



New South Wales

Civil and Administrative Tribunal Regulation 2013

under the

Civil and Administrative Tribunal Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Civil and Administrative Tribunal Act 2013*.

GREG SMITH, MP
Attorney General

Explanatory note

The objects of this Regulation are:

- (a) to prescribe fees payable in connection with proceedings in the Tribunal and provide for the waiver, postponement and refund of such fees, and
- (b) to provide for the practice and procedure concerning the issuing of summonses (including the allowances and expenses payable to witnesses who are summoned before the Tribunal), and
- (c) to prescribe members of the Guardian Ad Litem Panel constituted by the Director-General of the Department of Attorney General and Justice as persons who have the benefit of protection from civil liability if they are appointed by the Tribunal to represent parties to proceedings in the Tribunal, and
- (d) to provide for the practice and procedure in connection with the referral by the Tribunal of parties to mediation and other kinds of resolution processes, and
- (e) to prescribe interim rules for the practice and procedure of the Tribunal (to be called the *NCAIT Interim Rules 2014*) for the Tribunal until Tribunal rules come into force.

This Regulation is made under the *Civil and Administrative Tribunal Act 2013*, including sections 4 (4) and (5), 35, 45 (6), 47 (1), 48 (4) and 90 (the general regulation-making power) and Schedule 7.

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Civil and Administrative Tribunal Regulation 2013

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Civil and Administrative Tribunal Regulation 2013*.

2 Commencement

This Regulation commences on the establishment day.

3 Definitions

(1) In this Regulation:

the Act means the *Civil and Administrative Tribunal Act 2013*.

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

Part 2 Fees and witness allowances and expenses

4 Definitions

In this Part and Schedule 2:

conduct money, in relation to a person summoned to attend the Tribunal, means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the person attending the Tribunal as required by the summons and returning after so attending.

eligible pensioner means any of the following:

- (a) a person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government,
- (b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as:
 - (i) the widow or widower of a member of the Australian Defence Force or Peacekeeping Forces, or
 - (ii) the unmarried mother of a deceased unmarried member of either of those Forces, or
 - (iii) the widowed mother of a deceased unmarried member of either of those Forces,and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card,
- (c) a person who receives a special rate of pension under section 24 of the *Veterans' Entitlements Act 1986* of the Commonwealth,
- (d) a person who is receiving full-time education at a school, college or university and is a recipient of a student assistance allowance from a Commonwealth Government authority in respect of that education.

general consumer or commercial proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal other than strata proceedings or residential proceedings.

residential proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal arising under any of the following:

- (a) the *Boarding Houses Act 2012*,
- (b) the *Residential (Land Lease) Communities Act 2013*,
- (c) the *Residential Parks Act 1998*,
- (d) the *Residential Tenancies Act 2010*,
- (e) the *Retirement Villages Act 1999*.

strata proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal arising under the *Community Land Management Act 1989* or the *Strata Schemes Management Act 1996*.

5 Fees generally

- (1) The fee payable to the principal registrar in respect of a matter listed in Column 1 of Schedule 2 is the fee specified opposite that matter in Column 2 of that Schedule.
- (2) However, the fee payable to the principal registrar for the lodgment of an application for an order under Part 4 of the *Community Land Management Act 1989* that is

referred to the Tribunal is the fee prescribed under that Act for the purposes of section 63 (1) (c) of that Act.

- (3) In relation to evidence given in, or proceedings allocated to, the Consumer and Commercial Division of the Tribunal, the principal registrar may charge a person the full cost of providing the person with:
 - (a) all or part of a written record or transcript of the evidence or proceedings, or
 - (b) a sound or audio-visual recording of the evidence or proceedings.
- (4) The principal registrar may determine and charge fees (not exceeding \$39) for any other service provided (including for access to documents in the Registry of the Tribunal).
- (5) 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 principal registrar may agree with the person paying the fee.

6 Circumstances where no fee or reduced fee is payable

- (1) Fees are not payable for any of the following:
 - (a) the lodgment of a general application under any of the following Acts:
 - (i) the *Aboriginal Land Rights Act 1983*,
 - (ii) the *Anti-Discrimination Act 1977*,
 - (iii) the *Local Government Act 1993*,
 - (iv) the *Legal Profession Act 2004*,
 - (v) the *Public Notaries Act 1997*,
 - (b) the lodgment of an administrative review application under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
 - (c) the lodgment of a general application or external appeal under the *Dormant Funds Act 1942*,
 - (d) the lodgment of an external appeal under the *Apprenticeship and Traineeship Act 2001*,
 - (e) the lodgment of a general application that involves the exercise of a function of the Tribunal allocated to the Guardianship Division of the Tribunal,
 - (f) the commencement of, or any other matter in connection with, proceedings that are required to be entered in the Health Practitioner Division List of the Occupational Division of the Tribunal.
- (2) The fee payable by an eligible pensioner for the lodgment of a general application or external appeal in proceedings allocated to the Consumer and Commercial Division is \$5.
- (3) A person who is or was a party to any proceedings is entitled to one free copy of:
 - (a) any decision made by the Tribunal in respect of the proceedings, and
 - (b) any written reasons given by the Tribunal in relation to that decision.
- (4) If the principal registrar considers that there are special reasons for doing so, the principal registrar:
 - (a) may direct that any fee be waived wholly or in part, and that any part of the fee waived that has been paid be refunded, and
 - (b) may, subject to any conditions the principal registrar thinks fit to impose, postpone the time for payment of the whole or a part of any fee.
- (5) This clause applies despite any other provision of this Part or Schedule 2.

7 Allowances and expenses of witnesses

- (1) For the purposes of section 47 (1) of the Act, a person summoned by the Tribunal to appear and give evidence before the Tribunal is entitled to allowances and expenses on the same scale as a witness attending and giving evidence in criminal proceedings before the District Court.
 - (2) However, a person summoned by the Tribunal of its own motion is not entitled to allowances and expenses under subclause (1) in any of the following proceedings:
 - (a) proceedings for the exercise of a function of the Tribunal allocated to the Guardianship Division of the Tribunal,
 - (b) proceedings that are required to be entered in the Health Practitioner Division List of the Occupational Division of the Tribunal.
- Note.** Section 47 (1) of the Act also excludes a public servant from any entitlement to be paid witness allowances and expenses when summoned in that capacity.
- (3) If a summons to attend and give evidence is issued on the application of a party to proceedings, the person summoned need not comply with the requirements of the summons unless conduct money has been paid or tendered to the person a reasonable time before the date on which attendance is required.

8 Costs and expenses of compliance

- (1) The Tribunal may order a party who applied for a summons to produce or give evidence (or both) to pay the amount of any reasonable loss or expense incurred in complying with the summons.
- (2) If an order is made under subclause (1), the Tribunal must fix the amount (or direct that it be fixed) in accordance with the Tribunal's usual procedure in relation to costs.
- (3) An amount fixed under subclause (2) is separate from and in addition to:
 - (a) any conduct money paid to the person summoned, or
 - (b) any witness allowances or expenses payable to the person summoned.

Part 3 Miscellaneous

9 Additional power to set aside or vary decision determining proceedings

- (1) In addition to any power that is expressly conferred on the Tribunal by the Act or enabling legislation to set aside or vary its decisions, the Tribunal may order that a decision it has made that determines proceedings be set aside or varied in either of the following circumstances:
 - (a) if all of the parties to the proceedings have consented to the making of the order to set aside or vary the decision,
 - (b) if the decision was made in the absence of a party and the Tribunal is satisfied that the party's absence has resulted in the party's case not being adequately put to the Tribunal.
- Note.** The following provisions of the Act are examples of provisions that expressly confer powers to set aside or vary decisions of the Tribunal:
- (a) section 45 (3) (which enables the Tribunal to revoke leave granted to a person to represent a party),
 - (b) section 53 (4) (which confers a power on the Tribunal to set aside proceedings and decisions involving procedural irregularities resulting from a failure to comply with provisions of the Act or the procedural rules in relation to the commencement or conduct of proceedings),
 - (c) section 63 (which confers a power on the President or a presiding member to correct obvious errors in decisions of the Tribunal),
 - (d) section 64 (3) (which enables the Tribunal to vary or revoke a non-disclosure order made under section 64),
 - (e) section 73 (3) (which enables the Tribunal to vacate or revoke an order with respect to contempt of the Tribunal).
- (2) The Tribunal may make an order under this clause of its own motion or on the application of a party.
 - (3) Unless the Tribunal grants an extension under section 41 of the Act, an application for an order under this clause must be made within 7 days after the decision concerned was made.
 - (4) Except where the parties have consented to the making of the order, the Tribunal may not make an order under this clause unless the Tribunal has first:
 - (a) afforded the parties an opportunity to make submissions about the proposed order, and
 - (b) taken any such submissions into account.
 - (5) A party may not make an application for an order under this clause to set aside or vary a decision of the Tribunal if:
 - (a) an internal appeal or appeal to a court against the decision has been lodged or determined, or
 - (b) an application for a judicial review of the decision has been made or determined.
 - (6) A party may not, without the leave of the Tribunal, make an application for an order under this clause to set aside or vary a decision of the Tribunal if the party has previously made an application under this clause to have the decision set aside or varied.
 - (7) If the Tribunal sets aside a decision under this clause, it may also set aside any orders that it made consequent on the decision that has been set aside.

Note. An example of such a consequent order may be an order for costs in the proceedings.

- (8) Proceedings for the purposes of this clause are prescribed for the purposes of section 50 (1) (d) of the Act.

Note. A hearing is not required for proceedings that are prescribed for the purposes of section 50 (1) (d) of the Act.

- (9) This clause does not limit any power of the Tribunal to set aside, revoke or vary its interlocutory decisions or any other decisions that do not operate to determine proceedings.

10 Representation by members of Guardian Ad Litem Panel

- (1) A person who is a member of the Guardian Ad Litem Panel is prescribed for the purposes of section 45 (6) of the Act.
- (2) The *Guardian Ad Litem Panel* is the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Attorney General and Justice.

11 Repeal of NCAT Interim Rules 2014

This clause and Schedule 3 are repealed on the day on which the first set of Tribunal rules made by the Rule Committee come into force.

Note. The provisions of the *NCAT Interim Rules 2014* set out in Schedule 3 apply with respect to the practice and procedure of the Tribunal until the first set of Tribunal rules made by the Rule Committee come into force—see rule 3 (1) of those Rules.

Schedule 1 Resolution processes

Part 1 Introduction

1 Application of Schedule

- (1) The purpose of this Schedule is to set out the practice and procedure in connection with the use of resolution processes to which parties to proceedings have been referred by the Tribunal under section 37 of the Act.
- (2) However, nothing in this Schedule:
 - (a) requires the use of a resolution process mentioned in this Schedule in proceedings unless the Tribunal refers the parties to the process under section 37 of the Act in accordance with any applicable requirements of the Act and the procedural rules for such a referral, or
 - (b) prevents or limits the use of resolution processes (whether or not they are mentioned in this Schedule).

2 Protection from liability and inadmissibility of statements and admissions

- (1) A mediator, conciliator or other person facilitating a resolution process to which parties to proceedings have been referred by the Tribunal under section 37 of the Act has, in the exercise of his or her functions as such, the same protection and immunity as a member has in the exercise of his or her functions as a member.
- (2) Any statement or admission made before the Tribunal or any person at a meeting or other proceeding held for the purposes of a resolution process to which parties have been referred by the Tribunal under section 37 of the Act is not admissible in the proceedings in which the referral was made, or in any other legal proceedings before a court or other body, unless the person who made the statement or admission consents to its disclosure in the proceedings.
- (3) Subclause (2) does not apply with respect to proceedings in which the parties have been referred for mediation under section 37 of the Act.

Note. Part 2 makes special provision with respect to disclosures made in connection with mediation sessions.

Part 2 Mediation

3 Application of Part

This Part applies if the Tribunal refers parties to proceedings for mediation under section 37 of the Act.

4 Definitions

In this Part:

listed mediator means a person whose name appears on a list compiled under clause 5.

mediation means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

mediation session means a meeting arranged for the mediation of a matter.

mediator means a person to whom the Tribunal has referred a matter for mediation.

5 Listed mediators

- (1) The President may compile a list or lists of persons considered by the President to be suitable to be mediators for the purposes of this Part.
- (2) Different lists may be compiled for different types of matters or to take account of any other factors.
- (3) A person may be included in a list under this clause only if:
 - (a) the person consents to being included in the list, and
 - (b) the person agrees to comply with the provisions of this Part.
- (4) The President may amend or revoke any list compiled under this clause for any reason that the President considers appropriate.

6 Who may act as mediator

- (1) The mediation for proceedings that have been referred by the Tribunal for mediation is to be undertaken by:
 - (a) a mediator agreed to by the parties, or
 - (b) a person appointed as the mediator by the Tribunal.
- (2) A person appointed under subclause (1) (b) may be:
 - (a) a listed mediator, or
 - (b) a registrar, or
 - (c) a member, or
 - (d) any other person that the Tribunal considers to be qualified to act as the mediator.
- (3) Without limiting subclauses (1) and (2), the Tribunal may refer proceedings or part of proceedings for mediation under the *Community Justice Centres Act 1983*.

7 Duty of parties to participate

It is the duty of each party to proceedings that have been referred for mediation to participate, in good faith, in the mediation.

8 Costs of mediation

- (1) Unless the Tribunal decides to bear the costs itself, the costs of mediation are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal.
- (2) In this clause:
costs of mediation includes the costs payable to the mediator.

9 Agreements and arrangements arising from mediation sessions

- (1) Without limiting section 59 of the Act, the Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) On any application for an order under this clause, any party may call evidence, including evidence from the mediator and any other person engaged in the mediation, as to the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement.
- (3) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

10 Privilege

- (1) In this clause, *mediation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) The same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
 - (a) a mediation session, or
 - (b) a document or other material sent or produced to a mediator, or sent to or produced at the Tribunal or the registry of the Tribunal, for the purpose of enabling a mediation session to be arranged.
- (3) The privilege conferred by subclause (2) extends only to a publication made:
 - (a) at a mediation session, or
 - (b) in a document or other material sent or produced to a mediator, or sent to or produced at the Tribunal or the registry of the Tribunal, for the purpose of enabling a mediation session to be arranged, or
 - (c) in circumstances referred to in clause 11.
- (4) Subject to clause 9 (2):
 - (a) evidence of anything said or of any admission made in a mediation session is not admissible in any legal proceedings before any court or other body, and
 - (b) a document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in any legal proceedings before any court or other body.
- (5) Subclause (4) does not apply with respect to any evidence or document:
 - (a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons specified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings commenced with respect to any act or omission in connection with which a disclosure has been made as referred to in clause 11 (1) (c).

11 Confidentiality

- (1) A mediator may disclose information obtained in connection with the administration or execution of this Part only in one or more of the following circumstances:
 - (a) with the consent of the person from whom the information was obtained,
 - (b) in connection with the administration or execution of this Part, including clause 9 (2),
 - (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
 - (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
 - (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.
- (2) Nothing in subclause (1) permits a mediator to refuse to comply with a requirement of a kind referred to in subclause (1) (e).

12 Directions by mediator

A mediator may, by order, give directions as to the preparation for, and conduct of, the mediation.

13 Mediation otherwise than under this Part

This Part does not prevent:

- (a) the parties to proceedings from agreeing to and arranging for mediation of any matter otherwise than as provided by this Part, or
- (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983* without having been referred under section 37 of the Act.

Schedule 2 Fees

(Clause 5)

Column 1	Column 2	
Item	Matter for which fee payable	
Item	Fee	
1	Lodgment of a general application in residential proceedings	\$38
2	Lodgment of a general application in strata proceedings	\$78
3	Lodgment of a general application in general consumer or commercial proceedings:	
	(a) if the amount claimed or in dispute is not more than \$10,000 or if no amount is claimed or in dispute, or	\$38
	(b) if the amount claimed or in dispute is more than \$10,000 but is not more than \$30,000, or	\$78
	(c) if the amount claimed or in dispute is more than \$30,000	\$202
4	Lodgment of a general application for decision under <i>Dividing Fences Act 1991</i>	\$61
5	Lodgment of a general application for decision under <i>Retail Leases Act 1994</i>	\$77
6	Lodgment of a general application or external appeal in other proceedings:	
	(a) if it is an appeal required to be determined by an Appeal Panel, or	\$317
	(b) if it is an application or appeal required to be determined in a Division by 2 or more Division members, or	\$161
	(c) in any other case	\$77
7	Lodgment of an administrative review application:	
	(a) if the application is required to be determined by 2 or more members, or	\$161
	(b) in any other case	\$77
8	Lodgment of an internal appeal	\$317
9	Lodgment of an application under clause 9 of this Regulation to set aside or vary decision of Tribunal determining proceedings	\$78
10	Issue of a summons (for production or to give evidence, or both)	\$42
11	Request for the production to Tribunal of documents held by court	\$55
12	Retrieval of any document or file from archives	\$74
13	Supply of a duplicate sound recording of proceedings (other than proceedings in the Consumer and Commercial Division of the Tribunal), per cassette tape or disc	\$47.90
14	Supply of a transcript—proceedings (other than proceedings in the Consumer and Commercial Division of the Tribunal) that are under 3 months old:	
	(a) per page, or	\$9.95
	(b) if less than 9 pages	\$81

Column 1		Column 2
Item	Matter for which fee payable	Fee
15	Supply of a transcript—proceedings (other than proceedings in the Consumer and Commercial Division of the Tribunal) that are at least 3 months old:	
	(a) per page, or	\$11.30
	(b) if less than 9 pages	\$99.50
16	Provision of a copy or certified copy of decision or written reasons	\$74

Notes.

- 1 For the fees payable in relation to recordings and transcripts in relation to proceedings allocated to the Consumer and Commercial Division of the Tribunal, see clause 5 (3) of this Regulation.
- 2 Clause 6 (3) of this Regulation provides that a party to proceedings is entitled to one free copy of the decision or written reasons for a decision of the Tribunal.
- 3 Clause 6 of this Regulation provides for circumstances in which no fee or a reduced may be payable.
- 4 Clause 5 (4) of this Regulation provides that the principal registrar may charge a fee not exceeding \$39 for any other service provided.

Schedule 3 NCAT Interim Rules 2014

Note. These rules apply with respect to the practice and procedure of the Tribunal until the first set of Tribunal rules made by the Rule Committee come into force—see rule 3 (1).

Part 1 Preliminary

1 Citation

These rules may be cited as the *NCAT Interim Rules 2014*.

2 Interpretation

(1) In these rules:

address for service—see rule 15.

applicable fee, in relation to a matter, means:

- (a) if a fee is prescribed by the regulations under the Act for the matter—the prescribed fee, or
- (b) if the regulations authorise the principal registrar to determine and charge the fee for the matter—the fee determined and charged by the principal registrar.

approved form, in relation to a document, means the form approved by the President or principal registrar from time to time.

DX address and **DX box** have the same meanings as in the *Uniform Civil Procedure Rules 2005*.

originating document means a document by means of which proceedings in the Tribunal are commenced by a party (including a notice of appeal).

Registry means:

- (a) an office of the principal registrar, or
- (b) such other place approved by the President or principal registrar for the lodgment of documents with the Tribunal.

reply means a reply to an originating document.

residential proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal arising under any of the following:

- (a) the *Boarding Houses Act 2012*,
- (b) the *Residential (Land Lease) Communities Act 2013*,
- (c) the *Residential Parks Act 1998*,
- (d) the *Residential Tenancies Act 2010*,
- (e) the *Retirement Villages Act 1999*.

the Act means the *Civil and Administrative Tribunal Act 2013*.

working day means a day that is not a Saturday, Sunday or public holiday.

- (2) A document is not **duly completed** for the purposes of these rules if it does not include, or is not accompanied by, a search or other document or information specified by the approved form for the document.
- (3) Notes included in these rules do not form part of these rules.

3 Application of rules

- (1) These rules apply with respect to the practice and procedure of the Tribunal until the first set of Tribunal rules made by the Rule Committee come into force.

- (2) These rules apply to proceedings in the Tribunal subject to any provisions of enabling legislation or a Division Schedule for a Division of the Tribunal that are applicable to the practice and procedure to be followed in proceedings of the kind concerned.
- (3) Nothing in these rules is intended to limit the application of the guiding principle referred to in section 36 of the Act when the Tribunal exercises a power given to it by these rules or interprets a provision of these rules.

Note. Section 36 (1) of the Act provides that the *guiding principle* for the Act and the procedural rules, in their application to proceedings in the Tribunal, is to facilitate the just, quick and cheap resolution of the real issues in the proceedings.

4 Dispensation from rules

The Tribunal, the President or a Division Head may dispense with compliance with any requirement of these rules, either before or after the occasion for compliance arises.

Part 2 Time

5 Reckoning of time

- (1) Any period of time fixed by these rules, or by any order or other decision of the Tribunal or a 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 rule, 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.

6 Fixing time period

If no time is fixed by the Act, enabling legislation or these rules for the doing of any thing in or in connection with any proceeding before the Tribunal, the Tribunal may fix the time within which the thing is to be done.

7 Applications for extensions of time

An application for an extension of time made under section 41 of the Act must be made in writing unless the Tribunal dispenses with that requirement.

Part 3 Electronic case management

8 Definitions

In this Part:

ECM system means an electronic case management system established for the Tribunal under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

9 Electronic lodging of documents

- (1) In any proceedings in which the ECM system is available for use, a document may be lodged on behalf of a party, by means of the ECM system, by any of the following:
 - (a) the party,
 - (b) a person who has been directed to lodge the document by the party.
- (2) When lodged by means of the ECM system, a document that is required to be signed by a person is taken:
 - (a) to have been duly signed, and
 - (b) to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000*,
if the person's name is printed where his or her signature would otherwise appear.
- (3) A document that is lodged by means of the ECM system is so lodged as soon as it is received and accepted by a registrar.
- (4) A registrar must accept a document that is lodged by means of the ECM system unless the registrar refuses to accept the document in accordance with any directions given under subrule (5).
Note. See also rule 21.
- (5) The President may give directions in relation to the acceptance of documents lodged by means of the ECM system, either generally or for particular proceedings.
- (6) Notice, and the date, of the lodging and acceptance of a document is to be given, by means of the ECM system, to the person by whom the document was lodged.

10 Electronic issuing of documents

A registrar may, by means of the ECM system, issue a document to any party who has agreed to use the ECM system for the proceedings.

11 Format of documents lodged or issued electronically

The President may, in the case of documents lodged with the Tribunal, or issued by the Tribunal, by means of the ECM system, approve the format in which such documents are to be lodged or issued.

Part 4 Service

12 Service, giving and lodgment of notices or documents

- (1) **Application of rule**
This rule applies for the purposes of each of the following:
 - (a) the Act and the statutory rules under the Act,
 - (b) the *Administrative Decisions Review Act 1997* and the regulations under that Act.
- (2) **Means for service or giving of notices and documents**
A notice or document may be served on or given to a person or body:
 - (a) by means of personal service, or
 - (b) by posting a copy of the notice or document, addressed to the person or body:
 - (i) to the person's or body's address for service, or

- (ii) if the person or body does not have an address for service, to the person's or body's business or residential address (or the business or residential address last known to the person or body serving the notice or document), or
- (c) by leaving a copy of the notice or document, addressed to the person or body:
 - (i) at the person's or body's address for service, or
 - (ii) if the person does not have an address for service, at the person's or body's business or residential address (or the business or residential address last known to the person or body serving the notice or document), or
- (d) in the case of a Government Department—by leaving a copy of the notice or document at, or by posting the notice or document to, any office of that Department addressed to the head of the Government Department, or
- (e) in the case of a person or body whose address for service includes a DX address in New South Wales—by leaving a copy of the notice or document, addressed to the person or body, in the DX box at that address or in another DX box for transmission to that DX box, or
- (f) in the case of a person or body that has consented to service by means of a fax sent to a fax number specified by the person or body—by faxing a copy of the notice or document, addressed to the person or body, to that fax number, or
- (g) in the case of a person or body that has consented to electronic service by means of an email address or mobile phone number specified by the person or body—by transmitting the notice or document in an electronic format, addressed to the person or body, to that address or number, or
- (h) in the case of service on a corporation—by serving a copy of the notice or document on the corporation in any manner in which service of such a notice or document may, by law, be served on the corporation, or
- (i) in such other manner as the Tribunal or a registrar may direct in a particular case.

(3) Service, giving and lodgment of documents with Tribunal

A notice or document may be served on, given to or lodged with the Tribunal:

- (a) by leaving it at the Registry, or
- (b) by sending it by post to the Registry, or
- (c) by such electronic means as the Tribunal has made available for use for the service, giving or lodgment of notices or documents with the Tribunal.

(4) When notice or document taken to be served, given or lodged

Unless the contrary is proved, the time at which a notice or document is taken to be served, given or lodged is:

- (a) in the case of a copy of a notice or document that is posted—at the end of the fourth working day after the date on which the notice or document was posted to the person, or
- (b) in the case of a copy of a notice or document that is left in a DX box in accordance with subrule (2) (e)—at the end of the second working day following the day on which the copy is so left, or
- (c) in the case of a copy of a notice or document that is faxed in accordance with subrule (2) (f)—at the end of the first working day following the day on which the copy is so faxed, or

- (d) in the case of a notice or document that is served electronically in accordance with subrule (2) (g):
 - (i) if the notice or document that is served has been filed in, or issued by, the Tribunal by means of an ECM system referred to in Part 3—at the time provided by clause 13 of Schedule 1 to the *Electronic Transactions Act 2000*, or
 - (ii) if the notice or document that is served has not been filed in, or issued by, the Tribunal by such means—at the time provided by section 13A of the *Electronic Transactions Act 2000*.

13 Proof of service of document

If a party to proceedings before the Tribunal is required to serve a document on another person by the Act or these rules, the Tribunal or a registrar may require the party to furnish the Tribunal with such proof of its service as the Tribunal or registrar may require.

14 Substituted and informal service generally

- (1) If a document that is required or permitted to be served on a person in connection with any proceedings before the Tribunal:
 - (a) cannot practicably be served on the person, or
 - (b) cannot practicably be served on the person in the manner provided by law,the Tribunal or a registrar may direct that, instead of service, such steps be taken as are specified by the Tribunal or registrar for the purpose of bringing the document to the notice of the person concerned.
- (2) The Tribunal or a registrar may direct that the document be taken to have been served on the person concerned on the happening of a specified event or on the expiry of a specified time.
- (3) If steps have been taken, otherwise than under a direction under this rule, for the purpose of bringing the document to the notice of the person concerned, the Tribunal or a registrar may direct that the document be taken to have been served on that person on a date specified by the Tribunal or registrar.

Part 5 Documentation

15 Address for service

- (1) An originating document or reply lodged with the Tribunal must contain an address for service in respect of the person or body lodging the document.
- (2) A person's or body's address for service is to be the address of a place in New South Wales (other than a DX address):
 - (a) at which documents in the proceedings may be left for the person or body during ordinary business hours, and
 - (b) to which documents in the proceedings may be posted for the person or body.
- (3) A person or body may include a DX address in New South Wales (along with an address of a place in New South Wales) as part of the person's or body's address for service.
- (4) A person or body may also consent to the electronic service of notices and documents in proceedings by means of an email address, fax number or mobile phone number specified by the person or body.

16 Stamping and lodgment of documents

If an originating document or reply is lodged with the Tribunal (or a summons is issued by the Tribunal):

- (a) the date of lodgment (or issue) must be recorded on the document (or summons), and
- (b) the document or summons may be sealed with the seal of the Tribunal.

17 Approved form for documents generally to be used

- (1) Subject to these rules, any document to be used in proceedings before the Tribunal is to be in or to the effect of the approved form.
- (2) The principal registrar may make any approved form available to any person on request.

18 Form of documents if no approved form

If there is no approved form for a document to be used in proceedings before the Tribunal, a party may use a form of the party's own devising, but only if it contains such information as may be required by a registrar.

19 Registrar may accept documents that are not in approved form

- (1) The Tribunal or a registrar may accept any application or other document for lodgment with the Tribunal even though it does not comply with the approved form if the Tribunal or registrar considers it appropriate to do so.
- (2) Before accepting any such application or other document, the Tribunal or a registrar may require the person or body on whose behalf the document is being lodged to give the Tribunal or registrar such further information as the Tribunal or registrar may require within such period as may be specified by the Tribunal or registrar.
- (3) A document accepted by the Tribunal or a registrar under this rule is taken to be duly lodged.

20 Tribunal or registrar may accept documents that are not duly completed

- (1) With the approval of the Tribunal or a registrar, a document that is not duly completed may be accepted for lodgment.
- (2) Before accepting a document that is not duly completed for lodgment, the Tribunal or registrar may require the person or body on whose behalf the document is being lodged to give an undertaking to the Tribunal that the document will be resubmitted in the proper form within such period as is specified by the Tribunal or registrar.

21 Rejection of incorrectly lodged documents

- (1) Without limiting rule 9, 19 or 20, the Tribunal or a registrar may reject a document that has been lodged with the Tribunal (whether in hard copy or by electronic means) if:
 - (a) the document is not in or to the effect of the approved form, has not been duly completed or does not comply with any other requirement of these rules in relation to the document, or
 - (b) the applicable fee (if any) for the lodgment of the document is not received by the Tribunal within 2 working days after the document is lodged.
- (2) The Tribunal or a registrar may dismiss any application or appeal that has been commenced by means of a document that is rejected under this rule.

- (3) The dismissal of an application or appeal under this rule does not prevent the applicant or appellant from re-commencing proceedings by lodging another application or appeal that complies with the requirements of these rules and any other applicable legislation.

Part 6 Commencement of proceedings

22 General applications

- (1) A general application must be:
 - (a) in or to the effect of the approved form, and
 - (b) duly completed, and
 - (c) lodged at the Registry, and
 - (d) accompanied by the applicable fee (if any) for the application.
- (2) A general application need not specify the Division to which the function of determining the application is allocated by the Act. However, if the appropriate Division is not specified or an incorrect Division is specified, a registrar may complete or alter the application form accordingly.
- (3) Unless the Tribunal grants an extension under section 41 of the Act, an application must be made:
 - (a) in the case where enabling legislation specifies the period within which the application is to be made—within the period specified, or
 - (b) in any other case—within 28 days from the day on which the applicant became entitled under the enabling legislation to make the application.
- (4) This rule does not apply to a referral to the Tribunal by the Ombudsman of a legal question for an advisory opinion under section 35C of the *Ombudsman Act 1974*.

23 Administrative review applications

- (1) An administrative review application must be:
 - (a) in or to the effect of the approved form, and
 - (b) duly completed, and
 - (c) lodged at the Registry, and
 - (d) accompanied by the applicable fee (if any) for the application.
- (2) An administrative review application need not specify the Division to which the function of determining the application is allocated by the Act. However, if the appropriate Division is not specified or an incorrect Division is specified, a registrar may complete or alter the application form accordingly.
- (3) Unless the Tribunal grants an extension under section 41 of the Act, an application must be made:
 - (a) in the case where enabling legislation specifies the period within which the application is to be made—within the period specified, or
 - (b) in any other case—by the end of the default application period.
- (4) The ***default application period*** for the purposes of subrule (3) (b) is:
 - (a) in the case where the applicant has duly applied for an internal review of the administratively reviewable decision under the *Administrative Decisions Review Act 1997*—the period of 28 days after the day on which the internal review is taken to have been finalised under section 53 (9) of that Act, or

- (b) in any other case—the period of 28 days after:
 - (i) if the applicant has requested reasons under section 49 of the *Administrative Decisions Review Act 1997* for the administratively reviewable decision—the day on which the applicant was either provided with a statement of reasons under section 49 of that Act or notified under section 50 of that Act of a refusal to provide reasons, or
 - (ii) if the applicant has not requested reasons under section 49 of that Act—the day on which the applicant was notified of the making of the administratively reviewable decision.

24 External and internal appeals

- (1) An external or internal appeal (including, where required, an application for leave to appeal) may be made by lodging a notice of appeal.
- (2) The notice of appeal must be:
 - (a) in or to the effect of the approved form, and
 - (b) duly completed, and
 - (c) lodged at the Registry, and
 - (d) accompanied by the applicable fee (if any) for the appeal.
- (3) A notice of appeal need not specify the Division of the Tribunal (if any) to which the function of determining the appeal is allocated by the Act. However, if the appropriate Division is not specified or an incorrect Division is specified, a registrar may complete or alter the notice form accordingly.
- (4) Unless the Tribunal grants an extension under section 41 of the Act, an external or internal appeal must be lodged:
 - (a) in the case where the enabling legislation specifies the period within which the appeal is to be made—within the period specified, or
 - (b) in the case of an internal appeal against a decision made in residential proceedings—within 14 days from the day on which the appellant was notified of the decision or given reasons for the decision (whichever is the later), or
 - (c) in any other case—within 28 days from the day on which the appellant was notified of the decision to be appealed or given reasons for the decision (whichever is the later).
- (5) An appellant who lodges a notice of appeal must serve on each respondent a sealed copy of the notice as soon as practicable after lodging the notice.

25 Reply to application or appeal

- (1) This rule applies to the following (a *relevant application or appeal*):
 - (a) a general application,
 - (b) an administrative review application,
 - (c) an external appeal,
 - (d) an internal appeal.
- (2) Subject to subrule (4), a respondent to a relevant application or appeal may lodge a reply to the application or appeal with the Tribunal setting out the respondent's response to the application or appeal.
- (3) A reply must be:
 - (a) in or to the effect of the approved form, and
 - (b) duly completed, and

- (c) lodged at the Registry, and
 - (d) accompanied by the applicable fee (if any) for the notice.
- (4) The Tribunal may direct a respondent to lodge a reply to a relevant application or appeal in such manner and within such period as it may direct.
- (5) Unless the Tribunal grants an extension under section 41 of the Act, a reply must be lodged:
- (a) in the case where the Tribunal has given a direction under subrule (4) as to the period within which the reply must be lodged—within the period directed, or
 - (b) in any other case—within 14 days from the day on which the respondent was notified of the relevant application or appeal.
- (6) A respondent who lodges a reply must serve on the applicant or appellant a copy of the reply before, at the same time as or as soon as practicable after lodging the reply.

Part 7 Parties to proceedings and representation

Division 1 Parties

26 Parties to proceedings for general decision or administrative review decision

The parties to proceedings for a general decision or administrative review decision are:

- (a) the applicant, and
- (b) if an order or other decision is sought from the Tribunal in respect of a person or body (other than the applicant)—the person or body in respect of whom the order or other decision is sought, and
- (c) if the Attorney General or another Minister intervenes in the proceedings under section 44 of the Act—the Attorney General or Minister, and
- (d) any other person who is made a party to the proceedings by the Tribunal under section 44 of the Act, and
- (e) any other person required to be joined or treated as a party to the proceedings by a Division Schedule for a Division of the Tribunal, enabling legislation or the procedural rules.

Note. In proceedings for an administrative review decision, the administrator who made (or is taken to have made) the administratively reviewable decision concerned would be the person or body referred to in paragraph (b).

27 Parties to external appeal

- (1) The parties to an external appeal are:
- (a) the appellant, and
 - (b) except as provided by subrule (2), the external decision-maker who made (or is taken to have made) the appealable external decision under appeal, and
 - (c) any person or body (other than the appellant or external decision-maker) who was a party to the proceedings before the external decision-maker, and
 - (d) if the Attorney General or another Minister intervenes in the proceedings under section 44 of the Act—the Attorney General or Minister, and
 - (e) any other person who is made a party to the proceedings by the Tribunal under section 44 of the Act, and

- (f) any other person required to be joined or treated as a party to the proceedings by a Division Schedule for a Division of the Tribunal, enabling legislation or the procedural rules.
 - (2) However, an external decision-maker who makes an appealable external decision cannot be made a party to an external appeal against the decision if:
 - (a) the appeal is a designated external appeal (within the meaning of section 27 of the Act), or
 - (b) the decision-maker made the decision as an Adjudicator under the *Community Land Management Act 1989* or the *Strata Schemes Management Act 1996*.
- Note.** The following are designated external appeals:
- (a) an external appeal under section 45 of the *Drug and Alcohol Treatment Act 2007* (which is an appeal against a decision of a Magistrate made under Part 4 of that Act),
 - (b) an external appeal under section 50 of the *NSW Trustee and Guardian Act 2009* (which is an appeal against estate management orders made by the Mental Health Review Tribunal).

28 Parties to internal appeal

The parties to an internal appeal are:

- (a) the appellant, and
- (b) any person or body (other than the appellant) who was a party to the proceedings before the Tribunal at first instance, and
- (c) if the Attorney General or another Minister intervenes in the proceedings under section 44 of the Act—the Attorney General or Minister, and
- (d) any other person who is made a party to the proceedings by the Tribunal under section 44 of the Act, and
- (e) any other person required to be joined or treated as a party to the proceedings by a Division Schedule for a Division of the Tribunal, enabling legislation or the procedural rules.

Note. The member or members constituting the Tribunal at first instance cannot be made parties to an internal appeal—see section 44 (3) of the Act.

29 Parties to proceedings for contravention of civil penalty provision of Act

The parties to proceedings on an application made under section 77 of the Act are:

- (a) the applicant, and
- (b) the person who is alleged to have contravened the civil penalty provision of the Act concerned, and
- (c) any other person who is made a party to the proceedings by the Tribunal under section 44 of the Act, and
- (d) any other person required to be joined or treated as a party to the proceedings by a Division Schedule for a Division of the Tribunal, enabling legislation or the procedural rules.

Division 2 Representation of parties

30 Application for leave to represent a party

- (1) An application by a person under section 45 of the Act for leave to represent a party to proceedings may be made orally or in writing at any stage in the proceedings.
- (2) In making an order granting leave to a person to represent a party to proceedings, the Tribunal may impose such conditions in relation to the representation as the Tribunal thinks fit.

31 Granting and revocation of leave for a person to represent party

- (1) In dealing with an application under section 45 of the Act for leave to be granted to a person (other than an Australian legal practitioner) to represent a party to proceedings, the Tribunal is to have regard to:
 - (a) such of the following circumstances as it considers are relevant to the proceedings:
 - (i) whether the proposed representative has sufficient knowledge of the issues in dispute to enable him or her to represent the applicant effectively before the Tribunal,
 - (ii) whether the proposed representative has the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings,
 - (iii) whether the proposed representative is vested with sufficient authority to bind the party, and
 - (b) any other circumstances that it considers relevant.
- (2) The Tribunal may revoke leave granted to a person to represent a party to proceedings only if the Tribunal is satisfied that:
 - (a) the party no longer consents to the person representing the party, or
 - (b) the person applied for leave to represent that party without the consent of the party, or
 - (c) the person does not have the qualities referred to in subrule (1) (a) (i) or (ii) to act as the party's representative, or
 - (d) the party is, or has become, incapable of instructing the representative, or
 - (e) any other grounds are present that the Tribunal considers sufficient to justify the revocation.

32 Costs of representation may be disclosed

Without limiting rule 30 (2), the Tribunal may, as a condition of an order granting leave to a person (including an Australian legal practitioner) to represent a party to proceedings, require the person to disclose the estimated cost of representation by the person.

Part 8 Conduct of proceedings

33 Issue of summons

- (1) An application by a party to proceedings for a summons under section 48 of the Act must be made in or to the effect of the approved form.
- (2) If a summons is issued, the summons (and any sealed copies of the summons required to be served under subrule (4)) 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 a registrar, or
 - (b) where the summons is issued on the application of a party—by or on behalf of that party.
- (3) The summons must be served on the person named in the summons at least 5 days (or within such other shorter or longer period as a registrar may direct) before the return date specified in the summons unless the person named in the summons has agreed to the later service of the summons.

Note. Rule 5 makes provision for the reckoning of time for the purposes of these rules.

- (4) 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 (5).
- (5) A sealed copy of the summons is not required to be served under subrule (4) on a party to proceedings if the party applied for the summons or is the person named in the summons.
- (6) A person who is summoned to attend and produce a document or thing is not required to attend the Tribunal if:
 - (a) the person delivers or sends the summons or a copy of it and the document or thing to a registrar at the address specified for the purpose in the summons, and
 - (b) the document or thing is received not less than 2 clear days before the date specified in the summons for attendance.
- (7) Unless a summons specifically requires the production of the original, the person summoned may produce a copy of any document required to be produced by the summons.
- (8) A copy of a document for the purposes of subrule (6) or (7) may be:
 - (a) a photocopy, or
 - (b) in any electronic form that the party who applied for the summons has indicated will be acceptable.

34 Ex parte proceedings in Consumer and Commercial Division

- (1) This rule applies to proceedings for the exercise of functions of the Tribunal that are allocated to the Consumer and Commercial Division of the Tribunal.
- (2) Where a hearing is held for proceedings to which this rule applies, the Tribunal may proceed to hear the proceedings in the absence of a party who has failed to attend the hearing if:
 - (a) the Tribunal is satisfied that notice of the hearing was duly served on the party, or
 - (b) the Tribunal, being satisfied that service of notice of the hearing on the party has been duly attempted or having given directions under rule 14 to bring it to the notice of the party, considers that justice requires that the matter be dealt with in the absence of the party.
- (3) If proceedings to which this rule applies are adjourned by the Tribunal in the absence of a party, a registrar is to give notice (or direct that notice be given) of the time and place of the adjourned hearing to the absent party.

35 Applications to reinstate dismissed proceedings for failure to appear

Unless the Tribunal grants an extension under section 41 of the Act, an application made to the Tribunal to reinstate proceedings that were dismissed under section 55 (1) (c) of the Act must be made within 7 days after the Tribunal dismissed the proceedings that are sought to be reinstated.

Part 9 Determination of proceedings

36 Matters that may be taken into account when exercising settlement powers

- (1) When deciding whether to make orders to give effect to a settlement reached by parties to proceedings, the Tribunal is to take into account the interests of any

vulnerable person (whether or not a party to the proceedings) if the Tribunal considers that:

- (a) the person may be directly affected by the orders because the person is a party to, or the subject of, the proceedings concerned, and
 - (b) it is appropriate to do so in the circumstances.
- (2) Nothing in this rule limits the matters to which the Tribunal may have regard when deciding whether to make orders to give effect to a settlement.
- (3) In this rule:
vulnerable person means:
- (a) a minor, or
 - (b) a person who is totally or partially incapable of representing himself or herself in proceedings before the Tribunal because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled.

37 Costs in Consumer and Commercial Division of the Tribunal

- (1) This rule applies to proceedings for the exercise of functions of the Tribunal that are allocated to the Consumer and Commercial Division of the Tribunal.
- (2) Despite section 60 of the Act, the Tribunal may award costs in proceedings to which this rule applies even in the absence of special circumstances warranting such an award if:
 - (a) the amount claimed or in dispute in the proceedings is more than \$10,000 but not more than \$30,000 and the Tribunal has made an order under clause 10 (2) of Schedule 4 to the Act in relation to the proceedings, or
 - (b) the amount claimed or in dispute in the proceedings is more than \$30,000.

38 Interest on judgment debt

- (1) This rule applies if a party to proceedings has made a successful civil claim against another party for the payment or recovery of any debt, demand or damages (whether liquidated or unliquidated).
- (2) Interest is payable on the outstanding balance for the time being of money adjudged by the Tribunal to be payable and which, being due, remains unpaid.
- (3) Such interest is payable at a rate equal to the rate for the time being prescribed for the purposes of section 101 of the *Civil Procedure Act 2005*.

39 Applications to set aside decision determining proceedings

An application for an order under clause 9 of the *Civil and Administrative Tribunal Regulation 2013* must be:

- (a) in or to the effect of the approved form, and
- (b) duly completed, and
- (c) lodged at the Registry, and
- (d) accompanied by the applicable fee (if any) for the application.

Part 10 Miscellaneous

40 Inspections of documents in Registry

- (1) A party to proceedings is, on payment of the applicable fee (if any), entitled to inspect documents in the Registry relating to the proceedings.

- (2) A person who is not a party to proceedings is, on payment of the applicable fee (if any), entitled to inspect public access documents in the Registry relating to proceedings in the Tribunal.
- (3) However, a person is not entitled to inspect a document in the Registry if:
- (a) a claim for privilege has been made with respect to the document but not decided by the Tribunal, or
 - (b) the Tribunal has decided that the document contains matter that is privileged, or
 - (c) the Tribunal has ordered that the whole or part of the document not be disclosed, or
 - (d) the disclosure of the whole or part of the document to the person is otherwise prohibited by or under the Act or any other legislation or law.
- Note.** See, in particular, Division 6 of Part 4 of the Act, which contains provisions concerning the disclosure of information for the purposes of the Act and also section 67 of the *Administrative Decisions Review Act 1997*.
- (4) The Tribunal may order that persons who would otherwise be prevented from inspecting a document because of subrule (3) be given copies of the document to inspect with the privileged or confidential material concerned deleted or removed.
- (5) A person may be given, on payment of the applicable fee (if any), a copy of a document that the person is entitled to inspect instead of allowing the inspection of the original document.
- (6) Nothing in this rule entitles any person to inspect any notes or working papers produced by or for members in relation to any proceedings.
- (7) In this rule:
- public access document** means any of the following:
- (a) an originating document or reply,
 - (b) a notice filed by a party to proceedings,
 - (c) a summons issued by the Tribunal,
 - (d) written submissions made by a party to proceedings,
 - (e) a transcript of proceedings held in public,
 - (f) a statement or affidavit admitted into evidence in proceedings held in public (including expert reports),
 - (g) a record of any decision given, and any direction given or order made, in proceedings (including in connection with case management and the listing of proceedings),
 - (h) a record of the reasons given for a decision,
 - (i) a record of the dates on which proceedings are heard or to be heard and a record of the name of each member who heard or is officially listed to hear proceedings.