



NTCAT
Northern Territory
Civil and Administrative Tribunal

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL

ANNUAL REPORT 2015 - 2016



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

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 2015 to 30 June 2016.

I apologise for the slight delay in providing the report, which was due on 30 September 2016.

I draw your particular attention to observations made at paragraphs 21 to 29 of the report regarding the desirability of appointing additional full-time NTCAT members to service Alice Springs (especially) and Darwin.

Yours faithfully


Judge Richard Bruxner
President
Northern Territory Civil
and Administrative Tribunal

12 October 2016

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INTRODUCTORY

1. This is the annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2015-2016 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 second annual report and its first for a complete financial year.
4. In the 2015-2016 financial year, NTCAT substantially advanced the process of establishment and consolidation that commenced when the tribunal started operations on 6 October 2014.

5. By the time this report was written, NTCAT was actively managing and hearing matters in the majority of what will be its busiest jurisdictions, namely: residential tenancies; small claims; and guardianship of adults. The only 'high volume' jurisdiction that is yet to formally transfer to NTCAT is the mental health review jurisdiction currently exercised by the Mental Health Review Tribunal ('MHRT') under the *Mental Health and Related Services Act*; however, NTCAT already manages the administrative and quasi-judicial responsibilities of that tribunal.
6. It may be expected that, by the end of 2016/17, NTCAT's caseload, including MHRT matters, will have reached a level that (assuming there are no further conferrals of high volume jurisdictions) is representative of its likely caseload in the next few years.
7. As NTCAT moves from its establishment phase into carrying a full caseload, the focus of its management and administration will shift from the creation of systems and procedures to the ongoing refinement and improvement of those systems and procedures.

NTCAT'S JURISDICTIONS

8. The majority of NTCAT's hearings for the reporting period were in the residential tenancies jurisdiction. The hearings in that jurisdiction included some that related to matters that had been commenced prior to the establishment of NTCAT and were therefore dealt with by NTCAT members in their capacity as delegates of the Commissioner of Tenancies. The last such matter was completed by February 2016.
9. During the reporting period NTCAT also conducted several reviews of decisions by government officers and authorities in relation to planning, liquor licensing and crime victims compensation. In addition, NTCAT dealt with its first matters under the following legislation: *Anti-Discrimination Act*; *Health Practitioner Regulation (National Uniform Legislation) Act*; *Private Security Act*; *Building Act*; *Fences Act*; *Gaming Machines Act*; *Heritage Act*; and *Unit Titles Act*.
10. From 1 May 2016, NTCAT has exercised jurisdiction under the *Small Claims Act*. That Act gives NTCAT jurisdiction in certain civil disputes where the amount or value of the claim is up to \$25,000. Previously, small claims jurisdiction was exercised by the Local Court of the Northern Territory and related to claims up to \$10,000. The experience of the first few months of the small claims jurisdiction suggests that NTCAT's small claims workload will be approximately equivalent to its residential tenancies workload.
11. NTCAT's jurisdiction under the newly enacted *Guardianship of Adults Act* did not commence until 28 July 2016, but preparations for the commencement of that jurisdiction were well underway during the reporting period.
12. 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) was originally intended to transfer to NTCAT in 2015-2016, but that did not occur. It remains unclear when the transfer will take place.

13. As at 30 June 2016 jurisdiction had been conferred upon NTCAT under the following Acts:

- *Administrators Pensions Act*
- *Anti-Discrimination Act*
- *Births Deaths and Marriages Registration Act*
- *Building Act*
- *Caravan Parks Act*
- *Control of Roads Act*
- *Cooperatives (National Uniform Legislation) Act*
- *Darwin Waterfront Corporation Act*
- *Education Act*
- *Energy Pipelines Act*
- *Fences Act*
- *Gaming Control Act*
- *Gaming Machine Act*
- *Geothermal Energy 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*
- *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*
- *Victims of Crimes Assistance Act*

STAFFING

14. For the reporting period, NTCAT's full time senior staff comprised:
 - Judge Richard Bruxner - President;
 - Andrew Macrides – Senior Member;
 - Jim Laouris – Registrar; and
 - Eleanor Matarazzo – Registry Manager.
15. The senior staff were supported by five Darwin based and one Alice Springs based administrative officers.
16. From 1 July to 30 September 2015 John Birch SM, an Alice Springs based magistrate, was appointed as NTCAT's Vice President.
17. The President, Senior 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.
18. With the increase in NTCAT's caseload and the move to greater emphasis upon alternative dispute resolution via compulsory conferences (see further below at [35]) NTCAT has become increasingly reliant upon the services of its sessional members, in particular those holding legal qualifications.
19. The following were sessional members of NTCAT during the reporting period:

Legally qualified members (s 16(2)(a) of the NTCAT Act):

Ms Sonia Brownhill SC¹
 Ms Nardine Collier
 Mr Terence Coulehan (former Master of the Supreme Court)
 Ms Sally Gearin
 Ms Gabrielle Martin
 Prof. Les McCrimmon
 Mr Alasdair McGregor (former Stipendiary Magistrate)
 Mr Ben O'Loughlin

¹ Ms Brownhill resigned on 29 June 2016 owing to her appointment as Solicitor-General.

His Honour Mr Tom Pauling AO QC (former Solicitor-General for the Northern Territory, former Administrator of the Northern Territory)
Mr John Stewart
Mr John Stirk
Her Honour Ms Sally Thomas (former Judge of the Supreme Court of the Northern Territory and former Administrator of the Northern Territory)
Mr Anthony Whitelum
Ms Sarah McNamara (from 29 October 2015)
Ms Jodi Mather (from 29 October 2015)
Ms Kathryn Ganley (from 29 October 2015)
Mr Julian Johnson (from 29 October 2015)
Mr Philip Timney (29 October – 18 November 2015)²

Other members (s 16(2)(b) of the NTCAT Act):

Ms Kathleen Blair
Dr Timothy Carey
Dr Kerry Eupene
Dr Dana Fitzsimmons
Dr Rodney Omond
Louise O'Riordan
Dr Diane Szarkowicz
Dr Anita Toth
Ms Suzi Kapetas (from 29 October 2015)³
Ms Barbara Curr (from 29 October 2015)
Ms Paul Rysavy (from 29 October 2015)
Ms Beth Walker (from 29 October 2015)
Dr John Death (from 28 June 2016)

20. Sessional members are paid only for work done in and in connection with tribunal hearings and compulsory conferences. They are remunerated according to a determination made under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*. The rates are considered appropriate having regard to the experience levels of members and the need to maintain an incentive for them to make themselves available for sessional tribunal work. Nevertheless, NTCAT's experience is that the deployment of sessional members is less cost effective than reliance upon the full time members (namely, the President, the Senior Member and, in some contexts, the Registrar).
21. It is considered that a substantial part of resources presently devoted to the engagement of sessional members could more effectively be deployed if NTCAT's full time membership were expanded to include two additional members. Such members, remunerated at approximately the ECO1 to ECO2 level, would provide considerably greater value for money than a comparable investment in the engagement of sessional members. Apart from direct cost savings, the appointment of additional full time members would allow NTCAT

² Mr Timney resigned on 18 November 2015 in light of his employment as General Counsel for Licensing NT.

³ Ms Kapetas was formally appointed under section 16(2)(b) but also holds legal qualifications.

considerably greater flexibility in the management of its caseload and certainty in the management of its resources.

22. It should be emphasised here that NTCAT's sessional members would continue to play a critical role in NTCAT's operations; however, their deployment would be more targeted and cost effective.
23. The appointment of at least one additional full time member would also allow NTCAT to address a substantial shortcoming in its current operations: the management of its Alice Springs caseload.
24. The bulk of NTCAT's Alice Springs hearings are conducted remotely from Darwin. Although this approach has proved workable (if less than ideal) for straightforward matters, it will not be suitable as the number and complexity of NTCAT's Alice Springs matters increases. In particular, it will not be suitable in the context of hearings in NTCAT's guardianship, professional disciplinary and anti-discrimination jurisdictions, or in matters involving review of government decisions. Nor will it be suitable for the conduct of mediations in the context of compulsory conferences (see also [35] below).
25. Although NTCAT's Alice Springs workload is unlikely in the near future to involve full weeks of listings, an Alice Springs based full-time member could also remotely undertake some of the NTCAT's Darwin workload (especially in straightforward matters in the residential tenancies and small claims jurisdictions).
26. It was with the above considerations in mind that NTCAT obtained approval to undertake an expressions of interest process in January 2016 for the appointment of a full-time Alice Springs member to be remunerated at the ECO2 level.
27. Several expressions of interest were received.
28. It became necessary, however, to postpone the process when approval for the necessary remuneration determination was not forthcoming from the Office of the Chief Minister.
29. Despite several requests, NTCAT has not received any explanation for the refusal. The lack of explanation in the face of the continuing (and growing) need for NTCAT to have a full-time Alice Springs Member is a source of great frustration.

FACILITIES

30. 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.

31. NTCAT's Darwin premises for the reporting period included two hearing rooms; however, by the time of writing this report, a third hearing room had been established. NTCAT also has a hearing room in Alice Springs. All NTCAT hearing rooms are fully equipped for video conferencing and teleconferencing. 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.

PROCEDURES AND SYSTEMS

32. NTCAT's rules and forms were first published in October 2014. An updated version of the rules, prepared with the assistance of the Office of Parliamentary Counsel, came into force on 31 May 2016.
33. The rules emphasise that, wherever possible, NTCAT encourages parties to take advantage of electronic means of communication. There is a similar emphasis in the NTCAT registry, which maintains electronic files for all NTCAT matters.
34. In order to strike a balance between the simplicity of NTCAT's rules and forms and the variety of matters with which the Tribunal deals, all matters are closely case-managed from the time they are commenced.
35. During the reporting period, NTCAT established a new approach to case management of matters in its civil disputes jurisdictions (principally residential tenancies and small claims). Under the new 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 is 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.
36. For matters that are not in NTCAT's civil disputes jurisdictions, NTCAT adopts 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.

STAKEHOLDER ENGAGEMENT

37. During the reporting period, NTCAT presented and participated in several stakeholder seminars. The most significant related to the commencement of NTCAT's small claims jurisdiction and the (contemporaneous) introduction of the new approach to case management of civil dispute matters (see paragraph [35] above). In addition, the President presented papers regarding NTCAT at the Northern Territory Bar Association's Bar Readers Course and at the 2016 CPD Intensive conducted in Alice Springs by the Northern Territory Law Society.

RESOURCES

38. NTCAT's 2014-2015 Annual Report included the following observations under this heading:
 - '19. According to present budgetary allocations, NTCAT is funded for the 2014-15 and 2015-16 financial years only.
 20. Caseloads for the reporting period and forecast caseloads for 2015-16 suggest that the present allocation is sufficient for those years; however, it is also clear that there will be the need for substantial additional financial resources by the time NTCAT is operating at full capacity. Projections prepared at the time of writing this report suggest that NTCAT's eventual caseload may reach 4500-5000 matters per year and that this will require a threefold increase in existing staffing levels as well as a substantial increase in funding for members (whether sessional, full time or a mixture of both).'
39. In the 2016 Northern Territory Budget, there was an allocation of '\$2.5 million to continue to support NTCAT'.
40. That allocation was substantially less than NTCAT had sought and, having regard to available information regarding the cost of running similar tribunals interstate, is likely to be wholly inadequate.
41. In addition, NTCAT has subsequently been advised that the \$2.5 million allocation involves assumptions regarding the availability of revenue in the order of \$0.5 million to be generated by NTCAT by means of fee receipts.
42. Quite apart from the practical uncertainty this produces in terms of NTCAT's ability to plan and manage its operations, the notion that funding for an independent tribunal with an increasingly important role in the Northern Territory justice system should be tied to fee revenue is problematical.
43. The inadequacy of NTCAT's budget allocation was acknowledged by the former Attorney-General (also, at the time, the Minister for Health) in the course of the following exchange during the 2016 Budget Estimates hearings in June 2016:

Madam CHAIR: The committee will now consider Output 2.2, Lower Courts and Tribunals. Are there any questions?

Ms WALKER: Yes thanks, Madam Chair. Minister, court support services sets out an increase in funds for lower Courts and tribunals around \$2m. You noted that in your opening statement.

Will this assist NTCAT to have an increased presence in Alice Springs?

Mr ELFERINK: Yes, you will see NTCAT has a budget line item \$2m, I think is about right for the number off the top of my head. That is actually not quite enough for NTCAT. I have gone to the Minister for Health, had a strong argument with him, which he lost, and health because of the guardianship role has now moved to a different environment and will provide I think \$600 000 off the top of my head and the courts will also be providing, after the small claims jurisdictions moved on, some further \$200 000. It is not the budget that will be a transfer of allocations when the time comes so it actually will receive more money than is actually noted in the budget here.

The intention of NTCAT was always to make it cost neutral to government. That has not quite been achieved. Certainly, I have said to health, with adult guardianship going across and the courts with the small claims jurisdiction going across, those costs should go along with it. NTCAT ultimately now will be receiving a bit more than you see in the line item there. They will be providing the service in Alice Springs as well.

Ms WALKER: Sure. I would like to suggest having had a look at NTCAT's annual report that on page 8 under Resources states:

Caseloads with a reporting period forecasts caseloads of 2015-16 suggest that ...

Obviously the present allocation is sufficient, it goes on to say:

... eventual caseload may reach four and a half to five thousand matters per year and this will require a threefold increase in existing staffing levels as well as a substantial increase in funding for members.

Are you comfortable that the allocation is adequate for the time being as NTCAT grows?

Mr ELFERINK: Yes I am. I am aware the potential for NTCAT's growth is substantial. That is the pressure of other parts of the Court system, bearing in mind the appeals processes and other parts of the court system, which NTCAT captured, were functions that were already conducted by the parts of either government or the Court system.

44. Assuming the additional funding is forthcoming and is provided on a recurrent basis,⁴ NTCAT is confident that it will be adequately resourced for the foreseeable future.

MATTERS IN SECTION 151(2) OF THE NTCAT ACT

45. 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)

46. In order to appropriately reflect NTCAT's workload and turnaround rates, the summary below includes details of all matters dealt with by NTCAT between 1 July 2015 and 30 June 2016. These include matters that were commenced in the residential tenancies jurisdiction before NTCAT formally took over that jurisdiction on 1 June 2015. In order to obtain a more

⁴ NTCAT has received confirmation dated 4 October 2016 that the \$600,000 transfer from the Department of Health has been effected and that the funding is recurrent

accurate overview of the tribunal's workload, the statistical data in the annual report of the Mental Health Review Tribunal should also be considered.

| | From 1 July 2015 to 30 June 2016 | |
|---|----------------------------------|---------------------|
| Jurisdiction by Act | Cases Commenced | Cases Finalised (*) |
| <i>Anti-Discrimination Act</i> | 5 | 1 |
| <i>Building Act</i> | 2 | 1 |
| <i>Fences Act</i> | 4 | 3 |
| <i>Gaming Machine Act</i> | 1 | 1 |
| <i>Health Practitioners Act</i> | 4 | 1 |
| <i>Heritage Act</i> | 1 | 1 |
| <i>Liquor Act</i> | 2 | 1 |
| <i>Planning Act</i> | 4 | 2 |
| <i>Residential Tenancies Act</i> ⁵ | 1049 | 861 |
| <i>Small Claims Act</i> | 327 | 53 |
| <i>Unit Titles Act</i> | 2 | 0 |
| <i>Victims of Crime Assistance Act</i> | 17 | 11 |

(*) Cases finalised includes where the matter is settled, withdrawn or discontinued. A case is otherwise not regarded as finalised until a decision is made.

'THE NUMBER AND NATURE OF MATTERS THAT ARE OUTSTANDING' - s 151(2)(b)

47. It is assumed that 'outstanding' in section 151(2)(b) refers to matters that were commenced in the 2015-2016 year but which had not been brought to completion by 30 June 2016.

The number and nature of matters that are outstanding - s 151(2)(b)

48. In total there were 45 matters outstanding at the end of the reporting period, comprising the following:

⁵ Includes some matters dealt with by NTCAT on behalf of the Commissioner of Tenancies.

- (a) 4 *Anti-Discrimination Act* matters;
- (b) 1 *Building Act* matter;
- (c) 1 *Fences Act* matter;
- (d) 3 *Health Practitioner Regulation (N.U.L) Act* matters;
- (e) 1 *Liquor Act* matter;
- (f) 2 *Planning Act* matters;
- (g) 135⁶ *Residential Tenancies Act* matters;
- (h) 274⁷ *Small Claims Act* matters;
- (i) 2 *Unit Titles Act* matters; and
- (j) 6 *Victims of Crimes Assistance Act* matters.

49. NTCAT intends developing criteria for the purpose of monitoring the rate of progress of matters from commencement to completion. These criteria, which are likely to vary across NTCAT's jurisdictions, should mean that 'outstanding' matters are able to be broken down into categories that are more statistically useful. This statistical analysis will be more easily achievable when the new case management system replacing IJIS is implemented.

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

Jurisdictional inconsistency

50. NTCAT's 2014-2015 Annual Report contained at paragraphs [26] to [30] observations under this heading regarding the desirability of avoiding unnecessary inconsistency across NTCAT's many and varied jurisdictions. Those observations continue to hold true, as do the examples of inconsistency offered in paragraph [30].
51. To those examples may be added the procedurally awkward manner in which matters are commenced in NTCAT's jurisdictions under the *Anti-Discrimination Act*, *Information Act* and *Building (Resolution of Residential Building Work Disputes) Regulations*.

⁶ Of the 135 outstanding matters, there were 91 applications relating to housing matters in regional and remote communities. These matters, which involve complicated legal questions, have required NTCAT to adopt a different approach than for standard residential tenancies matters.

⁷ Bulk applications (on behalf of large scale creditors) were received in June 2016. A large number of these matters were finalised in the first quarter of 2016/17 but as at 30 June 2016 were outstanding.

Membership – depth

52. NTCAT's 2014-2015 Annual report contained at paragraphs [31] to [36] observations regarding the challenges faced by NTCAT in ensuring that its membership base is sufficiently broad to properly service its jurisdictions whilst not also so large as to become administratively unmanageable.
53. At no stage during the reporting period did NTCAT find itself without a suitable member to allocate to a matter. A new round of member recruitment proposed for late 2016 should further reduce the prospect of this happening; however the clear potential remains. A possible response (identified at paragraph [36] of the 2014-15 report) remains amendments to the NTCAT Act:
- to include provision for short-term, matter-specific, appointments by the President; or
 - 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

54. NTCAT's 2014-2015 Annual report contained at paragraphs [37] to [39] observations regarding the desirability of appointing a full time Alice Springs based member.
55. For those reasons, and the further reasons outlined in paragraphs [20] – [29] above, such an appointment is now considered a matter of high priority.

The NTCAT website

56. Consistently with its aim of providing justice in an accessible and modern forum and its emphasis upon electronic forms of communication, NTCAT actively encourages stakeholders to make use of its website at <http://www.ntcat.nt.gov.au>. Apart from NTCAT's physical registries, the website is the principal repository of NTCAT's forms and rules, as well as regularly updated information regarding NTCAT's processes, hearing lists and decisions.
57. In May 2016, without notice to NTCAT, all web traffic to NTCAT's website was redirected to a web page forming part of the newly established NT.GOV.AU website.
58. At the time of writing this report, the web page remains accessible as part of NT.GOV.AU. The web page does not contain links to essential NTCAT forms and documents. Such information as the website contains – much of it consisting of inaccurate paraphrasing of information on the NTCAT website – is in many respects misleading and outdated.
59. At NTCAT's insistence, access to the website at <http://www.ntcat.nt.gov.au> has been restored; however, it is a matter of concern that NTCAT stakeholders may, through no fault

of their own, have accessed and relied upon, the NT.GOV.AU web page (let alone that such access *remains* a possibility).

60. Also of great concern is the fact that an integral part of the operations of an independent tribunal has been compromised in such a fashion.

Costs in civil disputes jurisdictions

61. The usual rule in NTCAT proceedings is that each party bears their own costs (see NTCAT Act section 131). 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.
62. The implications of the usual rule were the subject of considerable concern on the part of mercantile agents (in particular) at the time of the commencement of NTCAT's jurisdiction under the new *Small Claims Act*. The possibility that fees for the commencement of proceedings and charges for the service of documents (which had been recoverable in the Local Court), might now prove unrecoverable, was considered to have potentially profound implications for mercantile agents, for many of whom debt recovery action is a core part of their business.
63. It can also be noted here that the potential cost of debt recovery action in NTCAT is also affected by NTCAT's inability to enter default judgment in undefended claims (see further paragraph [75] below).
64. Since the commencement of the *Small Claims Act*, NTCAT has, in a limited category of cases, allowed the recovery of part or all of a successful applicant's commencement and service fees. It has done so by recognising an exception to the usual rule where non-recovery of such costs would mean that the successful applicant is substantially deprived of the fruits of their success – in other words, where the reasonably incurred outlays are disproportionate to the amount recovered. An amendment to the NTCAT Rules to expressly recognise such an exception is likely to come into effect in the near future.
65. Recognition of the exception to the usual rule will go some way to addressing the concerns raised by mercantile agents, but it is not a perfect fix. In practical terms, it will operate only in respect of smaller debts.
66. Although it is ultimately a matter of policy, there would seem a strong case for expressly recognising in the NTCAT Act that the usual rule as to costs does not apply in relation to application fees and reasonable costs incurred in the service of documents. Although such outlays are traditionally treated as part of a party's 'costs', it is plain that they are of a fundamentally different nature from costs incurred in retaining legal representatives. There seems no obvious reason why a substantially successful party in *any* NTCAT proceeding (i.e. not solely in the civil dispute context) should not be able to recover reasonable expenses they have no alternative but to incur.

'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))

67. 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)

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 to provide written reasons for decision.

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

69. See below. (In addition, it is forecasted that NTCAT will be administratively responsible for approximately 600 Mental Health Review Tribunal hearings in 2016/17.)

| Jurisdiction | Projected NTCAT Cases |
|---|------------------------------|
| Adult Guardianship | 1085 ⁸ |
| Administrative Reviews (Appeals) | 20 |
| Discrimination | 5 |
| Occupational Licensing jurisdictions | 42 |
| Other Administrative Review jurisdictions (Appeals) | 30 |
| Residential Tenancies | 947 |
| Small Claims | 1400 |
| Other | 20 |

⁸ This includes re-assessments and variation applications for existing orders.

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

Members' Manual and Code of Practice


70. NTCAT had intended in the 2015-16 year to develop a members' manual and code of practice. This has not yet occurred but remains a priority.

Alternative Dispute Resolution

71. In the corresponding part of the 2014-15 Annual Report, attention to NTCAT's approach to alternative dispute resolution ('ADR') was identified as a major priority.
72. During the reporting period NTCAT has made substantial progress towards the implementation of a standardised approach to ADR in NTCAT's civil disputes jurisdictions (residential tenancies and small claims). As noted in paragraph [35] above an ADR process, via the holding of a compulsory conference, is now undertaken in all but the most straightforward of civil dispute matters.
73. At the conclusion of the reporting period, the new procedure had only been operational for a matter of weeks. As such, useful statistical data relating to the proportion of matters resolved by ADR will not be available until the next annual report.
74. Although there is less scope for the adoption of standardised approaches to ADR outside NTCAT's civil disputes jurisdictions, ADR remains an important focus in all NTCAT matters.

No power to enter default judgment

75. Presently, every matter that comes before NTCAT (and is not otherwise resolved, for example by settlement or withdrawal) must be the subject of a hearing. In addition, once a matter is heard, NTCAT must provide written reasons for its decision.
76. Whilst, in the ordinary course, those requirements are fundamental to the achievement of NTCAT's statutory objects, their operation in respect of certain types of claim is problematical.
77. In particular, since the commencement of NTCAT's small claims jurisdiction, the tribunal has routinely been confronted with undefended debt recovery claims. In the court context, such matters are able to be dealt with by the entry of default judgment (in which the allegations in the creditor's statement of claim are taken as admitted and a judgment is issued in what is essentially an administrative process). NTCAT does not have the option of proceeding in that way. Notwithstanding that the debtor has shown no interest in answering the creditor's claim, the creditor is required to prove their claim by evidence and NTCAT must then reach a decision and publish reasons.
78. In practice, and where possible, NTCAT endeavours to expedite the process by conducting hearings 'on the papers' (that is, without requiring the creditor to appear) and by the provision



of short form reasons; however, in a context where it is not uncommon for dozens, if not hundreds, of debt recovery actions to be commenced at a time (for example for the recovery of council rates) the potential for unnecessary cost and delay, and for the resources of the tribunal to be wasted, is patent.

79. Prompt consideration should be given to the amendment of the NTCAT Act to specifically recognise a power, exercisable in clearly understood circumstances, to make orders in the nature of default judgment.

New Case Management System and Website

80. A procurement process is presently underway which aims at replacing the Integrated Justice Information System (IJIS) presently used by NTCAT. The new system should provide significant improvements and capability. Importantly it will allow for greater emphasis on the electronic management of matters and some degree of automation in case management.
81. It is planned that the new system will first be implemented at NTCAT in early 2017.
82. In addition to the new case management system, NTCAT will also be undertaking procurement action for a new standalone website.