



NORTHERN TERRITORY CIVIL & ADMINISTRATIVE TRIBUNAL

ANNUAL REPORT
2020-2021





NTCAT
Northern Territory
Civil and Administrative Tribunal

The Honourable Selena Uibo MLA
Attorney-General and Minister for Justice
Parliament House
DARWIN NT 0801

Dear Attorney-General

NTCAT ANNUAL REPORT 2020/2021

In accordance with section 151 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, I am pleased to submit for your attention the Northern Territory Civil and Administrative Tribunal's annual report for the period 1 July 2020 to 30 June 2021.

Yours faithfully

Judge Richard Bruxner
President
Northern Territory Civil and Administrative Tribunal

28 September 2021

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INTRODUCTORY

1. This is the annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2020/2021 financial year. The preparation of an annual report is required by section 151 of the *Northern Territory Civil and Administrative Tribunal Act 2014* ('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 seventh annual report.
4. Since 3 June 2020, when the tribunal commenced exercising mental health review jurisdiction under the *Mental Health and Related Services Act 1998*, NTCAT has been exercising all of the high volume jurisdictions that were originally planned for it at the time of its creation.
5. The tribunal's 2019-20 annual report emphasised a need for greater depth in NTCAT's human resources in order to cope with an ever-expanding jurisdictional load.
6. Those resources have been sorely tested in 2020-21 by a marked increase in the number of matters in NTCAT's more complex and resource-intensive jurisdictions. The impact has been exacerbated by staffing challenges resulting from significant numbers of NTCAT's most experienced administrative staff performing higher duties elsewhere in the Northern Territory public service.
7. Without a commitment of sufficient additional resources, NTCAT is likely to struggle to continue meeting its core objective of providing prompt and fair outcomes for parties across its increasingly broad range of jurisdictions.

JURISDICTIONAL OVERVIEW

Acts

8. As at 30 June 2021, jurisdiction had been conferred upon NTCAT under the following Acts and subordinate legislation (*denotes Acts under which jurisdiction commenced, or under which additional jurisdiction was conferred, in the current reporting period):
 - *Administrators Pensions Act 1981*
 - *Administration and Probate Act 1969**
 - *Advance Personal Planning Act 2013*
 - *Alcohol Harm Reduction Act 2017*
 - *Anti-Discrimination Act 1992*
 - *Auctioneers Act 1935*
 - *Births Deaths and Marriages Registration Act 1996*
 - *Building Act 1993* (see *Building (Resolution of Residential Building Work Disputes) Regulations 2012*)
 - *Business Tenancies (Fair Dealings) Act 2003*
 - *Caravan Parks Act 2012*
 - *Construction Contracts (Security of Payments) Act 2004*
 - *Control of Roads Act 1953*
 - *Cooperatives (National Uniform Legislation) Act 2015*
 - *Cullen Bay Marina Act 1992*
 - *Darwin Waterfront Corporation Act 2006*
 - *Education Act 2015*

- *Energy Pipelines Act 1981*
- *Expungement of Historical Homosexual Offence Records Act 2018*
- *Fences Act 1972*
- *Firearms Act 1997*
- *Fisheries Act 1988*
- *Gaming Control Act 1993*
- *Gaming Machine Act 1995*
- *Geothermal Energy Act 2009*
- *Guardianship of Adults Act 2016*
- *Health Practitioner Regulation (National Uniform Legislation) Act 2010*
- *Health Practitioners Act 2004*
- *Hemp Industry Act 2019*
- *Heritage Act 2011*
- *Independent Commissioner Against Corruption Act 2017*
- *Information Act 2002*
- *Kava Management Act 1998*
- *Lands Acquisition Act 1978*
- *Legislative Assembly Members' Pension Act 1979*
- *Liquor Act 2019*
- *Local Government Act 2008*
- *Marine Act 1981*
- *Mental Health and Related Services Act 1998*
- *Mineral Titles Act 2010*
- *National Disability Insurance Scheme (Authorisations) Act 2019*
- *National Disability Insurance Act (Worker Clearance) Act 2020**
- *Northern Territory Civil and Administrative Tribunal (Conferral of Jurisdiction for Native Title Matters) Act 2014*
- *Pastoral Land Act 1992*
- *Petroleum Act 1984 & Petroleum Regulations 2020**
- *Planning Act 1999*
- *Poppy Regulation Act 2014*
- *Ports Management Act 2015*
- *Private Security Act 1995*
- *Racing and Betting Act 1983*
- *Residential Tenancies Act 1999**
- *Sex Industry Act 2019*
- *Small Claims Act 2016*
- *Superannuation Act 1986*
- *Teacher Registration (Northern Territory) Act 2004*
- *Termination of Units Plans and Unit Titles Schemes Act 2014*
- *Tobacco Control Act 2002*
- *Totalisator Licensing and Regulation Act 2000*
- *Training and Skills Development Act 2016*
- *Unit Titles Act 1975*
- *Unit Titles Schemes Act 2009*
- *Victims of Crimes Assistance Act 2006*

9. In addition, the following legislation, under which NTCAT will acquire jurisdiction, has been passed, but had not commenced by the end of the reporting period:
 - *Animal Protection Act 2018*
10. Among NTCAT's more significant new jurisdictions that commenced during the reporting period were:
 - jurisdiction under the *Residential Tenancies Act 1999* regarding new rights of tenants to keep pets on rented premises. No applications have yet been made to NTCAT; however this may partly be explained by the fact that the new provisions only affect tenancies created after 1 January 2021; and
 - jurisdiction under the *Petroleum Regulations 2020* to hear disputes about the terms of agreements under which miners are to be provided with access to land over which they hold exploration permits, retention licences or production licences (including in connection with onshore gas mining by hydraulic fracturing) granted under the *Petroleum Act 1984*. The jurisdiction commenced on 1 January 2021 and NTCAT received its first two applications in August 2021. They have been listed for hearings totalling 7 days in November and December 2021.
11. In addition, the reporting period saw the commencement of the first matters in NTCAT's jurisdiction under the *Teacher Registration (Northern Territory) Act 2004*, *Births Deaths and Marriages Registration Act 1996*, *Business Tenancies (Fair Dealings) Act 2003*, *Lands Acquisition Act 1978* and *Firearms Act 1977*.

COVID-19

12. During the reporting period, NTCAT's operations continued to be affected by the coronavirus pandemic.
13. Substantially increased reliance upon technologies allowing remote participation at hearings generally meant that the tribunal was able to progress matters at a satisfactory pace; however, the limitations of those technologies (including their dependence on network connections) could, at times, affect the quality of hearings.
14. In addition, there were matters (for example involving parties based interstate and/or with interstate representation) where COVID-19 related restrictions *outside* the Northern Territory affected the parties' ability to properly prepare for, and participate at, hearings.
15. The NTCAT jurisdiction most affected by the ongoing COVID-19 pandemic has been its mental health review jurisdiction. Before the pandemic, tribunal members and staff would physically attend mental health facilities (at Royal Darwin Hospital, the Tamarind Centre and Alice Springs Hospital) when conducting hearings. From the start of the pandemic, NTCAT adopted an approach where members and staff would only conduct hearings remotely (usually with the locally based members attending at NTCAT's hearing rooms and participating by video conferencing). That approach was driven by a perceived heightened risk to members and staff of attending health care facilities (as well as the fact that NTCAT has limited control over risk

mitigation measures at the facilities – for example social distancing). Although considered necessary, the altered arrangements had an impact upon mental health hearings, where it is often the case that lines of communication and understanding are already compromised. In light of ongoing developments in the understanding and management of the COVID-19 threat, and the relatively stable situation in the Northern Territory, NTCAT has since 13 September 2021 returned to the practice of having its members and staff attend at the facilities for hearings (of Darwin matters).

Proceedings

16. In the reporting period, 2283 new NTCAT matters were commenced (not including matters in the mental health review jurisdiction). Of those matters 80.8% related to the Darwin area, 10.2% concerned Alice Springs and the remainder (9%) related to other locations in the Northern Territory.
17. The jurisdiction in which the largest number of matters was commenced was the small claims jurisdiction with 1170 new matters.
18. 422 new residential tenancies matters were commenced in the reporting period. This represented a continuation of the decline observed between 2018-19 (722 new matters) and 2019-20 (575). The reduction likely reflects the ongoing impacts of the COVID-19 pandemic. Throughout the reporting period, emergency amendments to the *Residential Tenancies Act 1999* continued to affect both the grounds upon which residential tenancies could be terminated and the procedures (including notice timeframes) for doing so. In the 2019-20 Annual Report, the tribunal forecast a possible increase in activity in residential tenancies matters in the latter part of 2020. That did not transpire; however, it would seem unlikely that the downward trend will continue, particularly having regard to the apparent strength of the Northern Territory property market and low rental vacancy rates.
19. During the reporting period, 250 new guardianship proceedings were commenced in NTCAT's adult guardianship jurisdiction, an increase from 240 in 2019-2020 (and 208 the previous year). In addition, 349 reassessments of existing guardianship orders were commenced in 2020-2021, a decrease from 368 in 2019-20. The decrease in reassessments (which is a product of the tribunal having adopted a standard reassessment period of four years for guardianship orders other than initial orders) can be expected to continue, but gradually level out, over the next few years.
20. Guardianship matters (whether new applications or reassessments) usually require a series of listings (an oral hearing or hearings followed by later consideration - often more than once - 'on the papers'). The tribunal had 1752 guardianship listings for the reporting period, slightly less than the 2019-20 figure of 1818.
21. As is the case with guardianship, matters in the mental health review jurisdiction - which most often involve recurring reviews of orders affecting a particular person - are not always easily

able to be classified as ‘new’. In terms of the commitment of tribunal resources to mental health matters, the most reliable measure is the number of matters that required the tribunal to make discrete orders. For the reporting period, there were 703 such matters in the mental health review jurisdiction.

22. Apart from the four ‘routine’ jurisdictions, new NTCAT proceedings were also commenced during the reporting period under the following Acts:

- *Alcohol Harm Reduction Act 2017*;
- *Anti-Discrimination Act 1992*;
- *Births, Deaths and Marriages Registration Act 1996*;
- *Building Act 1993*;
- *Business Tenancies (Fair Dealings) Act 2003*;
- *Fences Act 1972*;
- *Firearms Act 1997*;
- *Health Practitioner Regulation (National Uniform Legislation) Act 2010*;
- *Information Act 2002*;
- *Lands Acquisition Act 1978*;
- *Liquor Act 1978* (now repealed);
- *Liquor Act 2019*;
- *Local Government Act 2008*;
- *Pastoral Land Act 1992*;
- *Planning Act 1999*;
- *Private Security Act 1995*;
- *Teacher Registration (Northern Territory) Act 2004*;
- *Unit Titles Act 1975*;
- *Unit Titles Schemes Act 2009*; and
- *Victims of Crime Assistance Act 2006*.

23. The statistics for these proceedings reveal two, very important, trends.

24. First, the *variety* of ‘non-routine’ jurisdictions in which new matters were commenced – spanning 20 different Acts – is significantly broader than in previous reporting periods (15 in 2019-20 and 10 in 2018-19).

25. Secondly, there was a dramatic increase in the *number* of non-routine matters commenced. For the 2018-19 and 2019-20 reporting periods, there were 52 and 42 commencements respectively. For 2020-21, there were 91 commencements.

26. Although matters in non-routine jurisdictions account for only a small proportion of the total number of matters with which NTCAT deals, those matters account for a substantial part of the tribunal’s workload.

27. A majority involve greater than usual factual and legal complexity, and often significantly higher 'stakes'.
28. The preliminary stages of such matters tend to be more protracted and can involve a number of directions hearings and other interlocutory steps (for example as the result of applications by parties for procedural orders).
29. Compulsory conferences and hearings in such matters also tend to take considerably more time, with allocations of a day or more not uncommon (in contrast to the usual 1.5 hour maximum for matters in the routine jurisdictions).
30. Not only does the added complexity of such matters make hearings longer, it means that the allocated member (or members) must spend additional time preparing for hearings and, afterwards, preparing written reasons for decision (this being a requirement of the NTCAT Act – see section 105).
31. Such matters also tend to warrant the involvement of NTCAT's more senior members (both from the permanent and sessional ranks). For matters in a number of the non-routine jurisdictions, it is either necessary (because of statutory requirements - for example in health disciplinary matters where the tribunal must be constituted by three members) or highly desirable (because of the scale or importance of the matter) for more than one member to be allocated to the hearing.
32. The complexity and scale of non-routine matters tends also to have a significant impact upon NTCAT's administrative workload. Files for such matters are usually significantly larger than for ordinary proceedings and require extra management. In addition, the logistical considerations affecting hearings (especially those involving multiple tribunal members and parties who are legally represented) can be extremely challenging. Such matters can also attract considerable public interest, with the associated need for registry staff to deal with requests from the media and members of public for information and for access to documents on tribunal files.
33. The combination of the above considerations mean that matters in NTCAT's non-routine jurisdictions have a disproportionately large impact upon the tribunal's human resources and tend also to be the most costly.

STAFFING

Senior Staff

34. For the reporting period, NTCAT's senior staff comprised:

Judge Richard Bruxner - President;
Andrew Macrides - Senior Member;
Mark O'Reilly - Alice Springs Member;

Lucy Hopkinson – Acting Registrar (until early May 2021);
Demetrios Laouris – Registrar (from early May 2021)
Eleanor Poulter - Tribunal Manager; and
Christi Hamon - Listings Coordinator

Tribunal Coordinators

35. The senior staff were supported by a staffing structure comprising an executive assistant and eight tribunal coordinators - seven in Darwin and one in Alice Springs (although see below).
36. From 7 September 2020 to 30 April 2021 the Alice Springs registry was also supported by one part time tribunal coordinator. That position was created by temporarily splitting one of the Darwin positions into two part time roles.
37. Provision for an extra Alice Springs based tribunal coordinator addressed the need identified in the 2019-20 Annual Report for additional administrative support for NTCAT's Alice Springs operations (and meant, for example, that NTCAT was able to keep its Alice Springs Registry open at all times during business hours). The arrangement will shortly be reinstated, with the temporary position again filled until February 2022. It is highly desirable that the arrangement is made permanent.

Staffing Challenges

38. Since inception, NTCAT's ability to fulfil its objective of providing justice in an accessible and modern forum has depended very heavily upon the services of a small but devoted workforce with an intimate understanding of its processes.
39. For substantial parts of the reporting period, NTCAT was faced with the difficulty of conducting its operations with many of its key staff unavailable because they had secured temporary higher duties placements elsewhere in the Northern Territory public service.
40. During 2020-21, there were extended occasions at the Darwin Registry during which only two or three of the ten positions at or below Registrar were filled by the person permanently appointed to the position.
41. In many cases, the temporarily vacant positions could only be filled by people external to NTCAT, who therefore required training (with only a handful of experienced staff available to provide it). Each time a temporary vacancy needed to be filled, there were requirements for compliance with Northern Territory Government procedures (often including recruitment processes).
42. To make matters worse, there was protracted uncertainty as to whether – and, if so, when – certain key administrative officers would return to their positions from higher-duties assignments. What might have started as a three-month placement would in many instances become significantly longer owing to extensions granted by the relevant agency.

43. In one extreme case, a tribunal coordinator was absent from NTCAT and 'acting up' in another role for more than two years before finally being offered the role permanently. Throughout that period, it was repeatedly necessary for NTCAT to fill that position on a temporary basis.
44. The difficulties the above matters presented for NTCAT during 2020-21 were profound. Substantial amounts of time and energy that could otherwise have been expended on conducting the core business of the tribunal were instead consumed with efforts to train and maintain a temporary workforce.
45. There can be no criticism of tribunal staff who took advantage of the opportunity to act in more senior roles. Nor, it must be emphasised, can there be any criticism of the temporary staff, who coped remarkably well with very challenging circumstances.
46. Nevertheless, the tribunal's experience of 2020-21 starkly demonstrates the impacts of the Northern Territory Government existing policies and procedures regarding higher duties placements, particularly upon organisations with small and specialised workforces.

Members

47. 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.
48. 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.
49. The following were sessional members of NTCAT during the reporting period:

Legally qualified members (s16(2)(a) of the Northern Territory Civil and Administrative Tribunal Act 2014):

Mr David Alderman
Mr David Baldry
Ms Helena Blundell
Ms Nardine Collier
Ms Cassandra Ellis
Mr Andrew George
Mr Russell Goldflam
Mr Kenneth Grime
Mr Ben Grimes
Ms Lesley Hastwell
Mr Joshua Ingrames
Mr Julian Johnson
Ms Megan Lawton
Ms Jodi Mather

Mr Ron Levy
Prof. Leslie McCrimmon
Mr Benjamin O'Loughlin
Mr Robert Perry
Ms Alison Phillis
Mr George Roussos
Ms Jodi Truman

Other members (s16(2)(b) of the Northern Territory Civil and Administrative Tribunal Act 2014):

Dr Dinesha Arya
Mr John Brears
Ms Kathryn Crawley
Ms Renate Dwyer
Dr Kerry Eupene
Dr Teresa Garrone
Dr Jim Greenwood
Dr Rosemary Howard
Ms Jill Huck
Ms Suzi Kapetas
Ms Frances Kilgariff
Ms Patricia Kurnoth
Ms Kathleen Luppino
Dr Peter O'Brien
Mr Paul Rysavy
Dr Diane Szarkowicz
Dr Arnold Waugh
Mr Don Zoellner

Additional full-time member

50. Previous annual reports have referred to the desirability of the appointment of another full-time Darwin-based NTCAT member.
51. The existing membership structure of NTCAT, under which there are only three full time members (including the President), means that a significant part of the hearing workload must be met by the sessional members, who are remunerated according to the time they spend preparing for a matter, hearing it and then writing their decision. There is substantial variation from matter to matter and from member to member in the amounts charged for their attendances. The resultant uncertainties present obvious challenges for NTCAT in terms of planning and budgeting.
52. In addition, the more NTCAT needs to depend upon the services of its sessional members (whose areas of expertise and availability vary quite significantly) the more difficult it is to ensure that the tribunal's processes are applied consistently and that, as far as possible, proceedings result in optimal outcomes.

53. For the above reasons, as well as building the additional depth necessary to manage an increasingly demanding and complicated workload (see paragraphs [23] – [33] above), NTCAT would benefit greatly if it were able to appoint an additional full time member.

Deputy President

54. Despite the requirement in section 15(1) of the *Northern Territory Civil and Administrative Tribunal Act 2014*, NTCAT remains without a Deputy President. There was an expectation at the time of the creation of the tribunal that the Deputy President role could be filled by a serving Local Court judge; however, this has not proven practicable. In particular, it does not appear likely that NTCAT and the Local Court would be able to arrive at arrangements under which an appointee could divide their time between the two institutions.
55. The appointment of a Deputy President remains a priority. Indeed, the importance of such an appointment is underlined by the recent establishment of the Northern Territory Judicial Commission under the *Judicial Commission Act 2020*. By section 7 of that Act, the President of NTCAT is automatically a member of the Judicial Commission. By section 10, the President may appoint a Deputy President of NTCAT to act as a member of the Commission in circumstances where the President is unable (for example because of a conflict of interest) or unavailable to do so.

FACILITIES

Registries

56. 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 can be lodged at Local Court registries in remote centres.
57. NTCAT's Darwin premises for the reporting period included three hearing rooms. NTCAT also has a hearing room in Alice Springs. 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.
58. All of NTCAT's hearing rooms and conference rooms (in Darwin and Alice Springs) are fully equipped for video conferencing and teleconferencing.

Darwin Premises

59. Previous annual reports have identified shortcomings of NTCAT's current premises at Casuarina, particularly in terms of security (see also below) and the inadequacy of facilities for conducting mediations at compulsory conferences.

Since 2019, NTCAT has been exploring the possibility of establishing alternative premises, ideally in the Darwin CBD. Existing premises that would possibly be suitable have been identified and preliminary drawings for a purpose-built refit of those premises have been approved; however, there has been no final decision about relocation. It is likely that the position will be clearer by the time of the next Annual Report.

Security

60. Previous annual reports have referred to the inadequacy of security arrangements for NTCAT's Casuarina premises.
61. The main active security measure for those premises continues to be the presence of a security guard in the tribunal's non-secure areas at all times when members of the public are attending for listings (hearings and compulsory conferences).
62. Passive security issues affecting NTCAT's Casuarina premises – which (as noted in previous Annual Reports) are an unavoidable product of the layout of the premises - remain.
63. NTCAT's Alice Springs premises are better configured for passive security than its Casuarina premises. An active security presence is maintained during the tribunal's sittings each Thursday (which tends to be the busiest day). For other days, active security is engaged on an *ad hoc* basis.

PROCEDURES AND SYSTEMS

Case management

64. During the reporting period, NTCAT has maintained its focus upon keeping its forms and procedures as straightforward as possible.
65. Rather than expecting parties (the majority of whom are not legally represented) to conduct themselves according to lengthy and complicated rules, the tribunal endeavours to control proceedings by means of issuing orders (tailored according to particular jurisdictions and matter types within those jurisdictions) in which the parties are clearly notified of what they are expected to do and when.
66. For the majority of matters in NTCAT's high volume jurisdictions, case management is coordinated by the NTCAT registry according to well-established procedures for categorising proceedings according to their complexity and urgency. Once categorised, matters are allocated to procedural 'streams' and standard orders are issued accordingly.

67. For other matters (for example matters in the tribunal's review jurisdiction), the approach is similar; however, the initial decisions about management of such matters are made by a tribunal member (usually the President) at a directions hearing.
68. In matters where the issues are suitable to resolution by mediation, a usual early step in the case management process is an order requiring the parties to participate in a compulsory conference. For the reporting period, 56% of matters referred to a compulsory conference were resolved at, or as a result of, the conference. This was a small increase over the rate for 2018-19 of 52%.

'Paperless' file management

69. NTCAT continues to work towards wholly 'paperless' management of its files. At the time of preparation of this report, it is anticipated that the tribunal will move to entirely electronic file management of all its jurisdictions, apart from mental health, on 1 November 2021.

STAKEHOLDER ENGAGEMENT

70. The tribunal continues to be represented on the executive committee of the Council of Australasian Tribunals ('COAT') and on the Australian Guardianship and Administration Council ('AGAC').
71. During the reporting period, NTCAT was again regularly consulted by Northern Territory Government agencies regarding proposals for the conferral of new jurisdiction, as well as amendments to legislation under which the tribunal already exercises jurisdiction. Although, in the context of such consultations, NTCAT does not have a role in the development of policy, it does closely consider the implications of the proposed legislation for tribunal resources and processes. In particular, NTCAT is assiduous to avoid situations where a new jurisdiction is unable to be managed according to established tribunal procedures. In the case of conferrals of review jurisdiction, this is best achieved if that jurisdiction is to be exercised wholly in terms of the *Northern Territory Civil and Administrative Tribunal Act 2014*.
72. In addition, throughout 2020-21, NTCAT has been liaising closely with the policy division of the Department of the Attorney General and Justice regarding a suite of amendments to the NTCAT Act and other Acts that confer jurisdiction upon the tribunal. The amendments (the first tranche of which are hoped to be passed into law in the first half of 2022) are aimed mainly at minor administrative and procedural issues that have come to light since NTCAT commenced operation.

RESOURCES

73. The tribunal was been able to operate within its financial resources during the reporting period.

74. However, for the reasons explained in paragraphs [23] to [33] above, compounded by a recent reduction of the tribunal's budget, it is extremely unlikely that NTCAT will be able to continue to do so.
75. In this regard, it must be understood that many of the non-routine matters commenced in 2020-21 have not yet proceeded to a hearing (see Table 6 at paragraph [80] below), so the full impact of the pronounced increase in the number of such matters has not yet been felt. In addition, as at the time of this report, data for the first quarter of 2021-22 are consistent with a continuation of the 2020-21 trend.

MATTERS IN SECTION 151(2) OF THE NTCAT ACT

76. 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)

77. The following tables include breakdowns of proceedings commenced and concluded in 2020-21.
78. In both the guardianship and mental health review jurisdictions, a large part of NTCAT's workload involves the review of earlier orders made in respect of a person. There will usually only be one tribunal 'matter' (or file) for that person, but it may remain on foot for many years (with sporadic activity throughout that period). As such, many proceedings in those jurisdictions are not 'commenced' or 'concluded' in the same sense as proceedings in other NTCAT jurisdictions. Because of these differences, statistics for the guardianship and mental health review jurisdictions are presented separately below.

Table 1

Proceedings Commenced: Jurisdictions other than Guardianship & Mental Health

JURISDICTION	2018/19	2019/20	2020/21
<i>Alcohol Harm Reduction Act 2017</i>	0	1	5
<i>Anti-Discrimination Act 1992</i>	8	7	18
<i>Births, Deaths and Marriages Registration Act 1996</i>	0	0	2
<i>Building Act 1993</i>	3	1	9
<i>Business Tenancies (Fair Dealings) Act 2003</i>	0	0	1
<i>Caravan Parks Act 2012</i>	3	1	0
<i>Fences Act 1972</i>	7	0	4
<i>Firearms Act 1972</i>	0	0	1
<i>Health Practitioner Regulations (N.U.L) Act 2010</i>	2	1	4
<i>Heritage Act 2011</i>	0	2	0
<i>Information Act 2002</i>	4	5	2

<i>Lands Acquisition Act 1978</i>	0	0	1
<i>Liquor Act 1978</i>	3	2	4
<i>Local Government Act</i>	0	0	4
<i>Mineral Titles Act 2010</i>	0	1	0
<i>Pastoral Land Act 1992</i>	0	0	1
<i>Planning Act 1999</i>	7	6	9
<i>Private Security Act 1995</i>	0	0	2
<i>Racing and Betting Act 1983</i>	0	1	0
<i>Residential Tenancies Act 1999</i>	722	575	422
<i>Small Claims Act 2016</i>	1345	1384	1170
<i>Superannuation Act 1986</i>	0	1	0
<i>Teacher Registration (Northern Territory) Act 2004</i>	0	0	3
<i>Unit Titles Act 1975</i>	9	9	10
<i>Unit Titles Schemes Act 2009</i>	0	1	1
<i>Victims of Crime Assistance Act 2006</i>	6	3	10
TOTAL	2119	2001	1683

Table 2

Proceedings Commenced: Guardianship

JURISDICTION	2018/19	2019/20	2020/21
<i>Advanced Personal Planning Act 2013</i> (new applications)	1	7	1
<i>Guardianship of Adults Act 2016</i> (new applications)	208	240	250
<i>Guardianship of Adults Act 2016</i> (reassessments of existing orders initiated)	444	368	349
TOTAL	653	615	600

Table 3

Matters requiring discrete orders: Mental Health

HEARING OUTCOME	2018/19			2019/20			2020/21		
	ALICE SPRINGS	DARWIN	COMBINED	ALICE SPRINGS	DARWIN	COMBINED	ALICE SPRINGS	DARWIN	COMBINED
Order for involuntary detention due to mental illness	55	206	261	39	202	241	60	166	226
Order for involuntary detention mental disturbance	7	13	20	4	15	19	4	15	19
Review Tribunal Order	3	41	44	5	37	42	10	33	43

Revoke admission & order person be discharged from facility	1	1	2	1	2	3	0	0	0
Discharge within seven days	0	3	3	0	0	0	2	4	6
Community Management Order (CMO)	33	176	209	48	177	225	74	149	223
Community Management Order (CMO) declined	2	3	5	1	6	7	0	6	6
Review report – Further action	0	2	2	0	1	1	0	0	0
Review report – No further action	8	47	55	4	39	43	12	33	45
Authorise electroconvulsive therapy	2	20	22	1	21	22	1	26	27
Authorise non-psychiatric treatment	0	5	5	5	14	19	0	7	7
Authorise major medical procedure	0	5	5	0	1	1	0	1	1
Warrant to apprehend a person for assessment	0	56	56	0	87	87	1	36	37
Adjourned	25	51	76	21	56	77	17	43	60
No order made	1	4	5	1	4	5	1	2	3
TOTAL	134	592	726	125	625	750	182	521	703

Table 4

Proceedings Concluded: Jurisdictions other than Guardianship & Mental Health

JURISDICTION	2018/19	2019/20	2020/21
<i>Alcohol Harm Reduction Act 2017</i>	0	1	4
<i>Anti-Discrimination Act 1992</i>	7	8	8
<i>Births, Deaths and Marriages Registration Act 1996</i>	0	0	1
<i>Building Act 1993</i>	1	2	0
<i>Caravan Parks Act 2012</i>	3	1	0
<i>Fences Act 1972</i>	8	1	4
<i>Health Practitioner Regulation (N.U.L) Act 2010</i>	6	0	1
<i>Heritage Act 2011</i>	0	1	0
<i>Information Act 2002</i>	0	6	4
<i>Liquor Act 1978</i>	0	1	6
<i>Mineral Titles Act 2010</i>	1	0	0
<i>Planning Act 1999</i>	8	4	7
<i>Private Security Act 1995</i>	0	2	1
<i>Racing and Betting Act 1983</i>	0	0	1
<i>Residential Tenancies Act 1999</i>	733	569	429

<i>Small Claims Act 2016</i>	1323	1545	904
<i>Superannuation Act 1986</i>	0	1	0
<i>Unit Titles Act 1975</i>	10	7	9
<i>Unit Titles Schemes Act 2009</i>	1	1	1
<i>Victims of Crime Assistance Act 2006</i>	7	4	7
TOTAL	2108	2154	1387

Table 5

Hearing Outcomes: Guardianship

TYPE OF ORDER (Section of <i>Guardianship of Adults Act 2016</i>)	NUMBER OF ORDERS MADE 2018/19	NUMBER OF ORDERS MADE 2019/20	NUMBER OF ORDERS MADE 2020/21
New guardianship order (s11)	173	154	191
Continued guardianship order - reassessment (s11, s38)	400	322	313
Interim (urgent) guardianship order (s20)	91	66	92
Specified measures (s35)	28	11	50
Vary guardianship order (s39)	59	343	83
Revoke guardianship order (s39)	23	10	26
Register interstate order (s54)	8	10	6

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

79. Past annual reports have noted the uncertainty regarding the term 'outstanding' in section 151(2)(b) of the NTCAT Act.
80. 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 927 (non-guardianship and non-mental health) matters in that category, as noted in the table below. This is an increase compared with the same figure for 2019-20; however, the difference is largely explained by the filing of an unusually large number of debt recovery claims by a corporate applicant in June 2021. Data regarding 'active' adult guardianship and mental health matters are not included in the table below because files in those jurisdictions can remain open indefinitely.

Table 6

Proceedings Active: Jurisdictions other than Guardianship and Mental Health

JURISDICTION	PROCEEDINGS ACTIVE (AS AT 30 JUNE 2019)	PROCEEDINGS ACTIVE (AS AT 30 JUNE 2020)	PROCEEDINGS ACTIVE (AS AT 30 JUNE 2021)
<i>Alcohol Harm Reduction Act 2017</i>	0	0	1
<i>Anti-Discrimination Act 1992</i>	2	3	13

Births, Deaths and Marriages Registration Act 1996	0	0	1
<i>Building Act 1993</i>	2	1	9
<i>Business Tenancies (Fair Dealings) Act 2003</i>	0	0	1
<i>Firearms Act 1997</i>	0	0	1
<i>Health Practitioner Regulations (N.U.L) Act 2010</i>	2	3	3
<i>Heritage Act 2011</i>	0	1	0
<i>Information Act 2002</i>	4	0	1
<i>Lands Acquisition Act 1978</i>	0	0	1
<i>Local Government Act 2008</i>	0	0	4
<i>Liquor Act 1978</i>	3	4	0
<i>Mineral Titles Act 2010</i>	0	1	0
<i>Pastoral Land Act 1992</i>			1
<i>Planning Act 1999</i>	0	4	6
<i>Private Security Act 1995</i>	2	0	1
<i>Racing and Betting Act 1983</i>	0	1	0
<i>Residential Tenancies Act 1999</i>	87	117	79
<i>Small Claims Act 2016</i>	260	610	792
<i>Teachers Registration (Northern Territory) Act 2004</i>	0	0	3
<i>Unit Title Act 1975</i>	1	4	5
<i>Victims of Crime Assistance Act 2006</i>	3	3	5
TOTAL	366	752	927

‘ANY TRENDS OR SPECIAL PROBLEMS THAT MAY HAVE EMERGED’ - S 151(2)(C)

Substantial increase in matters commenced in non-routine jurisdictions and likely impact on resources

81. See the comments at [23] – [33] above.

Jurisdictional inconsistency

82. NTCAT’s previous Annual Reports have emphasised the desirability of avoiding unnecessary inconsistency across NTCAT’s many and varied jurisdictions. The ability of the tribunal to manage its extremely (and increasingly) diverse workload efficiently and in a way that maximises benefit for *all* tribunal users depends upon it being able to adopt a consistent and largely standardised approach to how it does its business. That can be achieved most easily if legislation conferring jurisdiction upon the tribunal provides for that jurisdiction to be exercised in accordance with the *Northern Territory Civil and Administrative Tribunal Act 2014*.

83. NTCAT has jurisdiction under several Acts that depart from that approach and which, as a consequence, continue to have a disproportionate bearing upon the tribunal's resources.
84. A key example is NTCAT's jurisdiction under the *Anti-Discrimination Act 1992* in which the bulk of matters come to the tribunal's attention after a preliminary investigation process has been undertaken by the Anti-Discrimination Commissioner.
85. Such proceedings, which tend to be substantial and vigorously contested, cannot be case managed according to NTCAT's ordinary procedures. In addition, they are brought initially in the tribunal's original jurisdiction, meaning that they are liable to result in further proceedings in the tribunal's 'internal review' jurisdiction under section 140 of the NTCAT Act.
86. The impact of such considerations upon the efficient use of tribunal resources is significant of itself; however, it is compounded in the case of anti-discrimination matters by the fact that (consistently with the trend in many non-routine jurisdictions) the number of such matters has more than doubled - from 8 and 7 respectively in 2018-19 and 2019-20, to 18 in 2020-21.

Membership - Depth

87. When NTCAT is exercising health disciplinary jurisdiction under the *Health Practitioner Regulation (N.U.L.) Act 2010*, the (three member) hearing panel is required to include a health practitioner with current registration in the same profession as the person whose professional conduct has been called into question.
88. Toward the end of the reporting period, a 2020 matter relating to the conduct of a General Practitioner ('GP') was ready to be listed for hearing. NTCAT's member with GP qualifications had, however, retired from practice and resigned as an NTCAT member and an expression of interest process conducted earlier in 2021 had not yielded a replacement. Although, strictly speaking, one of NTCAT's 'medical members' from another discipline could have been allocated to the matter, the preference of the affected practitioner (and indeed of NTCAT) was to allocate a GP. After targeted attempts to locate a suitable local appointee were unsuccessful, NTCAT was eventually able to secure the appointment of an Adelaide-based GP who already sits as a member of NTCAT's South Australian counterpart, the South Australian Civil and Administrative Tribunal.
89. This was the first occasion on which a tribunal proceeding was delayed as a result of the unavailability of a suitable member.
90. Previous annual reports foreshadowed the possibility of such a scenario (as well as the impracticality of seeking to establish a membership base that caters for every type of matter that might come to NTCAT under more than 60 different Acts) and referred to the desirability of some provision in the NTCAT Act for short-term, matter specific appointments.

91. It is hoped that the pending amendments to the NTCAT Act (see [72]) will result in the introduction of some such capacity.

‘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))

92. In *Salter v Teacher Registration Board of the Northern Territory* [2021] NTCAT 15 the tribunal noted that the respondent Board had failed to notify the applicant of either his right to apply to NTCAT for review of a decision affecting him or his right to be provided with a written statement of its reasons for the decision. A consequence was that the applicant did not commence review proceedings until many months after the Board’s decision.
93. In the same matter, once the applicant had commenced the review proceedings, the Board failed to comply with its obligation under section 41 of the NTCAT Act to provide NTCAT with a statement of its reasons for decision. Even after NTCAT, at the initial directions hearing, directly raised the matter of the Board’s non-compliance with section 41, there was a delay of three months before the Board provided a statement of reasons.

‘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)

94. No concerns arose during the reporting period regarding decision-makers’ compliance with the requirement to provide written reasons for decision when requested by an affected party (per section 35 of the NTCAT Act). There was a matter, however, a matter involving unsatisfactory delay by a decision-maker in providing NTCAT with a statement of reasons after the tribunal had requested it to do so (see [93] above).

‘FORECASTS OF THE WORKLOAD OF THE TRIBUNAL IN THE NEXT FINANCIAL YEAR’ - S 151(2)(E)

95. Based on activity in the past three reporting periods, and assuming that there is a progressive lessening of the impacts of the COVID-19 upon the commencement of matters in NTCAT’s civil dispute jurisdictions, the following estimates are made for 2021-22:
- Small Claims and other similar disputes: 1000 - 1300 matters;
 - Residential Tenancies: 500 - 700 matters;
 - Guardianship: 600 matters (i.e. new applications and reassessments);
 - Mental Health: 700 - 750 matters requiring discrete orders;
 - Matters in non-routine jurisdictions: 90-140.

96. It is important to recognise that the above estimates do not make allowance for the commitment of resources that may be necessary for an individual matter.
97. As already emphasised above (see [23] – [33]) a continuation of the trend towards substantially increased numbers of matters in non-routine jurisdictions will have a disproportionate impact upon tribunal resources.

‘ANY PROPOSALS FOR IMPROVING THE ADMINISTRATION AND OPERATION OF THE TRIBUNAL’ - S 151(2)(F)

98. The planned introduction in November 2021 of wholly electronic file management in all jurisdictions apart from mental health is intended to assist NTCAT staff and members in managing the demands of a substantial and increasing workload (and therefore to improve tribunal-users’ experience).
99. Paragraphs [38] - [46] above contain observations regarding the impacts upon NTCAT of present Northern Territory Government policies and procedures affecting temporary higher-duties placements. It is not for NTCAT to lead any discussion about possible review of those policies and procedures; however, the impacts upon the administration and operation of NTCAT during the reporting period (and indirectly upon the tribunal-users) were significant. NTCAT would welcome the opportunity to contribute to any review of the existing policies and procedures.