



New South Wales

Administrative Decisions Tribunal Rules (Amendment No 1) 2009

under the

Administrative Decisions Tribunal Act 1997

The Rule Committee of the Administrative Decisions Tribunal made the following rules of the Tribunal under the *Administrative Decisions Tribunal Act 1997*.

Pauline Green
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Administrative Decisions Tribunal Rules 1998*:

- (a) to provide for the procedure to be followed in connection with the issue of a summons under section 84 of the *Administrative Decisions Tribunal Act 1997*, and
- (b) to provide for examples of:
 - (i) the circumstances where it would be appropriate for the Tribunal to grant leave under section 71 of the *Administrative Decisions Tribunal Act 1997* to a person who is not an Australian legal practitioner to represent a party in proceedings as the party's agent, and
 - (ii) the circumstances where it would be appropriate for the Tribunal to refuse or revoke any such leave, and
- (c) to provide for how time is to be reckoned for the purposes of the Rules.

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1 Name of Rules

These Rules are the *Administrative Decisions Tribunal Rules (Amendment No 1) 2009*.

2 Commencement

These Rules commence on the day on which they are published on the NSW legislation website.

Schedule 1 Amendment of Administrative Decisions Tribunal Rules 1998

[1] Rules 20 and 20A

Omit rule 20. Insert instead:

20 Issue of summons

- (1) An application by a party to proceedings for a summons under section 84 must be made in or to the effect of the approved form.
- (2) An applicant for a summons must provide the Registry with the following completed copies of the proposed summons:
 - (a) one copy for the file of the Tribunal,
 - (b) one copy for service on the person proposed to be named in the summons,
 - (c) one copy for the applicant,
 - (d) one copy each for all of the other parties to the proceedings.
- (3) If a summons is issued, the summons (and any sealed copies of the summons required to be served under subrule (6)) must be served on the person named in the summons:
 - (a) where the summons is issued at the direction of the Tribunal—by or on behalf of the Registrar, or
 - (b) where the summons is issued on the application of a party—by or on behalf of that party.
- (4) The summons must be served on the person named in the summons at least 5 days (or within such other period as the Registrar may direct) before the return date specified in the summons.

Note. Rule 42A makes provision for the reckoning of time for the purposes of these rules.

- (5) If a summons is issued on the application of a party to proceedings, that party must, at the time the summons is served, cause to be paid or tendered to the person named in the summons a sum of money payable to the person in accordance with section 141 of the Act.

Note. Section 141 of the Act provides that a person (other than a public servant) who is required to appear or give evidence before the Tribunal is entitled to be paid such allowances and expenses as are ascertained in accordance with a scale of allowances and expenses prescribed by

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the regulations. Clause 12 of the *Administrative Decisions Tribunal (General) Regulation 2004* provides for the prescribed scale of allowances and fees for witnesses required to appear or give evidence before the Tribunal.

- (6) A sealed copy of the summons must be served on each party to the proceedings before the return date specified in the summons, except as provided by subrule (7).
- (7) A sealed copy of the summons is not required to be served under subrule (6) on a party to proceedings if the party applied for the summons or is the person named in the summons.

20A Granting and revocation of leave for agent to represent party

- (1) This rule provides for the circumstances in which it is appropriate under section 71 of the Act for the Tribunal to grant, refuse or revoke leave for an agent to represent a party in proceedings, or part of proceedings, in the Tribunal.

Note. Section 71 (3A) of the Act provides that the rules of the Tribunal may make provision for or with respect to the following matters:

- (a) the circumstances in which it is, or is not, appropriate for the Tribunal to grant leave for an agent to represent a party,
 - (b) the circumstances in which it is, or is not, appropriate for the Tribunal to revoke any such leave.
- (2) It is appropriate for the Tribunal to grant leave to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that the person has:
 - (a) a sufficient degree of competence to provide effective representation for the party, and
 - (b) the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings.
 - (3) It is appropriate for the Tribunal to refuse leave to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that the person does not have the qualities referred to in subrule (2).
 - (4) It is appropriate for the Tribunal to revoke leave granted to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that:
 - (a) the party no longer consents to the person representing the party as the party's agent, or
 - (b) the person applied for leave to represent that party as the party's agent without the consent of the party, or
 - (c) the person does not have the qualities referred to in subrule (2) to act as the party's agent, or

- (d) the party is, or has become, an incapacitated person within the meaning of section 71 of the Act.

Note. Section 71 of the Act enables the Tribunal to appoint a person to represent a party who is an incapacitated person.

- (5) Nothing in this rule limits the matters that the Tribunal may take into account in deciding whether it is, or is not, appropriate for the Tribunal to grant, refuse or revoke leave for a person to represent a party as the party's agent in proceedings.

[2] Rule 42A

Insert after rule 42:

42A Reckoning of time

- (1) Any period of time fixed by these rules, or by any order or other decision of the Tribunal or the Registrar or by any document in any proceedings, is to be reckoned in accordance with this rule.
- (2) If a time of one day or longer is to be reckoned by reference to a given day or event, the given day or the day of the given event is not to be counted.
- (3) If, apart from this subrule, the period in question, being a period of 5 days or less, would include a day or part of a day on which the Registry is closed, that day is to be excluded.
- (4) If the last day for doing a thing is, or a thing is to be done on, a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.
- (5) Section 36 of the *Interpretation Act 1987* (which relates to the reckoning of time) does not apply to these rules.