



**NTCAT**  
Northern Territory  
Civil and Administrative Tribunal

# **NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL**

## **ANNUAL REPORT 2016 - 2017**



**NTCAT**

Northern Territory  
Civil and Administrative Tribunal

The Honourable Natasha Fyles MLA  
Attorney-General and Minister for Justice  
GPO Box 3146  
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Dear Attorney-General

**NTCAT ANNUAL REPORT 2016-17**

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 2016 to 30 June 2017.

Yours faithfully

**Judge Richard Bruxner**  
President  
Northern Territory Civil  
and Administrative Tribunal

28 September 2017

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## INTRODUCTORY

1. This is the annual report of the Northern Territory Civil and Administrative Tribunal ('NTCAT') for the 2016-2017 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 third annual report.
4. Since 29 July 2016, when its guardianship jurisdiction commenced, NTCAT has been exercising the bulk\* of the high volume jurisdictions that were originally planned for it at the



time of its creation. (\*The one exception remains the mental health review jurisdiction currently exercised by the Mental Health Review Tribunal ('MHRT') under the *Mental Health and Related Services Act*; however, NTCAT has managed the administrative and quasi-judicial responsibilities of that tribunal since early 2015.)

5. As forecast in the 2015-16 Annual Report, NTCAT's caseload (including MHRT matters) had by the end of 2016 reached a level representative of its likely caseload in the next few years.
6. That forecast was subject to the possible conferral of additional high volume jurisdictions. No such jurisdictions were conferred during the reporting period; however, it is noted that the *Alcohol Harm Reduction Act*, under which the tribunal has review jurisdiction in respect of banned drinker orders, commenced in early September 2017. Owing to the recency of the commencement of that jurisdiction, its impact on NTCAT's caseload cannot yet be forecast; though it is expected to be appreciable.

## NTCAT'S JURISDICTIONS

7. Statistically, the largest of NTCAT's jurisdictions in the reporting period was its small claims jurisdiction, with 1036<sup>1</sup> new matters commenced. Although, in terms of the number of matters, small claims has therefore taken over from residential tenancies (670 new matters, a substantial drop from 2015-16), it should be noted that residential tenancies still accounts for the largest proportion of the tribunal's time spent in contested hearings. This is because small claims matters have proven more likely to proceed to an uncontested hearing and (where contested) more amenable to settlement, for example through compulsory conferences conducted by the tribunal.
8. NTCAT's jurisdiction under the *Guardianship of Adults Act* and *Advance Personal Planning Act* commenced on 28 July 2016.
9. Unlike - for example - small claims, where the impact of the new jurisdiction was incremental, the commencement of NTCAT's guardianship jurisdiction had an immediate and substantial effect upon the tribunal's workload. This was because the review jurisdiction previously exercised by the Local Court of the Northern Territory - under which that court conducted regular (usually biennial) reviews of previous guardianship orders - was transferred to NTCAT. In effect, this meant that the tribunal acquired a 'ready-made' caseload (that is, apart from new guardianship applications) as soon as its guardianship jurisdiction commenced.
10. In addition, the impact of the commencement of NTCAT's guardianship jurisdiction was added to by the fact that the legislative scheme established by the *Guardianship of Adults Act* and *Advance Personal Planning Act* for the making of guardianship and related orders was substantially different from the scheme it replaced; most notably in terms of the role previously played by the (now disbanded) Executive Office of Adult Guardianship and the discontinuation of an affected adult's guarantee of legal representation. This resulted in a need to establish forms and procedures largely from scratch.

<sup>1</sup> The actual figure will have been higher - see paragraph [59] below.

11. Reassessments of existing guardianship orders accounted for 310 new NTCAT matters in the reporting period. In addition, there were 188 applications for new guardianship related orders. Data for the number of hearings in respect of the nearly 500 guardianship matters are not available for the reporting period; however, the substantial majority of such matters required at least two hearings in order to be finalised.
12. During the reporting period NTCAT conducted several reviews of decisions by government officers and authorities in relation to planning and crime victims compensation, as well as hearing disciplinary proceedings under the *Health Practitioner Regulation (National Uniform Legislation) Act* and complaints under the *Anti-Discrimination Act*. The tribunal also dealt with its first matters under the *Local Government Act*, the *Information Act*, the *Mineral Titles Act*, the *Pastoral Land Act* and the *Superannuation Act*.
13. The President of NTCAT also holds an appointment as President of the MHRT. As noted above, NTCAT manages the administrative and quasi-judicial responsibilities of the MHRT under the *Mental Health and Related Services Act* (NT). The jurisdiction of the MHRT (which accounts for between 10 and 15 hearings per week, and up to one day of hearing time, spread across lists conducted on different days) was originally intended to transfer to NTCAT in 2015-2016, but this has yet to occur.
14. As at 30 June 2017 jurisdiction had been conferred upon NTCAT under the following Acts:
  - *Administrators Pensions Act*
  - *Advance Personal Planning Act*
  - *Anti-Discrimination Act*
  - *Births Deaths and Marriages Registration Act*
  - *Building Act (and Building (Resolution of Residential Building Work Disputes) Regulations)*
  - *Caravan Parks Act*
  - *Control of Roads Act*
  - *Cooperatives (National Uniform Legislation) Act*
  - *Cullen Bay Marina Act*
  - *Darwin Waterfront Corporation Act*
  - *Education Act*
  - *Energy Pipelines Act*
  - *Fences Act*
  - *Fisheries Act*
  - *Gaming Control Act*
  - *Gaming Machine Act*
  - *Geothermal Energy Act*
  - *Guardianship of Adults Act*
  - *Health Practitioner Regulation (National Uniform Legislation) Act*
  - *Health Practitioners Act*
  - *Heritage Act*
  - *Information Act*



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

## STAFFING

### *Senior Staff*

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

- Judge Richard Bruxner - President;
- Andrew Macrides – Senior Member;
- Mark O'Reilly - Alice Springs Member (from 30 January 2017);
- Jim Laouris – Registrar (until 12 December 2016);
- Renata Blanch - Registrar (from 12 December 2016);
- Eleanor Matarazzo – Registry Manager (until 10 March 2017 – see [43]); and
- Sina O'Keeffe - Acting Registry Manager (from 13 March 2017).

16. The most significant development for NTCAT's senior staffing in the reporting period was the appointment of Mark O'Reilly as the tribunal's full time Alice Springs Member. Mr O'Reilly is



a senior lawyer with a long professional and family connection to Central Australia. His appointment has substantially addressed a concern identified in the 2015-16 annual report regarding the tribunal's operations outside Darwin. Since appointed, he has conducted the majority of hearings and compulsory conferences for NTCAT matters in Alice Springs, Tennant Creek and Katherine. He has also been a welcome addition to the tribunal's management team.

#### *Tribunal officers*

17. The senior staff were supported by seven permanently appointed officers (six in Darwin and one in Alice Springs). In addition, two supernumerary officers held temporary roles at times during the reporting period.
18. An additional permanent position (for a Darwin-based tribunal officer) has been approved and will be filled in 2017-18. NTCAT is also pursuing the creation of a new position (at AO5 level) for an officer with responsibility for managing tribunal listings.
19. Despite the tribunal's significant progress in developing its presence in Alice Springs, there is a pressing need for the appointment of a second Alice Springs based registry officer.
20. NTCAT is presently located at the Westpoint building, on the outer fringe of the Alice Springs CBD. Until recently, the tribunal shared back office space with other administrative officers employed (in various capacities) by the Department of Attorney General and Justice. *Ad hoc* arrangements with those officers meant that it was possible to accommodate lunch breaks and other temporary absences. The other officers have since been relocated and such arrangements are no longer possible. This has led to the need for temporary closure of NTCAT's publicly accessible facilities at times when the tribunal's one officer is out of the office, including at times when members of the public are most likely to wish to visit those facilities (for example lunch time).
21. The situation is incompatible with the accessibility that is one of NTCAT's most important objects.
22. At the time of writing this report, there is some uncertainty as to whether NTCAT's Alice Springs operations will continue to be located in the Westpoint Building. On the assumption the tribunal remains based at the Westpoint building (which presently appears likely, despite the apparent availability of space at the old Law Courts building following the relocation of the Supreme Court), the appointment of a second registry officer in Alice Springs is the obvious solution.
23. Although NTCAT's Alice Springs caseload does not of itself warrant such an appointment, the nature of the tribunal's approach to case management – which involves heavy emphasis upon electronic communications and avoiding a location-specific focus – means that the additional officer would be deployed in the context of the tribunal's Territory-wide operations (as indeed are all existing officers and members).

## *Members*

24. 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.
25. 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.
26. The following were sessional members of NTCAT during the reporting period:

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

Ms Nardine Collier  
Mr Terence Coulehan  
Ms Sally Gearin  
Ms Gabrielle Martin  
Prof. Les McCrimmon  
Mr Alasdair McGregor  
Mr Ben O'Loughlin  
His Honour Mr Tom Pauling AO QC  
Mr John Stewart  
Mr John Stirk  
Her Honour Ms Sally Thomas  
Mr Anthony Whitelum  
Ms Sarah McNamara (resigned March 2017)  
Ms Jodi Mather  
Ms Kathryn Ganley  
Mr Julian Johnson

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

Ms Kathleen Blair  
Dr John Death  
Dr Timothy Carey  
Dr Kerry Eupene  
Dr Dana Fitzsimmons  
Dr Rodney Omond  
Ms Louise O'Riordan  
Dr Diane Szarkowicz  
Dr Anita Toth  
Ms Suzi Kapetas<sup>2</sup>  
Ms Barbara Curr  
Mr Paul Rysavy  
Ms Beth Walker (resigned April 2017)

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<sup>2</sup> Ms Kapetas was formally appointed under section 16(2)(b) but also holds legal qualifications.



### *Additional full time member desirable*

27. As was the case in 2015-16, NTCAT's experience has continued to be that the deployment of sessional members is less cost effective than reliance upon the full time members - namely, the President, the Senior Member, the Alice Springs member and, in some contexts, the Registrar.
28. The 2015-16 annual report included the following observation (at [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 at least one additional member. Such a member, remunerated at approximately 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 an additional full time member would allow NTCAT considerably greater flexibility in the management of its caseload and certainty in the management of its resources.
29. That observation was primarily directed towards the desirability of the appointment of a full-time Alice Springs member which, as noted above, has now been secured. The observation remains true, however, in terms of the desirability of another full-time member, to be based in Darwin.

## **FACILITIES**

### *Registries*

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 three hearing rooms. NTCAT also has a hearing room in Alice Springs. All NTCAT hearing rooms<sup>3</sup> 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.
32. NTCAT's Alice Springs premises are affected by the staffing issues identified in paragraphs [20] to [22] above.
33. Whether NTCAT's premises remain at Westpoint, or are relocated, there is a need to ensure that those premises are properly suited to the day to day business of NTCAT.

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<sup>3</sup> And now it's main conference room.



## *Security*

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

## *Water Damage – December 2016*

35. During the 2016 Christmas holiday weekend, a plumbing fitting on the second level of NTCAT's Darwin premises failed, causing a very large quantity of water to leak into the premises. By the time the leak was detected (near midnight on 27 December 2016), nearly the whole of NTCAT's premises had been inundated, causing very substantial damage to fixtures and fittings, including in two of the tribunal's hearing rooms. Despite the scale of the damage, the tribunal was able to resume operations within a week of the flood. This was due in no small part to the remarkable efforts of tribunal staff, as well as the extremely accommodating attitude of the building manager, Peter Cohalan (who, despite the time of year, was able to marshal a small army of contractors at very short notice).

## **PROCEDURES AND SYSTEMS**

### *Rules*

36. NTCAT's rules and forms were first published in October 2014. An updated version of the rules came into force on 31 May 2016. The rules were further amended on 23 November 2016 to include clarification of the circumstances in which the tribunal may order that a successful party recover his/her out of pocket expenses associated with a proceeding (see further [77] below).
37. 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. This emphasis will increase in 2017-18 as the Odyssey electronic case management system is rolled out (see further [42] below).

### *Case management*

38. In the reporting period, NTCAT has maintained and refined the approach to case management of matters in its civil disputes jurisdictions that was introduced in 2015-16. Under that approach, matters are allocated to one of two streams according to their complexity. The most straightforward, or urgent, matters (for example tenancy terminations or simple debt recoveries) are placed in a stream designed to have them ready for hearing within a few weeks of commencement. The remainder are placed in a stream where the

initial emphasis is upon alternative dispute resolution at a compulsory conference (again, usually held within a few weeks of commencement). In each stream, a series of standard orders are made. The standard orders, which can vary according to type of matter and the stage it has reached, identify the next steps expected of the parties. The standard orders are designed to be self-explanatory, so that there should be little need for the parties to consult the NTCAT rules.

39. The approach has proven effective. In general, parties to NTCAT proceedings appear to understand, and comply with, the standard orders. Moreover, more than half of the matters that are referred to a compulsory conference are resolved by agreement between the parties (that is, without the need for a contested hearing).
40. For matters that are not in NTCAT's civil disputes jurisdictions, NTCAT continues to adopt a 'hands-on' approach to case management. Although the precise procedure can vary according to the jurisdiction being exercised, an initial directions hearing is usually convened within a few weeks of commencement of a matter. Consideration is given at the directions hearing to whether the matter should be prepared for hearing, or whether there should first be efforts towards alternative dispute resolution.
41. Intensive case management (by means of one or more hearings before the matter is finalised) has been extremely important in NTCAT's new guardianship jurisdiction - especially in matters where the Public Guardian is not involved as a guardian. In such matters (whether they involve new applications for guardianship or reassessments of existing orders) it is not uncommon for affected parties initially to have very little understanding of what is required of them.

#### *Odyssey*

42. From early 2017 NTCAT has been closely involved in the roll out of Odyssey, a software package intended to replace IJIS as the case management system for the Northern Territory's Courts and Tribunals.
43. The NTCAT implementation of the Odyssey system is the first stage of the project, with the Local and Supreme Courts to follow in 2018 and 2019. It has involved (and will continue to involve) a substantial commitment of the tribunal's resources, including the secondment of its Registry Manager as a consultant to the Odyssey development team.
44. At the time of writing this report, the NTCAT configuration of Odyssey was well advanced and it was anticipated that the system would be operational in early 2018.
45. NTCAT's expectation is that Odyssey will significantly add to the tribunal's capacity to deliver its stated aim of providing justice in an accessible, modern, forum. The introduction of the system should lead to substantial improvements in all areas of the tribunal's operations, most notably: by streamlining the 'back-office' management of cases; by creating a greatly enhanced reporting capacity; and (through the storage of case materials in an electronic repository accessible by tribunal officers, members and parties) by underscoring the



tribunal's strong disposition towards 'paperless' management of its cases from commencement to hearing.

## STAKEHOLDER ENGAGEMENT

46. In conjunction with the appointment of its full time Alice Springs member, NTCAT conducted a CPD for the Law Society of the Northern Territory from its Alice Springs premises (video streamed to Darwin) on 24 May 2017. In addition the tribunal conducted seminars in Darwin (30 March 2017) and Alice Springs (21 June 2017) for the Real Estate Institute of the Northern Territory.
47. In the guardianship context, the tribunal has established a productive working relationship with the Office of the Public Guardian.
48. Otherwise, the tribunal has continued to develop and refine fact sheets and other materials (available online and at its Darwin and Alice Springs registries) for the guidance of parties to existing and prospective NTCAT proceedings.
49. In addition, the President has maintained an active involvement in the activities of relevant national organisations, in particular as a member of the executive committee of the Council of Australasian Tribunals ('COAT').

## RESOURCES

50. In the 2015-16 annual report concerns were expressed regarding an ongoing lack of clarity as to the amount for which NTCAT is funded.
51. Those concerns have largely been addressed by indications since received from the Department of the Attorney-General and Justice.
52. Provided funding in accordance with those indications is maintained, NTCAT is confident that it can manage to operate within its means.
53. This assumes, however, that the tribunal will be allowed an appropriate degree of independence in the management of its financial resources (particularly in terms of staffing and membership structure). It is also potentially affected by impact upon NTCAT's future caseload of new jurisdictional conferrals.

## MATTERS IN SECTION 151(2) OF THE NTCAT ACT

54. 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)**

55. In order to appropriately reflect NTCAT's workload and turnaround rates, the tables below includes details of all matters dealt with by NTCAT between 1 July 2016 and 30 June 2017.
56. Several observations are necessary.
57. First, a case is designated 'finalised' if NTCAT has made a final decision and order or if a matter has been settled, withdrawn, dismissed or otherwise discontinued. Data allowing a further breakdown of the 'finalised' figure are not available; however, a much higher level of specificity should be possible once the Odyssey case management system (see above at [42] - [45] is operational.
58. Secondly, the cyclical nature of the tribunal's guardianship jurisdiction means that it is not practicable (or statistically meaningful) to categorise a matter as 'finalised' (or not). As such, figures for guardianship matters are listed separately from the figures for NTCAT's other jurisdictions. Once again, it is hoped that introduction of the Odyssey case management system will allow greater specificity in terms of the future recording and reporting of outcomes in guardianship matters.
59. Thirdly, the figures for cases commenced/completed in the residential tenancies and small claims jurisdictions are likely to be less than the true numbers for those jurisdictions. The figures are sourced from IJIS records relating to those cases; however, there is an anomaly resulting from the fact that certain NTCAT matters 'end up' in the Local Court - for example, when a successful party registers an NTCAT order with the Local Court in order to enforce it, or when an NTCAT proceeding is transferred to the Local Court. In those circumstances, the Local Court has adopted a practice of not creating a new IJIS record for the case. Instead the existing IJIS record is maintained, except that the case is thereafter treated as a Local Court case. The result is that the IJIS records for cases commenced or completed in NTCAT are not reliable. For the reporting period, NTCAT has ascertained that there were 253 cases affected by this anomaly (of which 245 involved enforcement of NTCAT orders and 8 related to transferred proceedings). It has not been possible for the purposes of this report to break down those cases according to jurisdiction; however, it may safely be assumed that most, if not all, were in NTCAT's civil disputes jurisdictions.
60. Finally, the figures do not take into account the tribunal's caseload under the *Mental Health and Related Services Act* (which comprised 1231 matters that were scheduled for determination, of which 532 ultimately proceeded to a hearing).
61. The details are as follows:

### *Guardianship of Adults Act*

| Cases commenced | Reassessment of orders | Total Matters |
|-----------------|------------------------|---------------|
| 188*            | 310                    | 498           |

(\*included one matter under *Advance Personal Planning Act*)

### *Other NTCAT jurisdictions*

| Jurisdiction                           | Cases commenced | Cases finalised |
|--|-----------------|-----------------|
| <i>Anti-Discrimination Act</i>         | 7               | 4               |
| <i>Building Act</i>                    | 1               | 1               |
| <i>Fences Act</i>                      | 1               | 1               |
| <i>Health Practitioners Act</i>        | 4               | 3               |
| <i>Information Act</i>                 | 1               | 0               |
| <i>Local Government Act</i>            | 1               | 1               |
| <i>Mineral Titles Act</i>              | 1               | 1               |
| <i>Pastoral Land Act</i>               | 1               | 1               |
| <i>Planning Act</i>                    | 8               | 6               |
| <i>Residential Tenancies Act</i>       | 670             | 645             |
| <i>Small Claims Act</i>                | 1036            | 700             |
| <i>Superannuation Act</i>              | 1               | 1               |
| <i>Unit Title Act</i>                  | 8               | 6               |
| <i>Unit Title Schemes Act</i>          | 3               | 0               |
| <i>Victims of Crime Assistance Act</i> | 7               | 0               |
| <b>TOTAL</b>                           | <b>1750</b>     | <b>1370</b>     |



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

62. As in previous annual reports it is noted that an indication of the number of matters 'outstanding' within the meaning of section 151(2)(b) can be derived by comparing the figures in the second and third columns above; however, several factors mean such a comparison must be approached with caution, as must the meaning of the expression 'outstanding'.
63. Most importantly, such a comparison does not take into account matters commenced prior to the reporting period that remain incomplete. In that respect it is noted:
- there are 91 related matters in the residential tenancies jurisdiction that were commenced in early 2016 but which have not yet proceeded to hearing. Those matters relate to public housing in remote indigenous communities and involve complicated legal questions about land tenure. Presently those questions are under consideration by the Northern Territory Supreme Court (following a decision by the tribunal to transfer one of the matters to that court); and
  - there are another 7 residential tenancies matters, also commenced before the reporting period, relating to public housing in an Alice Springs town camp which are the subject of ongoing settlement negotiations between the parties.
64. Secondly, there is a substantial number of matters in the tribunal's small claims jurisdiction which are 'active' only to the extent that the proceeding is being kept on foot pending compliance with a payment arrangement agreed between the parties. Such arrangements which may run to several months, are particularly common in matters involving corporate applicants (for example Councils and utilities companies) who may have many debt recovery proceedings active at any one time.
65. Thirdly, there are matters that will not be recorded in the 'finalised' column despite the fact that NTCAT currently has no active role to play in their resolution. Under section 49 of the *Northern Territory Civil and Administrative Tribunal Act*, for example, the tribunal has power to refer a matter back to a decision maker for further consideration before the tribunal undertakes any further review of the decision. That power has regularly been exercised in planning matters and in matters under the *Victims of Crime Assistance Act*.
66. In the context of the Odyssey implementation, NTCAT is developing criteria for the purpose of better monitoring the rate of progress of matters from commencement to completion. These criteria, which are likely to vary across NTCAT's jurisdictions, should hopefully mean that 'outstanding' matters are able to be broken down into categories that are more statistically useful.



### **Jurisdictional inconsistency**

67. NTCAT's 2014-2015<sup>4</sup> and 2015-16<sup>5</sup> Annual Reports contained observations under this heading regarding the desirability of avoiding unnecessary inconsistency across NTCAT's many and varied jurisdictions. Those observations continue to hold true.

### **Membership – depth**

68. NTCAT's 2014-2015 and 2015-16 Annual Reports included 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.
69. At no stage during the reporting period did NTCAT find itself without a suitable member to allocate to a matter; however the potential for such a difficulty was amply demonstrated in a disciplinary matter under the *Health Practitioner Act*, where the tribunal first had to cancel a three day hearing owing to an unanticipated conflict of interest on the part of the medical member allocated to the matter. Then, when it came to reconstituting the hearing panel for that matter, only one of the three other doctors included in NTCAT's sessional membership was available and not affected by a potential conflict.
70. 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**

71. As already noted above, NTCAT has secured the appointment a full time Alice Springs based member.
72. For the reasons outlined in paragraph [29] above, the appointment of an additional full time Darwin based member is now a priority.

### **The NTCAT website**

73. NTCAT's current website is part of the broader website of the Department of Attorney General and Justice. Apart from failing for that reason to properly convey the independence of the tribunal, the website is neither welcoming nor user-friendly.

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<sup>4</sup> See paragraphs [26] – [30].

<sup>5</sup> See paragraph [51].

74. Development of a new standalone NTCAT website was significantly progressed during the reporting period and it is expected to 'go live' in late 2017 (in conjunction with the implementation of Odyssey).

#### Costs in civil disputes jurisdictions

75. The 2015-16 annual report included the following observation (at [66]) regarding the implications - particularly for mercantile agents - of the 'usual rule' as to costs in NTCAT proceedings (namely that each party bears their own costs):

'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.'

76. The NTCAT Act has not been amended.
77. Although, during the reporting period, the tribunal amended its rules so as to recognise the recoverability of out-of-pocket expenses in certain, limited, circumstances,<sup>6</sup> this is no substitute for attention to the NTCAT Act.

#### '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))

78. 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)

79. 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.

<sup>6</sup> See rule 10(2)(b) of the *Northern Territory Civil and Administrative Tribunal Rules*, which was introduced on 23 November 2016.



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

80. NTCAT is now managing three of the four high volume jurisdictions originally planned for it (residential tenancies, small claims and guardianship). It also has the *de facto* conduct of the fourth high volume jurisdiction, the mental health review jurisdiction under the *Mental Health and Related Services Act*.
81. On the basis of the tribunal's experience to date (and noting the comparatively short period for which historical data are available), the following forecasts are made for 2017-18:
- Small Claims and other civil disputes - 900 to 1100 matters;
  - Residential tenancies - 600 to 800 matters (this assumes that the residential property rental market will remain depressed);
  - Guardianship – 500 to 550 matters (i.e. new applications and reassessments) requiring determination;
  - Mental Health – 1000 to 1200 matters requiring administrative management (of which approximately 500 to 600 will require hearings);
  - Other matters: 150 to 250 (this assumes that there will be a significant additional caseload associated with the tribunal's new review jurisdiction under the *Alcohol Harm Reduction Act*).

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

### **Members' Manual and Code of Practice**


82. NTCAT is yet to develop a members' manual and code of practice. Progress should be possible in this regard once the Odyssey implementation (which will impact upon tribunal procedure and practice) is complete.

### **Alternative Dispute Resolution**

83. As noted in the 2015-16 report an ADR process, via the holding of a compulsory conference, is now undertaken in all but the most straightforward of contested civil dispute matters. Sessional members are extensively deployed by the tribunal for compulsory conferences. A priority for 2017-18 will be the development, in consultation with members, of guidelines for the conduct of compulsory conferences.

### **No power to enter default judgment**

84. The 2015-16 annual report contained (at [75] – [79]) observations regarding the implications (both for the tribunal and for parties) of NTCAT's inability to enter default judgment in uncontested matters.

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85. Those observations concluded by urging prompt consideration of amendments to amendment of the NTCAT Act to specifically recognise a power, exercisable in clearly understood circumstances, to make orders in the nature of default judgment.
  86. Such consideration remains strongly desirable.