



15 February 2018

Mr Robert Bradshaw  
Director, Policy Coordination  
Department of the Attorney-General and Justice  
GPO Box 1722  
DARWIN NT 0801

Dear Robert

**RE: CONSULTATION PAPER – NTCAT COSTS ORDERS AND DEFAULT DECISIONS**

NT Shelter is the Northern Territory's peak body for affordable housing and homelessness. Our members are specialist homelessness services organisations, community housing providers and other stakeholders engaged with the provision of appropriate and affordable housing for all Territorians.

We welcome this opportunity to comment on the proposed changes to section 132 of the *Northern Territory Civil and Administrative Tribunal Act* to enable the awarding of costs orders to successful parties in matters decided by NTCAT.

NT Shelter has had the opportunity to view and consider the submission of Darwin Community Legal Service Inc. (DCLS) on this matter, particularly as it relates to low income earners, homeless persons, and vulnerable persons in general. NT Shelter supports the submission of DCLS.

The NT has a significant and disproportionate level of homelessness, at 15 times the national average. There are long waiting lists for public housing, at 6-8 years in some cases. For those who are successful in securing public housing, many continue to experience significant financial, family, health, education and employment challenges. This makes sustaining a tenancy and avoiding the risk of eviction very challenging.

Across Australia, specialist homelessness service providers are able to assist tenants to maintain a tenancy in nine cases out of ten when there is timely intervention by service providers. Unfortunately, due to the very high level of unmet demand for homelessness services in the NT relative to other jurisdictions, considerably fewer services are available for tenancy support (e.g. domestic violence or financial counselling). This means that there are too many instances of tenants unable to sustain public housing or private rental due to a lack of available support.

In such cases, persons can and do return to homelessness. These persons have far less capacity to be notified and appear at NTCAT proceedings and are at risk of unsubstantiated or unreasonable claims being made against them which they are not in a position to defend. They are vulnerable people who should not be at risk of costs being awarded against them.

**A no-costs, informal jurisdiction should be maintained**

NT Shelter notes the emphasis under the NTCAT Act of simplifying proceedings and issues before the Tribunal and to keeping costs to parties in proceedings before the Tribunal to a minimum.

The objective of cost minimisation is appropriate and should be maintained. It safeguards the ability of persons, particularly those of limited financial means, to assert their legal rights before the Tribunal without unfounded or undue concern of the prospect of costs being awarded against them. The perceived and actual risk of costs orders against a party with limited financial capacity would necessitate a reassessment of whether or not to proceed, regardless of the merits of the action brought before NTCAT and the prospects of what might otherwise be an outcome in their favour.

No-cost jurisdictions also discourage, if not prevent, the likelihood of parties with greater financial capacity resorting to paid agents. Any movement away from self-representation would disproportionately disadvantage low income applicants or defendants such as tenants or homeless persons.

We believe that the costs of debt recovery processes for creditors owed small amounts (and the mercantile agents acting on their behalf) are business decision considerations that need to continue to be made by those entities when deciding to bring debt recovery cases before NTCAT or otherwise. This should not be a primary motivation for amending the Act.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter McMillan', with a long horizontal flourish extending to the right.

Peter McMillan  
**Executive Officer**