



NORTHERN TERRITORY CIVIL & ADMINISTRATIVE TRIBUNAL

ANNUAL REPORT
2021-2022



The Honourable Chansey Paech MLA
Attorney-General and Minister for Justice
Parliament House
DARWIN NT 0801

Dear Attorney-General

NTCAT ANNUAL REPORT 2021/2022

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 2021 to 30 June 2022.

Yours faithfully

Mark O'Reilly
President
Northern Territory Civil and Administrative Tribunal

19 September 2022

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INTRODUCTORY

1. This annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2021/2022 financial year is required by section 151 of the *Northern Territory Civil and Administrative Tribunal Act 2014* ('NTCAT Act'), which provides that:

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.

GENERAL

2. This is NTCAT's eighth annual report.
3. The 2021-22 year has been a significant one for NTCAT. In October 2021 NTCAT's inaugural President, Richard Bruxner, took well-earned long service leave for six months. He did not return to NTCAT as President. In February of 2022 he made the decision to resign the position, with his resignation taking effect from 4 April 2022. NTCAT takes this opportunity to extend admiration and thanks to Richard for his enormous contribution to the formation and operations of the Tribunal. He has overseen the implementation of simple but robust procedures which makes NTCAT an easy to access forum for participants in all of its many jurisdictions. He has fostered an efficient and collaborative working environment and has lead the charge in establishing a high standard of legally astute decision making by the Tribunal. NTCAT wishes him well and is pleased that he will continue to contribute as a sessional Member.
4. As foreshadowed in the last Annual Report, NTCAT has been challenged by the expanding nature of its jurisdictions. It remains the case that NTCAT's four "high-volume" jurisdictions are under the *Residential Tenancies Act 1999*; the *Guardianship of Adults Act 2016*; the *Small Claims Act 2016*; and the *Mental Health and Related Services Act 1998*. Those jurisdictions account for regular lists in the Tribunal's operations as well as urgent and more complex disputes. The Tribunal continues to deal with a high volume of proceedings in both its Original and Review jurisdictions by way of Compulsory Conferences as well as Contested and Uncontested Hearings.
5. What might be described as a fifth "high-volume" jurisdiction for NTCAT is "everything else". There are currently 61 pieces of legislation conferring jurisdiction on NTCAT with 1 more pending. There are also pending amendments to existing legislation which will incrementally vary and/or increase NTCAT's jurisdiction.

JURISDICTIONAL OVERVIEW

Acts

6. As at 30 June 2022, jurisdiction had been conferred upon NTCAT under the following Acts and subordinate legislation:
 - *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*
7. 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:
- *Electrical Safety Act 2021*
8. The reporting period saw the commencement of the first matters in NTCAT's jurisdiction under the *Petroleum Regulations 2020*.

COVID-19

9. The coronavirus pandemic has had an ongoing impact on NTCAT's operations during the reporting period. As described in earlier reports, NTCAT was swift to respond to COVID by deferring non-urgent proceedings and increasing remote participation by parties.
10. While not always ideal, remote participation has enabled NTCAT to keep matters progressing through the system. Video facilities in both Darwin and Alice Springs have been upgraded to improve the reliability and quality of remote proceedings. It is critical that these systems are continuously improved and upgraded to keep pace with technological and information system changes. Like our interstate counterparts it is likely that NTCAT will retain its practise of facilitating remote participation at preliminary stages of a proceeding. While our capacity to accommodate remote hearings has improved, the default position will remain that NTCAT final hearings will be held face to face.
11. One high-profile proceeding was unfortunately delayed several times due to COVID. This matter was unusual in that it required NTCAT to sit in a remote Aboriginal community and there were particular vulnerabilities that required a cautious approach. Consistent with the requirement, under section 9 of the NTCAT Act, to facilitate access to services throughout the Territory, we took the view that for this particular proceeding, NTCAT should sit in the community. The proceeding remains ongoing although the face to face aspects of it have now been finalised.
12. For similar reasons we have been cautious while exercising our jurisdiction under the *Mental Health and Related Services Act 1998*. While we have returned to sitting in person at the hospital in Darwin we continue to monitor COVID numbers and reinstitute remote sittings when required to ensure the safety of hospital patients and staff.

13. On the upside, COVID has provided another catalyst for NTCAT's commitment to becoming "paperless". While this had long been an objective of the Tribunal, and was already in train, the benefit of reduced paper handling during COVID sharpened our focus on the issue.

Going Paperless

14. All of NTCAT's jurisdictions are now "paperless". As previously anticipated, the Odyssey file management system has allowed us to operate entirely electronically. We require Initiating Applications, Responses and evidence to be provided electronically. Sessional Members are encouraged to access material through Odyssey and are no longer provided with paper files. Most of our jurisdictions have been operating in this way since November 2021. Due to its peculiar history and the late transition to NTCAT, the "paperlessness" of the mental health jurisdiction occurred a little later in January 2022. To date being paperless has been very positive for NTCAT. It has reduced administration and storage requirements and is quick and efficient. Occasional accommodations are still required for users who do not have access to appropriate IT but those cases are rare.

Proceedings

15. In the reporting period, 1131 new NTCAT matters were commenced (not including matters in the mental health review jurisdiction). Of those matters 78.7% related to the Darwin area, 12.3% concerned Alice Springs and the remainder (9%) related to other locations in the Northern Territory.
16. It is immediately apparent that the number of new matters commenced is significantly less than in the last reporting period (2283 new matters). The reduction is largely explained by the changed internal practices of one regular corporate applicant. In the 2020-21 year that applicant filed 740 new applications in the small claims jurisdiction. In this reporting year it filed 1 new application. While the reduction is prima facie significant, its main impact on the operations of the Tribunal has been at the administrative level. In past years very few of those matters proceeded to a compulsory conference or final hearing. Most often they were resolved, withdrawn or finalised by way of default decision. They did not require the allocation of hearing time by a Member.
17. Accordingly, the reduction in filings does not represent a proportional reduction in work done by the Tribunal. It is unclear at this stage whether that corporate applicant will resume the practise of making applications to NTCAT. The proceedings all relate to debt recovery and NTCAT is the appropriate forum to make those claims. It may be that there will be a resumption of those applications and a consequent increase in future filings.
18. The jurisdiction in which the largest number of matters was commenced was the residential tenancies jurisdiction with 468 new proceedings commenced in the reporting period. This was an increase from the last reporting period (422 new matters) but remains less than pre-pandemic years. The relatively low number in all likelihood reflects the emergency modifications to the *Residential Tenancies Act 1999* which remained in force for effectively all

of the reporting period. Those modifications have largely ceased but continue to apply to some tenancies. Nevertheless NTCAT expects to see a gradual increase in applications under the *Residential Tenancies Act 1999* as things return to normal in a competitive rental market.

19. During the reporting period, 226 new proceedings were commenced in NTCAT's adult guardianship jurisdiction, a decrease from 250 in 2020-2021 (and 240 the previous year). In addition, 282 reassessments of existing guardianship orders were commenced in 2021-22, a decrease from 349 in 2020-21. Adult guardianship matters most often require a number of listings before they can be finally determined. Accordingly, they account for a large portion of NTCAT's regular weekly lists. In this reporting period the tribunal had 1287 guardianship listings. Less than the 2020-21 figure of 1752.
20. It is difficult to identify a specific reason for the lower number of new applications under the *Guardianship of Adults Act 2016*. One possibility is that remote and community outreach by service providers has been limited due to COVID and there has been a consequent reduction in the identification of individuals who might benefit from guardianship orders. The lower number of reassessments reflects NTCAT's decision to increase the number of four year orders made in appropriate cases. The further decrease in reassessments was anticipated in the previous Annual Report and evidences the resource benefits of conducting reassessments less frequently. It is a good example of NTCAT adjusting its practices to more effectively use available resources.
21. For the reporting period, there were 694 matters dealt with under the *Mental Health and Related Services Act 1998*. The nature of these proceedings is that they often involve ongoing reviews of the circumstances of particular individuals as their health status evolves. The number of new matters is an insignificant decrease from the previous year (703 matters).
22. Apart from the four 'high volume' jurisdictions, new NTCAT proceedings were also commenced during the reporting period under the following Acts:
 - *Alcohol Harm Reduction Act 2017*;
 - *Anti-Discrimination Act 1992*;
 - *Building Act 1993*;
 - *Caravan Parks Act 2012*;
 - *Health Practitioner Regulation (National Uniform Legislation) Act 2010*;
 - *Information Act 2002*;
 - *Liquor Act 2019*;
 - *Local Government Act 2008*;
 - *Mineral Titles Act 2010*;
 - *Pastoral Land Act 1992*;
 - *Petroleum Act 1984*;
 - *Planning Act 1999*;
 - *Private Security Act 1995*;

- *Unit Titles Act 1975*;
 - *Unit Titles Schemes Act 2009*; and
 - *Victims of Crime Assistance Act 2006*.
23. The number of the various pieces of legislation requiring an exercise of NTCAT's jurisdiction outside of the 'high volume' four remains high. While less than the 20 of the last reporting period, it exceeds those of 2019-20 and 2018-19. It must be expected that, as our Jurisdiction increases, these types of applications will continue to remain high. Similarly, the number of new applications remains higher than previous reporting periods, although less than last year.
 24. These types of matter are resource intensive for the Tribunal. In some cases they require the Tribunal to be comprised of several Members. The *Health Practitioner Regulation (National Uniform Legislation) Act 2010*, for example, requires the Tribunal to consist of three Members. Decisions of the Liquor Commission under the *Liquor Act 2019* are ordinarily made by three Members of the Commission. In those circumstances it is appropriate that NTCAT is comprised of at least three Members for the purpose of any review proceeding. Proceedings under Acts such as the *Petroleum Act 1984*, the *Local Government Act 2008*, the *Planning Act 1999* and the *Building Act 1993* may involve significant commercial or other interests and parties are most often legally represented, often with counsel and/or senior counsel.
 25. Other Acts that fall within this category, for example the *Anti-Discrimination Act 1992* and the *Information Act 2002* may raise important legal and social considerations which have wide application. The NTCAT Act at section 22(1) recognises that multiple Member Tribunals will sometimes be necessary. While the vast majority of NTCAT's proceedings are presided over by a single member, proceedings in these eclectic jurisdictions are most often the ones which require multiple Members.
 26. Further, due to their complexity, these types of matters tend to require more administration and more hearing time. This is true of the preliminary stages of the proceedings including Compulsory Conferences as well as final hearings. Additionally, preparation for hearings and decision writing most often takes longer.
 27. By way of example, NTCAT conducted its first proceedings under the *Petroleum Act 1984* during the reporting period. Each party to these applications was well resourced and legally represented including by Counsel/Senior Counsel. The Initiating Applications and supporting material were over 800 pages long. The evidence comprised almost 3,000 pages with further material filed after the hearing. The Tribunal was comprised of two experienced Members. The hearings were listed for 4 and 3 days respectively and included expert witnesses. The reasons for the final decision in one of those proceedings (including the Access Agreement settled by the Tribunal) was in the order of 47 pages. Four proceedings in this jurisdiction currently remain on foot.

STAFFING

Senior Staff

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

Judge Richard Bruxner - President;
Andrew Macrides - Senior Member;
Mark O'Reilly - Alice Springs Member; Acting President; President
Demetrios Laouris – Registrar
Eleanor Poulter - Tribunal Manager (on maternity leave from November 2021); and
Christi Hamon - Listings Coordinator; Acting Tribunal Manager
Dane Armstrong – Acting Listings Coordinator

Tribunal Coordinators

29. The senior staff were supported by a staffing structure comprising an executive assistant and nine tribunal coordinators - seven in Darwin and two in Alice Springs.
30. From 30 September 2021 the Alice Springs registry reverted to having a part time tribunal coordinator in addition to the full time position. As anticipated in the previous Annual Report, that arrangement is now effectively permanent and operates in conjunction with a permanent part-time position in Darwin. Given NTCAT's "paperlessness", each of the Alice Springs positions is able to assist the Darwin registry with the processing of applications and proceedings as required.

Staffing Challenges

31. NTCAT continues to rely on the dedication and commitment of its small but impressive staff. The previous Annual Report described the difficulties arising from the practice of key staff members being seconded to placements in other sections of the NTPS. This remains a problematic issue for the Tribunal. While it is important that staff members have the opportunity to extend themselves and to develop experience in more senior positions, it is difficult for a relatively small work place to absorb the absence of key staff. This is particularly so when there is long term uncertainty around the length of any absence and whether or not it is likely to be permanent.
32. 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.

Members

33. 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.

34. 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.

35. 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
Mr Richard Bruxner
Ms Nardine Collier
Ms Cassandra Ellis
Ms Sally Gearin
Mr Andrew George
Mr Richard Giles
Mr Russell Goldflam
Mr Kenneth Grime
Mr Ben Grimes
Mr Michael Grove
Ms Lesley Hastwell
Mr Joshua Ingrames
Mr Julian Johnson
Ms Megan Lawton
Ms Jodi Mather
Mr Ron Levy
Mr Alister Lindsay
Ms Jodie Mather
Prof. Leslie McCrimmon
Ms Samantha Miles
Ms Lindy Morgan
Mr Benjamin O'Loughlin
Mr Robert Perry
Ms Alison Phillis
Mr Ian Read
Mr George Roussos
Mr Gregory Shanahan
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 Claudia Espenschied
Dr Teresa Garrone
Dr Jim Greenwood

Ms Marion Guppy
Ms Jill Huck
Mr Barry Jenkins
Ms Suzi Kapetas
Ms Frances Kilgariff
Ms Patricia Kurnoth
Ms Kathleen Luppino
Mr Marcus Mancer
Ms Miriam McDonald
Dr Monkia Moy
Dr Peter O'Brien
Ms Elizabeth Parrella
Mr Paul Rysavy
Mr Adam Sattar
Dr Diane Szarkowicz
Ms Elizabeth Veel
Dr Arnold Waugh
Mr Don Zoellner

Additional full-time member

36. Previous annual reports have expressed a need for an additional full time Member based in Darwin. The need for that position has been brought into sharp focus by the resignation of president Bruxner. During his period of leave, and following his resignation, NTCAT has been operating with only two full time Members pending the appointment of the new President. One Member has been based in Darwin with one in Alice Springs. The Alice Springs based legal Member has filled the role of President during that period. There has been a consequent need to rely more heavily on sessional Members during this period. NTCAT is grateful for the hard work of its sessional Members but it is now critical that the full time position based in Darwin is filled.
37. Over and above that, as indicated in previous Annual Reports, the appointment of a further full time Member based in Darwin would allow for greater certainty in terms of planning and budgeting. Further, it will foster a growing body of knowledge and expertise within NTCAT and contribute to consistency in terms of adherence to process and the quality of decision making.
38. A fourth full time Member would alleviate some of the pressure arising from NTCAT's expanding jurisdiction and particularly in terms of the recent and pending complex jurisdictions already referred to. The ability to effectively manage those jurisdictions will be improved by ensuring that the presiding Member is in-house and familiar with NTCAT processes.
39. The optimal membership structure going forward would include four full time Members with a commensurate increase in administrative staff. Of the four Members one would be President while another would be Deputy President. Three Members would be based in Darwin to reflect the spread of the case-load.

40. An additional Member and the appointment of a Deputy President would mean that less of NTCAT's workload would be met by sessional Members. Sessional Members would remain an important resource for the Tribunal in that they can accommodate the need for specialist expertise in particular jurisdictions; cater for potential conflicts of interest; and prevent a backlog of proceedings.

Deputy President

41. Section 15(1) of the *Northern Territory Civil and Administrative Tribunal Act 2014* is expressed in mandatory terms. "There must be at least one Deputy President of the Tribunal". Despite that requirement NTCAT continues to remain without a Deputy President. As anticipated in the last Annual Report, the absence of a Deputy President has given rise to complications under the *Judicial Commission Act 2020* which provides that the President of NTCAT is automatically a member of the Judicial Commission. A Deputy President is required to fill that role in circumstances of any conflict of interest.
42. While historically there was a brief appointment of a sitting Local Court Judge as Deputy President, that appointment did not prove to be practical. The Deputy President of NTCAT needs to be a Member who is free to contribute on a full time basis to the daily operations of the Tribunal including presiding over complex disputes.

FACILITIES

Registries

43. 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.
44. NTCAT's Darwin premises for the reporting period remained unchanged and was comprised of three hearing rooms and a conference room. NTCAT also has a hearing room and conference 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. Occasionally, as resources permit, the tribunal will endeavour to have a member travel to those towns to conduct hearings in person. An additional full time Member would increase our capacity to travel to more remote locations.
45. All of NTCAT's hearing rooms and conference rooms (in Darwin and Alice Springs) are fully equipped for video conferencing and teleconferencing.

Darwin Premises

46. Previous annual reports have identified shortcomings of NTCAT's current premises at Casuarina, particularly in terms of security and the inadequacy of facilities for conducting mediations at compulsory conferences.
47. Those shortcomings remain. While discussions and planning are ongoing regarding a possible relocation of NTCAT, there is no certainty as to when and if this will occur. Whether a decision is made to relocate NTCAT or to refurbish current facilities, it is important that NTCAT premises should be fit for purpose.

PROCEDURES AND SYSTEMS

Case management

48. Consistent with the objectives in the NTCAT Act, the Tribunal remains committed to keeping its forms and procedures as straightforward as possible. To that end we have maintained, as far as possible, a uniform process for initiating a proceeding regardless of the jurisdiction. While this is not possible in our guardianship or mental health jurisdictions it applies to most of the others.
49. Regular management meetings include consideration of current forms and procedures which are constantly under review. This enables us to respond to jurisdictional idiosyncrasies and to maintain flexibility as required by the Act.
50. Case management continues to be coordinated by the NTCAT registry according to the complexity and urgency of the proceeding. Routine applications allow for the issuing of standard orders which direct the application through a particular stream. Unusual or more complex applications are most often case-managed by a senior Member by way of a directions hearing.
51. Most contested matters are listed before a Member for a Compulsory Conference in recognition of the requirement under the Act to employ mediation and alternative dispute resolution procedures. For the reporting period, 44% of matters referred to a compulsory conference were resolved at, or as a result of, the conference. During the reporting period, NTCAT conducted an internal audit of the outcomes of compulsory conferences in order to explore ways to increase the rate of settlement at compulsory conference. This issue combined with the pressures of operating within a reduced budget allocation has necessitated the development of a revised listing process to be trialled in the next reporting period. This is aimed at being more cost and results effective.

STAKEHOLDER ENGAGEMENT

52. 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').
53. NTCAT's expanding jurisdiction means that there is a constant process of consultation with the Northern Territory Government regarding legislation conferring new jurisdiction and amendments to existing jurisdiction. It is important for that consultative approach to continue. As our jurisdiction expands it is critical that, as far as possible, NTCAT processes remain uniform.
54. Most of the hoped for amendments to the NTCAT Act referred to in the last Annual Report have been delayed. We have been advised that while most of the amendments have been approved by cabinet and included in a draft Bill, those amendments are unlikely to be introduced before 2023. We have worked with the policy division to ensure that some of the more urgent amendments have been addressed. For example, changes to the *Anti-Discrimination Act 1992* removing an avenue of internal review of NTCAT decisions came into force at the end of the reporting period.

RESOURCES

55. The tribunal has been unable to operate within its financial resources during the reporting period. The tribunal's budget allocation was reduced for the reporting period. The tribunal has and continues to operate as efficiently as possible, however this must be balanced against the objectives set out in section 10 of the NTCAT.
56. As already described, NTCAT anticipates that complex proceedings in our review jurisdiction will become increasingly resource intensive. As table 6 (below) shows, there are a number of these types of matters still on foot with an expectation of more to come. These include the 4 proceedings under the *Petroleum Act 1984* already referred to.

MATTERS IN SECTION 151(2) OF THE NTCAT ACT

57. 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)

58. The following tables include breakdowns of proceedings commenced and concluded in 2021-22.
59. As in previous Annual Reports the statistics for the guardianship and mental health review jurisdictions are presented separately. The historical reason for this is that proceedings in those

jurisdictions are peculiar. Both the *Guardianship of Adults Act 2016* and the *Mental Health and Related Services Act 1998* require the Tribunal to review or reassess orders made under them. Accordingly proceedings are staged. From a resource point of view, each review or reassessment is effectively a new proceeding but is not reflected by the creation of a new NTCAT file.

Table 1

Proceedings Commenced: Jurisdictions other than Guardianship & Mental Health

JURISDICTION	2018/19	2019/20	2020/21	2021/22
<i>Alcohol Harm Reduction Act 2017</i>	0	1	5	3
<i>Anti-Discrimination Act 1992</i>	8	7	18	4
<i>Births, Deaths and Marriages Registration Act 1996</i>	0	0	2	0
<i>Building Act 1993</i>	3	1	9	7
<i>Business Tenancies (Fair Dealings) Act 2003</i>	0	0	1	0
<i>Caravan Parks Act 2012</i>	3	1	0	1
<i>Fences Act 1972</i>	7	0	4	0
<i>Firearms Act 1972</i>	0	0	1	0
<i>Health Practitioner Regulations (N.U.L) Act 2010</i>	2	1	4	5
<i>Heritage Act 2011</i>	0	2	0	0
<i>Information Act 2002</i>	4	5	2	6
<i>Lands Acquisition Act 1978</i>	0	0	1	0
<i>Liquor Act 1978</i>	3	2	4	1
<i>Local Government Act</i>	0	0	4	4
<i>Mineral Titles Act 2010</i>	0	1	0	3
<i>Pastoral Land Act 1992</i>	0	0	1	1
<i>Petroleum Act 1984</i>	0	0	0	4
<i>Planning Act 1999</i>	7	6	9	2
<i>Private Security Act 1995</i>	0	0	2	2
<i>Racing and Betting Act 1983</i>	0	1	0	0
<i>Residential Tenancies Act 1999</i>	722	575	422	468
<i>Small Claims Act 2016</i>	1345	1384	1170	370
<i>Superannuation Act 1986</i>	0	1	0	0
<i>Teacher Registration (Northern Territory) Act 2004</i>	0	0	3	0
<i>Unit Titles Act 1975</i>	9	9	10	15
<i>Unit Titles Schemes Act 2009</i>	0	1	1	2
<i>Victims of Crime Assistance Act 2006</i>	6	3	10	7
TOTAL	2119	2001	1683	905

Table 2

Proceedings Commenced: Guardianship

JURISDICTION	2018/19	2019/20	2020/21	2021/22
<i>Advanced Personal Planning Act 2013</i> (new applications)	1	7	1	10
<i>Guardianship of Adults Act 2016</i> (new applications)	208	240	250	216
<i>Guardianship of Adults Act 2016</i> (reassessments of existing orders initiated)	444	368	349	282
TOTAL	653	615	600	508

Table 3

Matters requiring discrete orders: Mental Health

HEARING OUTCOME	2019/20			2020/21			2021/22		
	ALICE SPRINGS	DARWIN	COMBINED	ALICE SPRINGS	DARWIN	COMBINED	ALICE SPRINGS	DARWIN	COMBINED
Order for involuntary detention due to mental illness	39	202	241	60	166	226	27	145	172
Order for involuntary detention mental disturbance	4	15	19	4	15	19	2	10	12
Review Tribunal Order	5	37	42	10	33	43	2	29	31
Revoke admission & order person be discharged from facility	1	2	3	0	0	0	0	0	0
Discharge within seven days	0	0	0	2	4	6	3	1	4
Community Management Order (CMO)	48	177	225	74	149	223	55	177	232
Community Management Order (CMO) declined	1	6	7	0	6	6	2	5	7
Review report – Further action	0	1	1	0	0	0	3	1	4
Review report – No further action	4	39	43	12	33	45	11	57	68
Authorise electroconvulsive therapy	1	21	22	1	26	27	0	19	19
Authorise non-psychiatric treatment	5	14	19	0	7	7	2	9	11
Authorise major medical procedure	0	1	1	0	1	1	0	1	1
Warrant to apprehend a person for assessment	0	87	87	1	36	37	1	59	60
Adjourned	21	56	77	17	43	60	31	33	65

No order made	1	4	5	1	2	3	0	8	8
TOTAL	125	625	750	182	521	703	139	555	694

Table 4

Proceedings Concluded: Jurisdictions other than Guardianship & Mental Health

JURISDICTION	2018/19	2019/20	2020/21	2021/22
<i>Alcohol Harm Reduction Act 2017</i>	0	1	4	4
<i>Anti-Discrimination Act 1992</i>	7	8	8	12
<i>Births, Deaths and Marriages Registration Act 1996</i>	0	0	1	1
<i>Building Act 1993</i>	1	2	0	9
<i>Business Tenancies (Fair Dealings) Act 2003</i>	0	0	0	1
<i>Caravan Parks Act 2012</i>	3	1	0	0
<i>Fences Act 1972</i>	8	1	4	0
<i>Firearms Act 1997</i>	0	0	0	1
<i>Health Practitioner Regulation (N.U.L) Act 2010</i>	6	0	1	7
<i>Heritage Act 2011</i>	0	1	0	1
<i>Information Act 2002</i>	0	6	4	6
<i>Lands Acquisition Act 1978</i>	0	0	0	1
<i>Local Government Act 2019</i>	0	0	0	8
<i>Liquor Act 1978</i>	0	1	6	0
<i>Mineral Titles Act 2010</i>	1	0	0	2
<i>Pastoral Land Act 1992</i>	0	0	0	1
<i>Planning Act 1999</i>	8	4	7	6
<i>Private Security Act 1995</i>	0	2	1	1
<i>Racing and Betting Act 1983</i>	0	0	1	0
<i>Residential Tenancies Act 1999</i>	733	569	429	472
<i>Small Claims Act 2016</i>	1323	1545	904	1136
<i>Superannuation Act 1986</i>	0	1	0	0
<i>Teacher Registration (Northern Territory) Act 2004</i>	0	0	0	2
<i>Unit Titles Act 1975</i>	10	7	9	18
<i>Unit Titles Schemes Act 2009</i>	1	1	1	0
<i>Victims of Crime Assistance Act 2006</i>	7	4	7	7
TOTAL	2108	2154	1387	1697

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	NUMBER OF ORDERS MADE 2021/22
New guardianship order (s11)	173	154	191	171
Continued guardianship order - reassessment (s11, s38)	400	322	313	263
Interim (urgent) guardianship order (s20)	91	66	92	77
Specified measures (s35)	28	11	50	6
Vary guardianship order (s39)	59	343	83	58
Revoke guardianship order (s39)	23	10	26	17
Register interstate order (s54)	8	10	6	4

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

60. Not including guardianship and mental health proceedings there were 301 matters that remained active at the end of the reporting period. The decrease from the last reporting period (927 matters) can be explained partly by the changed practises of the corporate applicant referred to in paragraph 16 above. A further reason though is that we have concluded a significantly higher number of proceedings than in the last reporting period. In 2021-22, 1697 proceedings were finalised compared to 1387 in the previous year. 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)	PROCEEDINGS ACTIVE (AS AT 30 JUNE 2022)
<i>Alcohol Harm Reduction Act 2017</i>	0	0	1	0
<i>Anti-Discrimination Act 1992</i>	2	3	13	6
<i>Births, Deaths and Marriages Registration Act 1996</i>	0	0	1	0
<i>Building Act 1993</i>	2	1	9	8
<i>Business Tenancies (Fair Dealings) Act 2003</i>	0	0	1	0
<i>Firearms Act 1997</i>	0	0	1	0
<i>Health Practitioner Regulations (N.U.L) Act 2010</i>	2	3	3	4
<i>Heritage Act 2011</i>	0	1	0	0
<i>Information Act 2002</i>	4	0	1	1
<i>Lands Acquisition Act 1978</i>	0	0	1	0
<i>Local Government Act 2008</i>	0	0	4	0
<i>Liquor Act 1978</i>	3	4	0	2
<i>Mineral Titles Act 2010</i>	0	1	0	1

<i>Pastoral Land Act 1992</i>	0	0	1	1
<i>Petroleum Act 1984</i>	0	0	0	4
<i>Planning Act 1999</i>	0	4	6	2
<i>Private Security Act 1995</i>	2	0	1	2
<i>Racing and Betting Act 1983</i>	0	1	0	0
<i>Residential Tenancies Act 1999</i>	87	117	79	132
<i>Small Claims Act 2016</i>	260	610	792	122
<i>Teachers Registration (Northern Territory) Act 2004</i>	0	0	3	1
<i>Unit Title Act 1975</i>	1	4	5	6
<i>Unit Titles Schemes Act 2009</i>	0	0	0	2
<i>Victims of Crime Assistance Act 2006</i>	3	3	5	7
TOTAL	366	752	927	301

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

High number of matters commenced in non-routine jurisdictions and likely impact on resources

61. As described in paragraphs 24 – 28 above, NTCAT’s resources will continue to be challenged by complex proceedings in its non-routine jurisdictions.
62. It is important to note that while there has been a decrease in matters commenced during the reporting period, there has been an increase in the number of matters finalised. The last Annual Report noted that:

“...it must be understood that many of the non-routine matters commenced in 2020-21 have not yet proceeded to a hearing...so the full impact of the pronounced increase in the number of such matters has not yet been felt.”
63. The impact has well and truly been felt in 2021-22. 1697 matters were concluded during the reporting period. Of those, 12 were under the *Anti-Discrimination Act 1992* as opposed to 8 in the last reporting period; 6 were under the *Information Act 2002* as opposed to 4; 7 were under the *Health Practitioner Regulation (NUL) Act 2010* as opposed to 1; and 18 were under the *Unit Titles Act 1975* as opposed to 9. Further, there were 2 matters concluded under the *Teacher Registration (Northern Territory) Act 2004*; 8 under the *Local Government Act 2019*; 9 under the *Building Act 1993*; 1 under the *Heritage Act 2011*; 2 under the *Mineral Titles Act 2010*; 1 under the *Pastoral Land Act 1992*; and 1 under the *Lands Acquisition Act 1978* compared to none in the previous reporting period.
64. Accommodating these constant and often challenging and resource intensive proceedings will remain and expand as a part of NTCAT’s core business.

Specialist Members

65. NTCAT continues to struggle with the need to appoint specialist Members in some jurisdictions. The *Mental Health and Related Services Act 1998*, for example, requires that one Member of the Tribunal must be a medical practitioner. NTCAT has a pool of psychiatrists who sit on the Tribunal regularly. Overwhelmingly, these are interstate practitioners due to the small pool of professionals in the Northern Territory and the consequent likelihood of conflicts of interest. As Members retire from the Tribunal they can be difficult to replace.
66. The problem is exacerbated in those jurisdictions in which NTCAT exercises jurisdiction only occasionally. For example, it is difficult to identify and recruit dental practitioners and other professionals required for reviews of decisions of various disciplinary boards. It remains the case that NTCAT would benefit from an amendment to the Act to allow for quick, short-term appointments to the Tribunal for specific proceedings.

‘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. There were no concerns arising from proceedings before the Tribunal about compliance by decision makers with the requirement to provide notice of decisions and a right of review. It should be noted that in circumstances where a person is not notified about a decision or the right of review, the chances of it coming before NTCAT are reduced. NTCAT would not be aware of matters where a failure to notify of a right of review has meant that no review is ever applied for.

‘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. 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).

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

69. Based on activity in the past three reporting periods; lodgements for 2022-23 so far; and pending matters, the following estimates are made for 2022-23:

- Small Claims and other similar disputes: 300 matters;
- Residential Tenancies: 500 - 700 matters;
- Guardianship: 550 matters (i.e. new applications and reassessments);
- Mental Health: 700 - 750 matters;
- Matters in non-routine jurisdictions: 100-150.

70. 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.

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

71. The appointment of a Deputy President and a fourth full time Member would significantly improve the operation of the Tribunal. It would allow for greater procedural consistency and allow the growth of shared knowledge within the Tribunal. Parties to proceedings would benefit from improved consistency of decision making.
72. To the same end NTCAT has recently begun to implement procedural changes aimed at creating efficiencies in its listings and case allocation process and also in relation to its reviews proceedings, particularly those commenced under section 140 of the NTCAT Act. It is hoped that the benefits of these changes will be evident during the next reporting period.