

2018

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Northern Territory Civil and Administrative Tribunal
Amendment Bill 2018**

SERIAL NO. 54

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Bill amends the *Northern Territory Civil and Administrative Tribunal Act* (the Act) so as to provide that:

- (a) one of the grounds for the Northern Territory Civil and Administrative Tribunal (NTCAT) reopening a matter under section 80 of the Act is that a default decision was made under section 101A;
- (b) NTCAT can make a decision against a party who has not responded to an application for the recovery of a debt (new section 101A);
- (c) there is an expectation that a successful party can recover application fees, service fees and search fees that are necessary and reasonable for the conduct of a matter;
- (d) the seal of NTCAT can be affixed electronically; and
- (e) new section 101A of the Act does not apply to proceedings commenced prior to the commencement of that section.

NOTES ON CLAUSES

Clause 1. Short title

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Northern Territory Civil and Administrative Tribunal Amendment Act 2018*.

Clause 2. Commencement

This is a formal clause that provides that the commencement of the Bill will occur on a day or days fixed by the Administrator by way of a notice published in the Gazette.

Clause 3. Act amended

This clause provides that this Bill amends the *Northern Territory Civil and Administrative Tribunal Act*.

Clause 4. Section 80 amended (Tribunal may reopen proceeding)

Section 80 of the Act sets out the circumstances in which NTCAT can reopen a matter. Section 80 is to be amended so that it is clear that a matter can be reopened if a default decision has been made under new section 101A.

Clause 5. Section 101A inserted

Clause 5 inserts new section 101A.

101A Default decisions

New section 101A provides that if a party to a proceeding before NTCAT does not respond to an action for the recovery of a debt or for a fixed sum, NTCAT can make a decision against the party that has not responded.

The effect of this provision is that NTCAT can make a decision on the basis of the application rather than requiring the applicant to provide evidence. NTCAT would conduct a hearing on the papers (as permitted by section 69(2) of the Act). The hearing would deal with such matters as ensuring that the relevant papers have been served on the parties. The parties would not necessarily be required to attend the hearing.

New section 101A(2) seeks to ensure that, before making a default decision, the Tribunal must be satisfied that the application sets out the claim in terms that are reasonably clear.

Clause 6. Section 132 amended (Tribunal may make costs orders)

Clause 6 amends section 132 so that in determining whether to make a costs order NTCAT must consider the expectation that the successful party should be able to recover:

- costs paid under the Act (e.g. fees paid under sections 85(5), 94(2) or 118); and
- fees paid for activities necessary to make an application under the Act or to respond to an application. These fees would include fees payable for the service of documents and the conduct or searches.

This section has the effect of modifying the operation of section 131 (Parties to bear own costs) and section 132 (Tribunal to make costs orders) which, read together, suggest that a costs order regarding disbursements is unlikely to be made. The amendment makes it clear that there is an expectation that such an order will be made. It is anticipated that, on the commencement of the amendment to section 132, rule 10(2)(b) of the Rules will be either repealed or amended by NTCAT. Rule 10(2)(b) provides that a factor that NTCAT takes into account in dealing with an application for a costs order for out-of-pocket expenses is that of whether a failure to give a costs order would substantially deprive the party of relief. Rule

10(2)(b) represents a solution to the costs issue developed by NTCAT pending possible legislative amendment.

New section 132(2)(ba)(ii) seeks to ensure that the costs claimed are necessary and reasonable for the purposes of the application.

Clause 7. Section 154 amended (seal)

Section 154 of the Act provides for NTCAT to have a seal. Section 154 is being amended so that it is clear that the seal can be affixed either manually or electronically.

Clause 8. Part 8 heading replaced

This clause renames the heading for Part 8 as Part 8 will cover transitional matters under this Act as well as under the *Justice Legislation Amendment Act 2015*. The clause also renames current Part 8 as Division 1 of Part 8.

Clause 9. Part 8, Division 2 inserted

This clause provides for Division 2 and new section 157. New section 157 provides that section 101A(1) does not apply to any proceeding commenced before the commencement of section 101A. In this situation commencement of a proceeding refers to the time when an application is made to NTCAT.

Clause 10. Repeal of Act

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Bill ceases to have effect once it has performed its function of amending the other legislation.