, there is a sufficient number of listings in Katherine or Tennant Creek, and if circumstances otherwise permit, the tribunal will endeavour to have a member travel to those towns to conduct hearings in person.

Casuarina premises

29. NTCAT's three hearing rooms at Casuarina are adequate for managing the existing workload of the tribunal (although see the next heading regarding security issues).
30. The tribunal's facilities for the conduct of compulsory conferences are less satisfactory. Those facilities are presently confined to a single conference room without a 'breakout' room. Ideally, the tribunal would like to move towards multiple conference rooms, each with their own 'breakout' facility. That is unlikely to be achievable using the floor space presently available to the tribunal at Casuarina.

Security

31. The following was noted in the 2016 - 17 report (at [34]) and remains an issue for the tribunal:

An ongoing concern for the tribunal's Darwin premises (in particular) is providing adequate passive security for hearing participants (parties, witnesses, observers, tribunal members and staff). The layout of the facilities means that opportunities for safe exit of hearing rooms in circumstances of urgency are constrained. This is particularly the case with hearing room 2, the only access to which is a single door from the public waiting area. In addition, NTCAT's Darwin based full time members, whose offices are on the second floor of the Darwin premises, cannot access the secure areas of the first floor (or return to their offices) without passing through areas that are open to the public.

32. In matters where the tribunal anticipates volatility on the part of a party or parties at a hearing or compulsory conference, the practice is to arrange for a security guard to be in attendance; however, the limitations of such an approach are self-evident.

PROCEDURES AND SYSTEMS

Rules and forms

33. NTCAT's rules and forms were first published in October 2014. An updated version of the rules came into force on 31 May 2016. The rules were further amended on 23 November 2016 to include clarification of the circumstances in which the tribunal may order that a successful party recover his/her out of pocket expenses associated with a proceeding.

⁴ NTCAT's Alice Springs conference room will soon also be equipped with videoconferencing capacity.

34. The rules have not changed during the current reporting period; however, there is a Bill currently before the Legislative Assembly for amendments to the *Northern Territory Civil and Administrative Tribunal Act* which, if passed, will have the effect that a successful party in NTCAT proceedings will generally be entitled to recover unavoidable out-of-pocket expenses associated with bringing or defending such proceedings (see further [67] below).
35. The introduction of the Odyssey case management system (see further [39] below) during the current reporting period meant that there was a need to substantially revise the majority of NTCAT's forms.

Caseflow management

36. The following description of NTCAT's general approach to caseflow management, from paragraphs [38]-[40] of the 2016 – 17 annual report, remains apposite and has continued with the introduction of Odyssey (see further [39] below):

In the reporting period, NTCAT has maintained and refined the approach to case management of matters in its civil disputes jurisdictions that was introduced in 2015-16. Under that approach, matters are allocated to one of two streams according to their complexity. The most straightforward, or urgent, matters (for example tenancy terminations or simple debt recoveries) are placed in a stream designed to have them ready for hearing within a few weeks of commencement. The remainder are placed in a stream where the initial emphasis is upon alternative dispute resolution at a compulsory conference (again, usually held within a few weeks of commencement). In each stream, a series of standard orders are made. The standard orders, which can vary according to type of matter and the stage it has reached, identify the next steps expected of the parties. The standard orders are designed to be self-explanatory, so that there should be little need for the parties to consult the NTCAT rules.

The approach has proven effective. In general, parties to NTCAT proceedings appear to understand, and comply with, the standard orders. Moreover, more than half of the matters that are referred to a compulsory conference are resolved by agreement between the parties (that is, without the need for a contested hearing).

For matters that are not in NTCAT's civil disputes jurisdictions, NTCAT continues to adopt a 'hands-on' approach to case management. Although the precise procedure can vary according to the jurisdiction being exercised, an initial directions hearing is usually convened within a few weeks of commencement of a matter. Consideration is given at the directions hearing to whether the matter should be prepared for hearing, or whether there should first be efforts towards alternative dispute resolution.

37. From March 2018 the tribunal has adopted a new approach to management of matters in its guardianship jurisdiction. A challenge since the commencement of that jurisdiction in July 2016 has been ensuring that, as far as possible, both the adult who is the subject of the proceedings and all other people who are likely to have a genuine interest in the proceedings, have an opportunity to express their views. Under the new approach, all such persons are required to be notified of, and are encouraged to attend, an initial hearing at which the tribunal gives consideration to the further steps that may be necessary in order to determine whether guardianship orders should be made (or continued).
38. The approach remains relatively new (and will undergo further refinement); however, the tribunal's experience so far has been that the initial hearings are well attended and provide

an invaluable opportunity for the presiding member to obtain an insight into the particular circumstances of the affected adult and to tailor the tribunal's approach to the further hearing of the matter accordingly - including, for example, in terms of reports or assistance that might be required from the Public Guardian.

Odyssey

39. By far the most significant development for NTCAT in the current reporting period has been the roll out of Odyssey, a software package which will eventually replace IJIS as the electronic case management system for the Northern Territory's Courts and Tribunals.
40. The NTCAT implementation of the Odyssey system was the first stage of the project.
41. The tribunal has been operating under Odyssey since 1 December 2017.
42. Since implementation, the system has proven robust and flexible. The basics of its operation are easily learnt and the developers, Tyler Technologies Inc ('Tyler'), have been very responsive whenever technical assistance has been necessary.
43. Apart from replacing IJIS as the means of capturing, organising and reporting upon data relevant to the day-to-day activities of NTCAT, Odyssey has the capacity to allow tribunal files to be maintained in a wholly electronic form.
44. In late 2018 and into 2019 NTCAT will be moving towards entirely 'paperless' management of its case files via Odyssey.
45. The Odyssey implementation - which had to occur in a context where the tribunal was also busily managing its usual caseload - involved a very substantial commitment of time, resources and patience on the part of all involved, particularly in the first six months of the reporting period.
46. Although everyone involved in the implementation should share the credit for its success, special mention should be made of the efforts of NTCAT's Registry Manager, Ellie Poulter (née Matarazzo). For most of 2017 Ms Poulter was deployed in a liaison role, acting as the main conduit between NTCAT and Tyler's Darwin-based staff. As such, she was responsible for interpreting, communicating and explaining the respective requirements and expectations of both organisations. She carried out that extremely challenging (and sometimes thankless) role with great care, skill and diligence.

STAKEHOLDER ENGAGEMENT

47. Despite the demands of the Odyssey implementation, NTCAT was able to maintain engagement with key stakeholders during the reporting period.
48. The President gave a presentation regarding NTCAT at the Solicitor for the Northern Territory 'Masterclass' in October 2017. On 15 December 2017 the President and full-time

members presented a seminar for guardianship stakeholders regarding changes to the tribunal's approach to the management of guardianship matters.

49. The President maintained an active involvement in the activities of relevant national organisations, in particular as a member of the executive committee of the Council of Australasian Tribunals ('COAT').

RESOURCES

50. The tribunal has been able to operate within its financial resources during the reporting period. If those resources are substantially maintained, and if the tribunal continues to be permitted flexibility and independence in the management of the resources, they should remain sufficient for the time being.

MATTERS IN SECTION 151(2) OF THE NTCAT ACT

51. The following paragraphs address the matters listed in section 151(2) of the NTCAT Act.

'THE NUMBER, NATURE AND OUTCOME OF MATTERS THAT HAVE COME BEFORE THE TRIBUNAL' - S 151(2)(a)

52. 2732 proceedings were commenced in NTCAT in 2017-18. That total includes new applications in the tribunal's guardianship jurisdiction (232) and reassessments of guardianship orders (408) that were commenced in that period.
53. The ability to generate useful data for matters concluded (whether by final orders, settlement, withdrawal or otherwise) is affected by the transition from IJIS to Odyssey in late 2017. There was not a wholesale migration of data from IJIS to Odyssey when Odyssey was implemented from 1 December 2017. Only matters that were ongoing or were commenced after that date became the subject of Odyssey records. Comprehensive data for matters concluded between 1 July and 30 November 2017 can only be compiled by manual extraction from the relevant files and such an exercise is beyond the tribunal's present capacity. The information below regarding concluded matters is therefore confined to matters finalised in the 'post-Odyssey' period of 1 December 2017 – 30 June 2018. For comparison purposes, details of matters commenced in that period are also provided.
54. It is finally noted that the figures summarised in the tables below do not take into account the tribunal's caseload under the *Mental Health and Related Services Act* (which comprised 1450 matters that were scheduled for determination, of which 664 ultimately proceeded to a hearing).

Table 54A
NTCAT Proceedings Commenced:
Jurisdictions other than Guardianship
2017-18

Jurisdiction	Proceedings commenced
<i>Alcohol Harm Reduction Act</i>	1
<i>Anti-Discrimination Act</i>	5
<i>Building Act</i>	1
<i>Caravan Parks Act</i>	2
<i>Fences Act</i>	6
<i>Health Practitioners Act</i>	8
<i>Liquor Act</i>	1
<i>Local Government Act</i>	8
<i>Mineral Titles Act</i>	1
<i>Planning Act</i>	4
<i>Residential Tenancies Act</i>	590
<i>Small Claims Act</i>	1451
<i>Unit Title Act</i>	6
<i>Unit Title Schemes Act</i>	1
<i>Victims of Crime Assistance Act</i>	7
TOTAL	2092

Table 54B
NTCAT Proceedings Commenced:
Guardianship
2017-18

<i>Guardianship of Adults Act (new applications)</i>	232
<i>Guardianship of Adults Act (reassessments commenced)</i>	408
TOTAL	640

Table 54C
NTCAT Proceedings Commenced:
Jurisdictions other than Guardianship
1 December 2017 – 30 June 2018

Jurisdiction	Proceedings commenced
<i>Alcohol Harm Reduction Act</i>	1
<i>Anti-Discrimination Act</i>	2
<i>Building Act</i>	
<i>Caravan Parks Act</i>	1
<i>Fences Act</i>	4
<i>Health Practitioners Act</i>	7
<i>Liquor Act</i>	1
<i>Local Government Act</i>	1
<i>Mineral Titles Act</i>	
<i>Planning Act</i>	3
<i>Residential Tenancies Act</i>	383
<i>Small Claims Act</i>	1278
<i>Unit Title Act</i>	5
<i>Unit Title Schemes Act</i>	1
<i>Victims of Crime Assistance Act</i>	5
TOTAL	1692

Table 54D
Proceedings Concluded:
Jurisdictions other than Guardianship
1 December 2017 – 30 June 2018

Jurisdiction	Proceedings concluded
<i>Alcohol Harm Reduction Act</i>	1
<i>Anti-Discrimination Act</i>	4
<i>Building Act</i>	1
<i>Caravan Parks Act</i>	2
<i>Fences Act</i>	5
<i>Health Practitioners Act</i>	3
<i>Liquor Act</i>	1
<i>Local Government Act</i>	5
<i>Mineral Titles Act</i>	
<i>Planning Act</i>	1
<i>Residential Tenancies Act</i>	395

Jurisdiction	Proceedings concluded
<i>Small Claims Act</i>	942
<i>Unit Title Act</i>	5
<i>Unit Title Schemes Act</i>	1
<i>Victims of Crime Assistance Act</i>	7
TOTAL	1373

THE NUMBER & NATURE OF MATTERS THAT ARE OUTSTANDING' - S 151(2)(b)

55. Past annual reports have noted the uncertainty regarding the term 'outstanding' in section 151(2)(b) of the NTCAT Act.
56. If the term is understood as referring to the number of NTCAT matters that remained 'active' as at the expiry of the reporting period - in the sense that some further action by the tribunal is required before the matter can be regarded as concluded (for example by judgment, settlement or withdrawal) – then there were 349 (non-guardianship) matters in that category, as follows:

Table 56
Proceedings Active:
Jurisdictions other than Guardianship
30 June 2018

Jurisdiction	Proceedings active
<i>Anti-Discrimination Act</i>	2
<i>Fences Act</i>	1
<i>Health Practitioners Act</i>	3
<i>Local Government Act</i>	1
<i>Mineral Titles Act</i>	1
<i>Planning Act</i>	1
<i>Residential Tenancies Act</i>	93
<i>Small Claims Act</i>	242
<i>Unit Title Act</i>	1
<i>Unit Title Schemes Act</i>	1
<i>Victims of Crime Assistance Act</i>	3
TOTAL	349

57. The figure of 93 active residential tenancies matters includes a group of 70 that were commenced in 2016 and relate to public housing at Santa Teresa. A group of five test cases was referred to the Supreme Court in 2017 and has since been referred back to NTCAT after

determination of a series of legal questions. Those cases are listed for hearing in Alice Springs in November 2018.

'ANY TRENDS OR SPECIAL PROBLEMS THAT MAY HAVE EMERGED' - S 151(2)(c)

Jurisdictional inconsistency

58. NTCAT's previous three Annual Reports contained observations under this heading regarding the desirability of avoiding unnecessary inconsistency across NTCAT's many and varied jurisdictions. Those observations continue to hold true.

Membership – depth

59. At no stage during the reporting period did NTCAT find itself without a suitable member to allocate to a matter.
60. It is noted, however, that the number of medical practitioner members appointed to the tribunal dropped to two during the reporting period and will reduce to one in February 2019. This has potential ramifications for NTCAT's jurisdiction in disciplinary matters under the Health Practitioner Act where a combination of factors (such as work commitments and conflicts of interest due to social or professional acquaintance) makes member depth essential. The tribunal will give priority to bolstering its reserves of medical practitioner members before the end of 2018.
61. Although the issue just described is specific to NTCAT's health disciplinary context, it remains desirable (as noted in earlier annual reports) that there is the capacity for *ad hoc* member appointments in limited circumstances. This could be achieved by amendments to the NTCAT Act:
- a. to include provision for short-term, matter-specific, appointments by the President; or
 - b. to provide that a person who is a relevantly qualified member of an interstate 'Super Tribunal' may sit as a member of NTCAT in circumstances where there is no relevantly qualified member of NTCAT available to do so.

Membership – economics

62. For the reasons outlined in paragraph [25] above, the appointment of an additional full time Darwin based member is now a priority.

The NTCAT website

63. NTCAT's current website remains part of the broader website of the Department of Attorney General and Justice and is not user-friendly.
64. At the time of the 2016 – 17 Annual Report it was noted that a new standalone NTCAT website was expected to 'go live' in late 2017. That has not yet occurred, although the tribunal understands that preparation of the website is now substantially complete and is hopeful that it will be operational before 2019.

Costs in civil disputes jurisdictions

65. Previous annual reports have referred to the fact that the 'usual rule' as to costs in NTCAT proceedings (namely that each party bears their own costs) can operate so as to unfairly deprive a successful party from recovering unavoidable out of pocket expenses associated with commencing or defending NTCAT proceedings.
66. That issue has partially been addressed by means of amendments to the NTCAT Rules;⁵ however, those amendments are relevant only in a restricted category of cases.
67. The *Northern Territory Civil and Administrative Tribunal Amendment Bill 2018*, which is currently before the Legislative Assembly, includes proposed amendments to section 132 of the NTCAT Act. If the amendments are passed, they will mean that the usual costs rule does not preclude a successful party from recovering fees such as filing fees and other similar expenses necessarily and reasonably incurred in bringing or defending to an NTCAT proceeding. The amendments will have no bearing upon the recoverability of other types of costs incurred by a party, for example legal fees.

'IN RELATION TO THE MATTERS THAT HAVE COME BEFORE THE TRIBUNAL - THE LEVEL OF COMPLIANCE BY DECISION MAKERS WITH REQUIREMENTS TO... NOTIFY PERSONS OF REVIEWABLE DECISIONS AND THEIR RIGHTS TO SEEK REVIEW' - S 151(2)(d)(i))

68. In the matters that NTCAT dealt with in its review jurisdiction during the reporting period, no concerns arose regarding decision-makers' compliance with requirements either to notify reviewable decisions or review rights in respect of such decisions.

'IN RELATION TO THE MATTERS THAT HAVE COME BEFORE THE TRIBUNAL - THE LEVEL OF COMPLIANCE BY DECISION MAKERS WITH REQUIREMENTS TO... PROVIDE WRITTEN REASONS FOR REVIEWABLE DECISIONS WHEN REQUESTED TO DO SO' - S 151(2)(d)(ii)

69. In the matters that NTCAT dealt with in its review jurisdiction during the reporting period, no concerns arose regarding decision-makers' compliance with requirements to provide written reasons for decision.

'FORECASTS OF THE WORKLOAD OF THE TRIBUNAL IN THE NEXT FINANCIAL YEAR' - S 151(2)(e)

70. The following forecasts are made for 2017-18:

⁵ See rule 10(2)(b) of the *Northern Territory Civil and Administrative Tribunal Rules*, which was introduced on 23 November 2016.

- c. Small Claims and other civil disputes – 1300-1500 matters;
- d. Residential tenancies – 500-700 matters (this assumes that the residential property rental market will remain depressed);
- e. Guardianship – 600-700 matters (i.e. new applications and reassessments) requiring determination;
- f. Mental Health – 1300-1500 matters requiring administrative management (of which approximately 650 - 700 will require hearings);
- g. Other matters: 50 - 150.

'ANY PROPOSALS FOR IMPROVING THE ADMINISTRATION AND OPERATION OF THE TRIBUNAL' - S 151(2)(f)

Members' Manual and Code of Practice

71. It was hoped at the time of the last annual report that the development of a members' manual and code of practice could be advanced in 2017-18. This has not proven possible, in light of the substantial commitment of resources required for the Odyssey implementation and for the 2018 sessional member intake, as well as the need to attend to the tribunal's regular workload. Realistically, it is unlikely that the development of a manual and code of practice will occur until after the tribunal has moved to wholly paperless management of its case files in 2019.

Alternative Dispute Resolution

72. Compulsory conferences (conducted under section 107 of the NTCAT Act) continue to be an important part of NTCAT's core business. In the reporting period, approximately 50% of matters referred to a compulsory conference were resolved without the requirement for a hearing. Although that is an encouraging statistic, significantly higher settlement rates are achieved by some interstate tribunals.
73. NTCAT is moving towards an increasingly uniform approach to compulsory conferences (for example by the development of templates for settlement agreements). If time and resources permit, the tribunal intends arranging mediations skills development training for sessional members in 2019.

Default judgment

74. The 2015–16 annual report contained observations, which were again referenced in the 2016–2017 report, regarding the desirability of the introduction of a power for NTCAT to enter default judgement in a limited class of uncontested proceedings.
75. The *Northern Territory Civil and Administrative Tribunal Amendment Bill 2018*, which is currently before the Legislative Assembly, proposes a new section of the NTCAT Act, section 101A, by which the tribunal will have power to make a default decision in uncontested proceedings for the recovery of a debt or other fixed sum of money. If proposed section 101A becomes law, it will be a welcome development.