Ms FYLES (Attorney-General and Justice): Madam Speaker, I thank all members who have contributed to the debate of this bill. I thank the Member for Spillett and the opposition for its contribution and the indication that they support this bill. I also thank the Member for Nelson for his support of the bill.

Both the Members for Spillett and Nelson have addressed the recommendations from the Economic Policy Scrutiny Committee. These recommendations have been considered and I will propose to make a committee stage amendment, which I believe has been circulated in the Chamber.

I will discuss the recommendations and the proposed amendment recommended in a moment. I thank the Members for Wanguri, Arnhem, Braitling, Port Darwin and Karama for their support in speaking to this bill in the House today. It is important to hear all of the members who have spoken about the importance of NTCAT as part of our judicial system.

This government is ensuring that we are reforming our justice system so that it represents Territorians and they can access justice and feel it represents them. I note the setting up of NTCAT. Although the opposition likes to claim it because the legislation passed under them, it was a recommendation of the Law Reform Committee, a very important body in the Northern Territory in making recommendations, in a very thorough sense, to our justice system.

We appreciate that for everyday Territorians the difficulty in navigating the justice system at times can be very stressful and we want to make that process easier. The process should not only be easy for the people who interact with the justice system, but also for the bodies that administer the justice system.

The purpose of this bill is to implement a number of amendments to the *Northern Territory Civil and Administrative Tribunal Act*. The NTCAT is a tribunal for the Northern Territory. It was set up to help people resolve disputes that otherwise would have had to be dealt with in the courts or by other boards or tribunals. The tribunal is easily accesses by the public, resolves disputes relatively quickly, uses straightforward language, intends to keep costs to a minimum and is responsive, especially to people with special needs—particularly important as part of our justice system. The tribunal is a very important aspect of a judicial system.

The amendments in this bill will allow for the awarding of reasonable costs in particular circumstances, provide a power to make default judgments in certain cases, and enable the reopening of a matter in relation to a default judgment in particular circumstances.

The amendments are intended to facilitate the process and procedure in the NTCAT. The annual report of the NTCAT mentioned the changes in this bill that will be implemented, particularly section 101(a). This section enables the tribunal to have the power to make a default decision in uncontested proceedings for the recovery of a debt or other fixed sum of money. I will speak shorty about that default judgment.

If this amendment is passed, it will assist the NTCAT in managing its caseload. It is important that our courts and tribunals are equipped with the right tools to enable them to function efficiently for Territorians. Our courts and tribunals are busy and if we can implement changes to assist them, I believe that is a positive outcome for all. I am pleased to hear from the NTCAT annual report that this bill will help it manage its caseload.

I will outline briefly the history of NTCAT, followed by the current process regarding an application to NTCAT. This will provide further context in relation to the intent and practical implementation of this bill. As we know from discussion in this House, the *Northern Territory Civil and Administrative Tribunal Act*, or NTCAT Act, commenced on 6 October 2014. The small claims jurisdiction of the NTCAT commenced on 1 May 2016 with the transfer of judicial jurisdiction for the small claims under $25 000 from the Local Court to NTCAT.

As I mentioned previously, the formation of an NTCAT in the Northern Territory was a recommendation of the Law Reform Committee. I acknowledge those members of the Law Reform Committee, both current and passed, for the work they provide in ensuring there is a fair justice system in the Territory. In those individuals there is a great deal of knowledge and their work should be very much respected.

Under the small claims legislation which was in place before 1 May 2016—the *Local Court Act 1989* and the *Small Claims Ordinance 1974* and other associated court rules—it was generally accepted that the court could make costs regarding payments for matters such as search and lodgement fees. Under the NTCAT Act, the general principle is that each party pays its own costs. This is subject to a set of factors that the NTCAT must consider when deciding whether or not to make a cost order. These factors include the main objectives of NTCAT, to simplify the procedures and issues before it, keep costs to parties to a minimum, ensure that proceedings are fair and that parties are not disadvantaged by proceedings that have little or no merit, other matters specified by the rules and any other matters that NTCAT considers relevant.

The NTCAT view is that the basic rule prevents them from making costs orders, including payments based simply on the success of a party in a proceeding. While it has maintained the position of being a no-cost jurisdiction, in 2016 NTCAT made an interim procedural rule to provide that costs would be awarded if the failure to make a costs order for out-of-pocket expenses would substantially deprive a successful party of relief.

The NTCAT president sought a legislative amendment to deal with the issue in a thorough manner. A default decision power was sought by the NTCAT president to clarify the circumstances in which a decision can be made when an alleged debtor fails to respond to an application and therefore fails to deny an obligation for a debt or other fixed sum of money. Currently such matters proceed to an uncontested hearing. This bill which provides a power to make a default decision clarifies in what circumstances a decision can be made in favour of an uncontested debt or other sum of money owed.

It is important to note other jurisdictions. The Civil and Administrative Tribunals exist in most jurisdictions in Australia including Victoria, Queensland, New South Wales and South Australia. The tribunals provide a one-stop shop, so to speak, of specialist tribunal services, they are not only important in our NT justice system but across Australia. Tasmania is the only jurisdiction that does not have a Civil and Administrative Tribunal. The Queensland Civil and Administrative Tribunal also has power to make default judgements.

It is important to practically set out how NTCAT's process work and subsequently the default judgment process to outline how this bill provides for a difference in process. A proceeding in the NTCAT commences when an originating process is filed by an applicant, which is called the initiating application. The application is vetted by the registrar who conducts a high level triaging process. If the initial application is accepted by the registrar, the document is returned to the applicant with a set of standard orders attached. An application will not be accepted in circumstances where the claim is defective, outside the jurisdiction or time barred.

The standard orders provided will vary according to the type and complexity of procedures, however they all require the applicant to serve the initiating application upon the respondent by a specified date. Without service, the NTCAT has no jurisdiction over the respondent. In addition, the standard orders include requirements that become binding upon the respondent, once served.

The standard orders require the respondent to file and serve a response to the initiating application by a specified date. Both the initiating application and the standard orders make it very clear that they should not be ignored.

The filing of a response serves the same purpose as the filing of an appearance or defence in court proceedings. It signifies that the respondent wishes to be involved in the proceeding. By NTCAT rule 6, the filing of a response is a pre-condition to the opposing or otherwise being heard in relation to the initiating application.

The future course of the proceeding is then effected by whether or not a response is filed by the specified date. If a response is filed, the proceeding, dependant on the type of proceeding, will be listed for a contested hearing. Other matters, not debt recoveries, will likely be required to attempt an alternative dispute resolution. If a response is not filed by the specified date, the matter becomes the subject of an uncontested hearing.

There is no requirement for an application for an uncontested hearing, the listing as a matter for uncontested hearing is by means of standard orders. Similarly, there would be no requirement for an application for a default decision.

An uncontested hearing will usually proceed as a verbal hearing for example requiring attendance of the applicant at NTCAT. There may be cases where material supplied by an applicant in advance of the hearing is determined to be sufficient, that the NTCAT is prepared to proceed to a decision on those papers. The member allocated to the hearing will make that decision.

Whatever shape for the uncontested hearing takes, the first consideration for NTCAT is whether there is proof that the initiating application was served on the respondent. The applicant will either have been directed by the standard orders to file proof of the service prior to the hearing, or to bring such proof on the day of the hearing.

The NTCAT is not bound by the rules of evidence, however, it does not act without evidence. The NTCAT will not deal with any matter as uncontested unless they are satisfied that the service has been affected in accordance with the NTCAT rules.

The evidentiary basis for the service may be supplied by testimony of the applicant and this can be done in the form of an unattested declaration or a verbal testimony at the uncontested hearing. The evidence can also be by document such as an email chain which is evident that an email attached to the initiating application has been replied to by the respondent.

The question for NTCAT is always whether the initiating application has been brought to the respondent's attention or whether the applicant has taken steps that are recognised as legally sufficient to constitute service.

If there is not sufficient proof of service of the initiating application orders will be made either requiring additional proof or again requiring the applicant to serve the initiating application—therefore starting the process again.

It there is sufficient proof of service uncontested hearings then proceed to an application of whether the claims in the initiating application are supported by the evidence. Once again, the standard orders will have required the applicant to furnish such evidence either in advance or on the day of the hearing. NTCAT then makes its orders and gives reasons for its decision.

If the proposed power to make the default decisions is passed, in the limited case of applications for recovery of debt or other fixed sum of money owed, there will be modifications to the above practice so that the requirements supply evidence at the hearing would not apply.

This bill amends the NTCAT so the *Northern Territory Civil and Administrative Tribunal Act*. The Department of the Attorney-General and Justice administers this act. There are a number of amendments that will be made.

A new section 101A to the NTCAT will provide the NTCAT with the power to make a default judgement. This means if a party proceeding before the NTCAT does not respond to an action for the recovery of a debt of fixed sum a judgement can be made. This is the provision that I referred to earlier that was outlined in the NTCAT annual report.

Section 80 of the NTCAT Act will be amended to make it clear that the matter can be reopened if a default decision has been made under the proposed new section I just spoke about.

Section 132 which relates to the awarding of costs will be amended to incorporate the concept of reasonableness regarding the incurring of cost. In order for the cost to be made there is a need for the cost to have been incurred, both reasonably and necessarily.

There is a new proposed amendment which will create a new section 101A2. This amendment follows recommendations made from the Economic Policy Scrutiny Committee. I thank those members of that committee both past and present for their work on this bill.

The new section will provide that a decision cannot be made under section 101A, unless an unattested declaration is filled by the applicant which declares to the applicants best knowledge, information and belief the amount of debt or the sum of money remains due and owing, and that the NTCAT is satisfied that the application sets out the claim in terms that are reasonably clear.

I will note that the making of a false unattested declaration will be an offence under section 119 of the Northern Territory Criminal Code, and the amendment will clarify the circumstances in which a default judgement can be made through requiring the applicant to provide the unattested declaration to confirm that the debt or sum of money owing outstanding before a judgement can be made. There is no subordinate legislation proposed.

As I said earlier, a default decision power was sought by the NTCAT president to clarify the circumstances in which a default decision can be made. Without the power to make a default judgement, a matter otherwise will proceed to an uncontested hearing involving the use of NTCAT resources for the listing and hearing of that proceeding.

Commercial agents have raised concerns that lack of certainty about the recovery of payments made it uneconomical to collect smaller debts and fixed sums. This is because the cost of collection, such as lodgement search fees, could significantly eat in to a small claims debt that is being collected.

This bill is allowing an NTCAT process to be easier. The practicality of a default judgement is as follows:

> For a default judgement to be made the initiating application must be served on the respondent. The respondent must then not file a response to the initiating application which allows for a default judgement—they must not file a response.

I note that the service of the document may be pursuant to the NTCAT process that I have just outlined. The terms of initiating application must also be sufficiently clear to establish the debt or sum owing. This enable the NTCAT to make a decision in favour of the applicant.

The proposed amendment discussed earlier implements an additional requirement on the applicant to file an unattested declaration containing the information. This amendment will be a useful tool for NTCAT.

It is important to note that draft legislation was released in early 2018 for consultation prior to the introduction of this bill into the Legislative Assembly. Submissions were received from various stakeholders, with some in support of the proposed legislation whilst others raised questions about the effect on NTCAT operation and on parties. The concerns of stakeholders were considered in finalising a bill for introduction.

Following its introduction, the bill was referred to the Economic Policy Scrutiny Committee for consideration. The committee has outlined in its report the submissions received and has made four recommendations.

The first is to pass the bill with amendments.

The second recommendation is to amend proposed section 101A to require an applicant to provide an affidavit of service—this would be to prove that the initiating application has been served. I acknowledge the committee's recommendation regarding the service of documents. The chair of the committee has been advised there are already processes in place in NTCAT that provide for the service of documents.

The processes are available in the NTCAT document titled: General Information – How NTCAT Will Deal With Your Matter. This document is available through the NTCAT website. Due to these processes already being in place there is no need to make an amendment in regard to the service of documents.

The third recommendation of the committee was to amend section 101A to 'require the applicant to file an affidavit of evidence to prove the debt or money owing'. It was due to this recommendation that I propose an amendment being the implantation of section 101(A)(2), on which I have spoken.

The fourth recommendation was to require that recommendations two and three to be established prior to an application for default decision. This recommendation is not considered to be required as there is no application process for a default decision—rather, the making of a default decision is a discretionary power of NTCAT that arises during a proceeding and the acceptance of an originating application.

I thank the committee for their work. We have listened to their concerns, and we believe the implementation of an amendment will alleviate these concerns. I have advised the chair of the committee of the amendment.

This legislation will commence on a date to be fixed by the administrator by gazette notice.

In concluding I would like to thank and acknowledge the hard work of the staff at the Department of the Attorney-General and Justice who have lead the development of this bill, some of whom are here in the chamber today, as well as those involved at every level.

I would like to thank the Office of Parliamentary Counsel for their work. I would acknowledge again the Economic Policy Scrutiny Committee, and its chair the Member for Brennan, for this work.

I commend the bill to the Assembly.