



New South Wales

Administrative Decisions Tribunal Regulation 2009

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*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Administrative Decisions Tribunal (General) Regulation 2004* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation revises the fees payable in respect of applications to, and services provided by, the Administrative Decisions Tribunal (the **Tribunal**).

This Regulation makes provision with respect to the following:

- (a) the exclusion of certain classes of reviewable decisions from the requirement to provide reasons for a decision and from internal review,
- (b) the scale of expenses and allowances for witnesses before the Tribunal,
- (c) the oaths of office for members of the Tribunal,
- (d) the payment of fees,
- (e) savings and formal matters.

This Regulation is made under the *Administrative Decisions Tribunal Act 1997*, including sections 43 (1), 49 (4) (a), 53 (11) (b), 56 (1), 141 (1) and 145 (the general regulation-making power) and clause 4 of Schedule 3.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery 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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1 Name of Regulation

This Regulation is the *Administrative Decisions Tribunal Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Administrative Decisions Tribunal (General) Regulation 2004*, which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

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

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

4 Reviewable decisions excluded from requirement to provide reasons

For the purposes of section 49 (4) (a) of the Act, a decision to make a finding or to take action of a kind referred to in section 33 of the *Building Professionals Act 2005* is excluded from the application of section 49 of the Act.

5 Reviewable decisions excluded from internal review

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 126A (6) of the *Anti-Discrimination Act 1977*,
- (b) a decision referred to in section 31 or 44 of the *Architects Act 2003*,
- (c) a decision referred to in section 18 (b) or (d) of the *Building Professionals Act 2005*,

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- (d) a decision referred to in section 18 (c) of the *Building Professionals Act 2005* made in the circumstances referred to in clause 2 (1) of Schedule 4 to the *Building Professionals Regulation 2007*,
- (e) a decision referred to in section 18 (e) of the *Building Professionals Act 2005*, but only if:
 - (i) the decision is made in the circumstances referred to in clause 2 (1) of Schedule 4 to the *Building Professionals Regulation 2007*, or
 - (ii) the decision relates to the renewal of the person's certificate of accreditation, or
 - (iii) the decision is made under section 9 (2) of the *Building Professionals Act 2005*,
- (f) a decision referred to in section 18 (f) of the *Building Professionals Act 2005* (but only if the decision is made on a ground set out in section 8 (2) (c), (d), (e) or (f) of that Act),
- (g) a decision to make a finding or to take action of a kind referred to in section 33 of the *Building Professionals Act 2005*,
- (h) a decision referred to in clause 209 (1) (b), (f) or (g) of the *Coal Mine Health and Safety Regulation 2006*,
- (i) a decision referred to in section 64A (8) of the *Fair Trading Act 1987*,
- (j) any reviewable decision of the Bar Council, the Law Society Council or the Legal Services Commissioner under the *Legal Profession Act 2004*,
- (k) a decision referred to in section 14 of the *Surveying Act 2002*,
- (l) a decision referred to in section 45 of the *Tow Truck Industry Act 1998* involving the exercise of a function conferred on the Roads and Traffic Authority under Division 4 of Part 3 of that Act,
- (m) a decision referred to in section 22 (3) or (4) of the *Travel Agents Act 1986*,
- (n) a decision referred to in section 34, 48 or 75 of the *Veterinary Practice Act 2003*.

6 Witness allowances and expenses

- (1) 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 set out in subclauses (2)–(5).

(2) **Attendance as a witness**

For attending to give:

- (a) expert evidence—the amount that is agreed between the person and the party calling the person as an expert witness, or
- (b) 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.

(3) **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).

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

For any:

- (a) photocopying—25 cents a page, or
- (b) 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.

(5) **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:

- (a) 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) Reviewed Award 2006*,
- (b) 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.

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7 Oath to be taken by members of Tribunal

- (1) For the purposes of clause 4 of Schedule 3 to the Act, a member of the Tribunal is to take the following oath of office before entering into office:

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

* Delete whichever is inapplicable

- (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.

8 Fees

- (1) The fee payable to the Registrar in respect of a matter listed in Column 1 of Schedule 1 is the fee specified opposite that matter in Column 2 of that Schedule.
- (2) The Registrar may charge a fee of up to \$35 for any other service provided.
- (3) A fee is payable before the service to which the fee relates is provided or at such time, and in accordance with such conditions, as the Registrar may agree with the person paying the fee.
- (4) The Registrar may, at any time, waive the payment of any fee prescribed by this Regulation if the Registrar is satisfied that the payment of the fee would result in undue hardship to the person concerned.

9 Saving

Any act, matter or thing that, immediately before the repeal of the *Administrative Decisions Tribunal (General) Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Fees

Schedule 1 Fees

(Clause 8)

Column 1	Column 2
Matter for which fee is charged	Fee
Application to Tribunal for original decision (but not if under <i>Legal Profession Act 2004</i> or <i>Public Notaries Act 1997</i>):	
(a) if application must be determined by the Tribunal constituted by 2 or more members, or	\$142
(b) in any other case	\$68
Application to Tribunal for review of reviewable decision:	
(a) if application must be determined by the Tribunal constituted by 2 or more members, or	\$142
(b) in any other case	\$68
Copy or certified copy of decision or written reasons.	\$65
Note. A party to the proceedings is entitled to one copy of the decision or written reasons without charge.	
Issue a summons (for production, to give evidence or both)	\$32
Lodge internal appeal or external appeal	\$280
Request production to Tribunal of documents held by court	\$50
Retrieve any document or file from archives	\$65
Supply duplicate sound recording of proceedings, per cassette tape or disc	\$42
Supply transcript—proceedings that are under 3 months old:	
(a) per page, or	\$9.30
(b) if less than 9 pages	\$76
Supply transcript—proceedings that are at least 3 months old:	
(a) per page, or	\$10.60
(b) if less than 9 pages	\$93

Note. Clause 8 (2) provides that the Registrar may charge a fee of up to \$35 for any other service provided.