

# Northern Territory Civil and Administrative Tribunal Amendment Bill 2018

Darwin Community Legal Service

Submission to the Economic Policy Scrutiny Committee

6 June 2018

**Darwin Community Legal Service (“DCLS”)** is a free, confidential service. We assist disadvantaged members of the community to protect their legal rights. We work towards a community where everyone has access to legal advice and support. We seek to challenge unjust laws and procedures and to ensure that people are aware of their legal rights.

DCLS assists many of our clients with matters in the NTCAT. We advise some people on law and procedure to enable them to self-represent, and we also represent some people who face barriers which inhibit their ability to self-represent.

## Submission summary

This Bill introduces changes to the nature of the NTCAT which will have significant impacts on our clients, the way they access the NTCAT, and on the advice we give them. This Bill may look like it is mainly procedural, but it includes measures that will have significant, substantive impacts on access to justice and outcomes at the NTCAT. DCLS understands that the significant caseload of NTCAT may be driving proposals for efficiency but these seemingly small changes are likely to impact on some of the most disadvantaged people in the Northern Territory.

DCLS proposes caution in passing the Bill as our view is that it does not have sufficient regard to the rights and liberties of individuals. DCLS suggests that a social impact assessment be commissioned to determine the potential impacts on human rights and access to justice before the Bill proceeds any further.

Amendments to allow the awarding of costs and disbursements in what was intended to be a no-costs regime may lead to an opening of the floodgates. The original intention for NTCAT to be an accessible and flexible forum to resolve disputes may be defeated if the level of risk to those least likely to be able to bear costs and charges is increased.

## Specific amendments

### 1. Fees disbursed: proposed section 132(2)(ba)

Darwin Community Legal Service still holds concerns about this new provision facilitating the making of costs orders by NTCAT, because the risk of a costs order could dissuade people from bringing or defending matters, which limits access to justice. However, we are pleased that the measure is restricted to fees and disbursements and does not include legal practitioner costs. The inclusion of the reference to reasonableness in s 132(2)(ba)(ii) will go some way to ensuring that any costs ordered are proportionate to the matters in dispute.

DCLS considers that the wording of s 132(2)(ba)(ii) should be slightly changed to remove ambiguity: the words “ ... if *it* was necessary and reasonable to make or respond to an application; and” could be ambiguous, and that a slight change, along the lines of “if *the fee paid* was necessary and reasonable to respond to ...”, or “if *the service paid for* was necessary and reasonable to respond to...” would remove the ambiguity.

### 2. Default judgments

The amendments also propose the making of a default judgment in a debt matter if a defendant does not appear in court. In the ordinary course, the requirement for a hearing

and written reasons for decision are fundamental to the achievement of NTCAT's outcomes. The efficiencies of entering a default judgment in the matter of undefended debt recovery claims should be balanced against the challenges of remoteness, culture and language in the Northern Territory justice system.

DCLS understands that the intention of s 101A(2) is to ensure that the defendant to a matter actually knows about and understands the nature of the claim against them. The NTCAT has indicated that default decisions would not be made unless the Tribunal were confident that the matter had actually been brought to the defendant's attention (in circumstances where email service is allowed but may not be effective).

DCLS is of the view that the default judgment power should be clearly restricted to cases where the NTCAT is convinced on the evidence that the defendant knows about the claim, understands the nature of proceedings, and the failure to attend was a decision made voluntarily and with an appreciation of the consequences. There are many people in the NT who do not have a strong understanding of the justice system and its procedures so it is important that the rights of the marginalised are protected and that they are not subjected to orders merely because they didn't understand the importance of appearing at the NTCAT on a certain day.

We are concerned about the standard of proof that is required before an applicant can succeed through a default decision. DCLS considers that there ought to be a short review of the evidence in the substantive matter before orders can be made and reasons should be given for all decisions made, in order to maintain high standards of decision-making and to facilitate reviews of default judgments.

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