



# Administrative Decisions Tribunal (General) Regulation 2004

under the

Administrative Decisions Tribunal Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Administrative Decisions Tribunal Act 1997*.

BOB DEBUS, M.P.,  
Attorney General

## Explanatory note

The object of this Regulation is to remake the *Administrative Decisions Tribunal (General) Regulation 1998* (with certain additions and alterations). That Regulation will be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation deals with the following:

- (a) formal matters, including the meaning of certain terms used in the Regulation (Part 1),
- (b) the oaths of office for members of the Administrative Decisions Tribunal (Part 2 and Schedule 1),
- (c) fees for applications and appeals to the Tribunal (Part 3),
- (d) the manner in which draft rules of the Tribunal are to be publicly exhibited (Part 4),
- (e) the exclusion of certain classes of decisions from the internal review provisions of the *Administrative Decisions Tribunal Act 1997* (Part 5),
- (f) miscellaneous other matters, including the scale of expenses and allowances for witnesses before the Tribunal and a savings provision (Part 6).

The new Regulation also amends the provisions of the *Administrative Decisions Tribunal Act 1997* that deal with the composition and functions of the Administrative Decisions Tribunal to provide that the Tribunal is to be constituted by a judicial member, a barrister member or a solicitor member of the Legal Services Division of the Tribunal for the purposes of proceedings under section 38JA (Regulation of advertising and other marketing of services) of the *Legal Profession Act 1987*.

## **2004 No 584**

Administrative Decisions Tribunal (General) Regulation 2004

Explanatory note

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This Regulation is made under the *Administrative Decisions Tribunal Act 1997*, including sections 23, 43 (1), 53 (11) (b), 56 (1), 98 (1), 141 (1) and 145 (the general regulation-making power) and clause 4 of Schedule 3.

With the exception of Parts 3 and 5, this Regulation comprises or relates to matters of a machinery nature, matters of a savings or transitional nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
<b>Part 2 Oaths of office</b>	
4 Oath to be taken by members of Tribunal	5
<b>Part 3 Fees for applications and appeals to Tribunal</b>	
5 Fees for original applications	6
6 Fees for review applications	6
7 Fees for internal and external appeals	6
8 Fees not payable by Crown	7
9 Waiver of fees	7
<b>Part 4 Rules of the Tribunal</b>	
10 Public consultation under section 98 of the Act	8
<b>Part 5 Internal reviews</b>	
11 Reviewable decisions excluded from internal review under section 53 of the Act	9
<b>Part 6 Miscellaneous</b>	
12 Witness allowances and expenses: sec 141	10
13 Amendment of Act	11
14 Transitional provision: references to senior judicial members of former Equal Opportunity Tribunal	11
15 Saving	11
<b>Schedule 1 Oaths of office</b>	12

## 2004 No 584

Clause 1 Administrative Decisions Tribunal (General) Regulation 2004

Part 1 Preliminary

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# Administrative Decisions Tribunal (General) Regulation 2004

under the

Administrative Decisions Tribunal Act 1997

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Administrative Decisions Tribunal (General) Regulation 2004*.

### 2 Commencement

This Regulation commences on 1 September 2004.

**Note.** This Regulation replaces the *Administrative Decisions Tribunal (General) Regulation 1998*, which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

***original application*** means an application to the Tribunal for an original decision.

***review application*** means an application to the Tribunal for a review of a reviewable decision.

***the Act*** means the *Administrative Decisions Tribunal Act 1997*.

(2) Notes included in the text of this Regulation do not form part of this Regulation.

## Part 2 Oaths of office

### 4 Oath to be taken by members of Tribunal

- (1) The members of the Tribunal are to take the following oaths of office before entering into office:
  - (a) in the case of the President—the oath set out in Part 1 of Schedule 1,
  - (b) in the case of a Deputy President—the oath set out in Part 2 of Schedule 1,
  - (c) in the case of a non-presidential judicial member—the oath set out in Part 3 of Schedule 1,
  - (d) in the case of a non-judicial member—the oath set out in Part 4 of Schedule 1.
- (2) Subclause (1) does not apply to the following members:
  - (a) a judicial officer who is taken to have been duly appointed to act as a member of the Tribunal by or under section 14 of the Act,
  - (b) a state tribunal member (within the meaning of section 14A of the Act) who is taken to have been duly appointed to act as a member of the Tribunal by or under that section,
  - (c) a person who is appointed a member of the Tribunal by operation of Schedule 5 to the Act,
  - (d) a member who is re-appointed as a member no later than 14 days after the expiry of the member's previous term of office.
- (3) However, nothing in subclause (2) prevents any such member from taking an oath specified in subclause (1) before commencing to exercise his or her functions as a member.

## 2004 No 584

Clause 5 Administrative Decisions Tribunal (General) Regulation 2004

Part 3 Fees for applications and appeals to Tribunal

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### Part 3 Fees for applications and appeals to Tribunal

#### 5 Fees for original applications

- (1) For the purposes of section 43 (1) of the Act, the fee prescribed in respect of an original application is:
  - (a) if the Act or any other law requires the application to be determined by the Tribunal constituted by 2 or more members—\$115, or
  - (b) in any other case—\$55.
- (2) Subclause (1) does not apply to the following:
  - (a) original applications made under an enactment specified in clause 2 of Part 3 of Schedule 2 to the Act (being applications that are allocated to the Legal Services Division for determination),
  - (b) original applications referred to in section 43 (3) of the Act.

**Note.** Section 43 (1) of the Act provides that an application cannot be made to the Tribunal unless the fee prescribed by the regulations (if any) in respect of the application has been paid. Section 43 (3) provides that the section does not apply to applications for an original decision made under the *Anti-Discrimination Act 1977*.

#### 6 Fees for review applications

- (1) For the purposes of section 56 (1) of the Act, the fee prescribed in respect of a review application is:
  - (a) if the Act or any other law requires the application to be determined by the Tribunal constituted by 2 or more members—\$115, or
  - (b) in any other case—\$55.
- (2) Subclause (1) does not apply to the following:
  - (a) review applications under section 90 (3) of the *Anti-Discrimination Act 1977*,
  - (b) review applications referred to in section 56 (3) of the Act.

**Note.** Section 56 (1) of the Act provides that an application cannot be made to the Tribunal unless the fee prescribed by the regulations (if any) in respect of the application has been paid. Section 56 (3) provides that the section does not apply to applications for a review of a reviewable decision made under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

#### 7 Fees for internal and external appeals

A person lodging an internal appeal or external appeal must pay a fee of \$230 in respect of the appeal.

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**8 Fees not payable by Crown**

Despite clauses 5–7, no fee is payable in respect of any original application or review application or any internal appeal or external appeal if the application or appeal is made by or on behalf of:

- (a) the Government of New South Wales, or
- (b) any New South Wales Government Department, or
- (c) any statutory body whose expenditure is paid out of the Consolidated Fund.

**9 Waiver of fees**

The Registrar may waive the payment of any fee prescribed by this Part in respect of an application to the Tribunal or internal appeal or external appeal (either at the time of the lodgment of the application or appeal or otherwise) if the Registrar is satisfied that the payment of the fee would result in undue hardship to the applicant or appellant concerned.

**Note.** Section 43 (2) of the Act provides that an application for an original decision in respect of which a fee is waived under the regulations (whether at the time of lodgment or otherwise) is taken to be made at the time the application is lodged with the Tribunal. Section 56 (2) makes similar provision in respect of review applications.

## 2004 No 584

Clause 10 Administrative Decisions Tribunal (General) Regulation 2004

Part 4 Rules of the Tribunal

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### Part 4 Rules of the Tribunal

#### 10 Public consultation under section 98 of the Act

- (1) For the purposes of section 98 (1) of the Act, the manner of public exhibition of a draft rule of the Tribunal specified in this clause is prescribed.
- (2) The Rule Committee must:
  - (a) cause notice to be given in a newspaper circulating generally in New South Wales (or in such other publication or publications determined by the Rule Committee) of the places, dates and times for inspection of the draft rule during the exhibition period, and
  - (b) specify in the notice the exhibition period for the draft rule, and
  - (c) specify in the notice that the period within which submissions about the draft rule may be made to the Rule Committee is the exhibition period or such further period as may be specified in the notice, and
  - (d) publicly exhibit during the exhibition period a copy of the draft rule at the places, on the dates and during the times specified in the notice.
- (3) Copies of the draft rule are to be made available to interested persons by the Rule Committee during the exhibition period, either free of charge or on payment of reasonable copying charges.
- (4) In this clause:

***exhibition period*** means the period specified in a notice published in a newspaper or other publication for the public exhibition of a draft rule, being a period of at least 2 months from the date on which the notice is published.

## Part 5 Internal reviews

### 11 Reviewable decisions excluded from internal review under section 53 of the Act

For the purposes of section 53 (11) (b) of the Act, the following reviewable decisions are excluded from the operation of section 53 of the Act:

- (a) a decision referred to in section 90 (3) of the *Anti-Discrimination Act 1977*,
- (b) a decision referred to in section 126A (6) of the *Anti-Discrimination Act 1977*,
- (c) a decision referred to in section 31 or 44 of the *Architects Act 2003*,
- (d) a decision referred to in section 64A (8) of the *Fair Trading Act 1987*,
- (e) a decision referred to in section 45 (1) of the *Motor Vehicle Repairs Act 1980*,
- (f) a decision referred to in section 14 of the *Surveying Act 2002*,
- (g) a decision referred to in section 45 of the *Tow Truck Industry Act 1998* involving the exercise of a function conferred on the Tow Truck Authority under Division 4 of Part 3 of that Act,
- (h) a decision referred to in section 22 (3) or (4) of the *Travel Agents Act 1986*,
- (i) a decision referred to in section 34, 48 or 75 of the *Veterinary Practice Act 2003*,
- (j) a decision referred to in section 21, 31 or 53 of the *Veterinary Surgeons Act 1986*.

## 2004 No 584

Clause 12 Administrative Decisions Tribunal (General) Regulation 2004

Part 6 Miscellaneous

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### Part 6 Miscellaneous

#### 12 Witness allowances and expenses: sec 141

For the purposes of section 141 (1) of the Act, the prescribed scale of allowances and expenses for witnesses required to appear or give evidence before the Tribunal is as follows:

(a) **Attendance as a witness**

- (i) for attending to give expert evidence—the amount that is agreed between the person and the party calling the person as an expert witness,
- (ii) for attending to give non-expert evidence—the amount of wages, salary, remuneration or fees actually lost because of the person's attendance (including travelling time), but not exceeding \$100 an hour, or \$500 for any one day,

(b) **Travelling expenses**

for travelling expenses to and from a person's usual place of residence or business and the Tribunal—the amount actually paid for public transport or the amount actually paid for petrol used for travel by private transport plus parking fees (but only if the Tribunal considers that travel by public transport was not practicable),

(c) **Other costs of complying with summons**

- (i) for photocopying—25 cents a page,
- (ii) for any other costs of complying with a summons issued under section 84 of the Act that the Tribunal considers were necessarily incurred—the amount actually paid,

(d) **Accommodation and meal costs**

for accommodation and meals, if a person is required to be absent over night from the person's usual place of residence—the amount actually paid, but not exceeding:

- (i) for accommodation—the applicable allowance specified in relation to Item 2 (Travelling Allowances When Staying in Non-Govt Accommodation) of Table 1 of Part B of the *Crown Employees (Public Service Conditions of Employment) Award 2002*,
- (ii) for meals—the applicable allowance specified in relation to Item 1 (Meal Expenses on One Day Journeys) of Table 1 of Part B of that Award.

**13 Amendment of Act**

Schedule 2 (Composition and functions of Divisions) to the Act is amended by inserting after clause 4 of Part 3:

**4AA Legal Profession Act 1987 (Advertising contraventions)**

For the purposes of proceedings under section 38JA (Regulation of advertising and other marketing of services) of the *Legal Profession Act 1987*, the Tribunal is to be constituted by one member of the Legal Services Division of the Tribunal, being a judicial member, a barrister member or a solicitor member.

**14 Transitional provision: references to senior judicial members of former Equal Opportunity Tribunal**

Any reference in section 112 of the *Anti-Discrimination Act 1977* to the senior judicial member of the Tribunal is to continue to be read as a reference to a Deputy President of the Administrative Decisions Tribunal.

**Note.** This clause continues in effect the transitional provision previously contained in Schedule 2 to the *Administrative Decisions Tribunal (General) Regulation 1998*, which updated references to the senior judicial member of the former Equal Opportunity Tribunal.

**15 Saving**

Any act, matter or thing that, immediately before the repeal of the *Administrative Decisions Tribunal (General) Regulation 1998*, had effect under that Regulation continues to have effect under this Regulation.

**2004 No 584**

Administrative Decisions Tribunal (General) Regulation 2004

Schedule 1 Oaths of office

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**Schedule 1 Oaths of office**

(Clause 4)

**Part 1 Oath of office for President**

I, \_\_\_\_\_, do

\*swear/\*solemnly, sincerely and truly declare and affirm that I will faithfully and impartially discharge the duties of the office of President of the Administrative Decisions Tribunal of New South Wales.

**Part 2 Oath of office for a Deputy President**

I, \_\_\_\_\_, do

\*swear/\*solemnly, sincerely and truly declare and affirm that I will faithfully and impartially discharge the duties of the office of a Deputy President of the Administrative Decisions Tribunal of New South Wales.

**Part 3 Oath of office for a non-presidential judicial member**

I, \_\_\_\_\_, do

\*swear/\*solemnly, sincerely and truly declare and affirm that I will faithfully and impartially discharge the duties of the office of a non-presidential judicial member of the Administrative Decisions Tribunal of New South Wales.

**Part 4 Oath of office for a non-judicial member**

I, \_\_\_\_\_, do

\*swear/\*solemnly, sincerely and truly declare and affirm that I will faithfully and impartially discharge the duties of the office of a non-judicial member of the Administrative Decisions Tribunal of New South Wales.

\* Delete whichever is inapplicable

BY AUTHORITY