

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.

Northern Territory Civil and Administrative Tribunal Amendment Bill 2018

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The Northern Territory Civil and Administrative Tribunal Amendment Bill 2018 (the Bill) amends the *Northern Territory Civil and Administrative Tribunal Act* (the Act) to include additional factors that must be considered when the Northern Territory Civil and Administrative Tribunal (NTCAT) considers an application to recover costs, and provides a mechanism for dealing with cases when a defendant does not respond to an application made to the NTCAT.

The Bill also clarifies that the NTCAT can affix its seal to documents by means of physical or electronic methods.

Human rights implications

The Bill engages the right to equality before courts and tribunals referred to in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and the right to effective access to justice referred to in Article 13(1) of the Convention on the Rights of Persons with Disabilities (CRPD):

Article 14 of the ICCPR provides that all persons shall be equal before the courts and tribunals.

Article 13(1) of the CRPD provides that:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

The new section 101A to be inserted by the Bill empowers the NTCAT to make a decision adverse to a defendant who does not respond to an application in relation to a debt-recovery matter. This means that the adverse decision can be made *ex parte*, meaning in the absence of the party that is affected. This provision facilitates access to justice for applicants in the situation where a defendant is refusing to participate in the process, however it also has the potential to operate adversely to defendants

who are unable to participate in the process, including defendants whose capacity to participate is affected by disability.

In order to address this issue, the Bill amends section 80 of the Act to provide that a defendant may apply to re-open a decision that was made under section 101A, which may then be revisited if the person had a reasonable excuse for not attending the relevant proceeding, or if there are grounds on which the order ought to be set aside or varied.

It should also be noted that:

- the NTCAT has a discretion whether to make a decision under new section 101A and is able to consider whether exercising this discretion is in the interests of justice on a case-by-case basis; and
- the new section 101A will also facilitate access to justice for all persons, including persons with disabilities, who may otherwise be unable to recover debts they are owed from an unresponsive defendant.

The Bill pursues the legitimate objective of ensuring access to justice for applicants to the NTCAT. It does so in a reasonable and proportionate way, and the amendment is necessary to facilitate access to justice for applicants to the NTCAT.

The other provisions in the Bill do not engage human rights and freedoms.

Conclusion

This Bill is compatible with human rights as it facilitates access to justice for all persons, including persons with disability, and only impacts equality before the law and access to justice by persons with disability to the extent that is reasonable, proportionate, and necessary to achieve this objective.