



New South Wales

Civil and Administrative Tribunal Regulation 2022

under the

Civil and Administrative Tribunal Act 2013

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Civil and Administrative Tribunal Act 2013*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake, without substantive changes, the *Civil and Administrative Tribunal Regulation 2013*, which would otherwise be repealed by the *Subordinate Legislation Act 1989* on 1 September 2022.

This Regulation makes provision for the following—

- (a) the practice and procedure for resolution processes, including alternative dispute resolution,
- (b) the fees payable for services provided by the Civil and Administrative Tribunal (the *Tribunal*),
- (c) the allowances and expenses payable to witnesses in proceedings at the Tribunal,
- (d) other miscellaneous matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, 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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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Civil and Administrative Tribunal Regulation 2022*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation repeals and replaces the *Civil and Administrative Tribunal Regulation 2013*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this Regulation—

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

corporation has the same meaning as in the *Corporations Act 2001* of the Commonwealth, section 57A.

external appeal application means an application made to the Tribunal for an external appeal under the Act, Part 3.

fee unit, for Schedule 2—see Schedule 2, section 1.

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

internal appeal application means an application made to the Tribunal for an internal appeal under the Act, Part 3.

residential proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal arising under the following Acts—

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

set aside application means an application under section 9 to set aside or vary a decision of the Tribunal that determines proceedings.

strata proceedings means proceedings allocated to the Consumer and Commercial Division of the Tribunal arising under the following Acts—

- (a) the *Community Land Management Act 2021*,
- (b) the *Strata Schemes Management Act 2015*.

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

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Resolution processes—the Act, s 90(2)(f)

Schedule 1 contains provisions relating to certain resolution processes.

Part 2 Fees and witness allowances and expenses—the Act, ss 47, 48 and 90(2)(b)–(e)

5 Fees generally

- (1) The fee payable by a person to the principal registrar in relation to a matter listed in Schedule 2, Part 2, Column 1 is—
 - (a) the fee specified in Schedule 2, Part 2, Column 2, or
 - (b) if the person is a corporation and a fee is specified in relation to the matter—the fee specified in Schedule 2, Part 2, Column 3.
- (2) The fee payable by a person to the principal registrar in relation to the following matters is the fee payable for the lodgment of the relevant originating application—
 - (a) an application to reinstate dismissed proceedings for failure to appear,
 - (b) an application to renew proceedings in the Consumer and Commercial Division.
- (3) In relation to evidence given in, or proceedings before, 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) an audio or audio-visual recording of the evidence or proceedings.
- (4) The principal registrar may determine and charge fees, not exceeding the fee specified in Schedule 2, Part 2, for any other service provided, including for access to documents in the Registry of the Tribunal.
- (5) A fee is payable, in accordance with the conditions agreed by the principal registrar with the person paying the fee, before or at the time the service to which the fee relates is provided.

6 Circumstances where no fee or reduced fee is payable

- (1) Fees are not payable for the following—
 - (a) the lodgment of a general application under 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 Uniform Law (NSW)*,
 - (v) the *Legal Profession Uniform Law Application Act 2014*,
 - (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 administrative review application 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 List of the Occupational Division of the Tribunal.
- (2) The fee payable by an eligible pensioner for the lodgment of the following is a concession rate of 25% of the full fee—

- (a) an administrative review application,
 - (b) a general application,
 - (c) an internal appeal application,
 - (d) a set aside application,
 - (e) an external appeal application.
- (3) The concessional fee must be rounded to the nearest dollar and an amount of 50 cents must be rounded up.
- (4) A person who is or was a party to any proceedings is entitled to 1 free copy of—
- (a) a decision made by the Tribunal in respect of the proceedings, and
 - (b) written reasons given by the Tribunal in relation to the decision.
- (5) If the principal registrar considers that there are special reasons for doing so, the principal registrar may—
- (a) direct that a fee be waived wholly or in part, and that a part of the fee waived that has been paid be refunded, and
 - (b) postpone the time for payment of the whole or a part of a fee, subject to conditions the principal registrar thinks fit.
- (6) This section applies despite any other provision of this Part or Schedule 2.
- (7) In this section—
- eligible pensioner*** means—
- (a) a person who receives a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth, Chapter 2, or a service pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, Part III, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government, or
 - (b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as one of the following, 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 the card—
 - (i) the surviving spouse, including widow or widower, of a member of the Australian Defence Force or Peacekeeping Forces,
 - (ii) the unmarried mother of a deceased unmarried member of the Australian Defence Force or Peacekeeping Forces,
 - (iii) the widowed mother of a deceased unmarried member of the Australian Defence Force or Peacekeeping Forces, or
 - (c) a person who receives a special rate of pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, section 24, or
 - (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 relation to the education.

7 Allowances and expenses of witnesses

- (1) For the Act, section 47(1), 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.

Note— The scale of expenses published in Government Gazette No 57 of 2014, pp 2338 and 2339 was the applicable scale when this Regulation was made.

- (2) However, a person summoned by the Tribunal of its own motion is not entitled to allowances and expenses under subsection (1) in 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 List of the Occupational Division of the Tribunal.
- Note—** The Act, section 47(1) also excludes a public servant, when summoned in that capacity, from an entitlement to be paid witness allowances and expenses.
- (3) If a summons to attend and give evidence is issued on the application of a party to proceedings, the person summoned does not need to 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 subsection (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 subsection (2) is separate from and in addition to—
- (a) conduct money paid to the person summoned, or
 - (b) witness allowances or expenses payable to the person summoned.

Part 3 Miscellaneous

9 Additional power to set aside or vary decision determining proceedings—the Act, s 90(2)(a)

- (1) In addition to a 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 if—
- (a) all of the parties to the proceedings have consented to the making of the order to set aside or vary the decision, or
 - (b) 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.

Example— The Act, sections 45(3), 53(4), 63, 64(3) and 73(3) expressly confer powers to set aside or vary decisions of the Tribunal.

- (2) The Tribunal may make an order under this section of its own motion or on the application of a party.
- (3) Unless the Tribunal grants an extension under the Act, section 41, an application for an order under this section 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 section unless the Tribunal has—
- (a) given the parties an opportunity to make submissions about the proposed order, and
 - (b) taken any submissions into account.
- (5) A party may not make an application for an order under this section 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 section to set aside or vary a decision of the Tribunal if the party has previously made an application under this section to have the decision set aside or varied.
- (7) If the Tribunal sets aside a decision under this section, it may also set aside orders that it made consequent on the decision that has been set aside.
- Example—** An order for costs in the proceedings is a consequential order.
- (8) Proceedings for this section are prescribed for the Act, section 50(1)(d).
- Note—** A hearing is not required for proceedings that are prescribed for the Act, section 50(1)(d).
- (9) This section does not limit a power of the Tribunal to set aside, revoke or vary its interlocutory decisions or other decisions that do not operate to determine proceedings.

10 Representation by members of Guardian Ad Litem Panel

A person who is a member of the Guardian Ad Litem Panel is prescribed for the Act, section 45(6).

11 Repeal and savings

- (1) The *Civil and Administrative Tribunal Regulation 2013* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Civil and Administrative Tribunal Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Resolution processes

section 4

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 the Act, section 37.
- (2) However, nothing in this Schedule—
 - (a) requires the use of a resolution process referred to in this Schedule in proceedings, unless the Tribunal refers the parties to the process under the Act, section 37 in accordance with the applicable requirements of the Act and the procedural rules for the referral, or
 - (b) prevents or limits the use of resolution processes, whether or not they are referred to 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 the Act, section 37 has, in the exercise of the person's functions in that capacity, the same protection and immunity as a member has in the exercise of the member's functions as a member.
- (2) A statement or admission made before the Tribunal or a 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 the Act, section 37 is not admissible in the proceedings in which the referral was made, or in 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) Subsection (2) does not apply in relation to proceedings in which the parties have been referred for mediation under the Act, section 37.

Note— Part 2 makes special provision in relation 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 the Act, section 37.

4 Definitions

In this Part—

listed mediator means a person whose name appears on a list compiled under this Schedule, section 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 this Part.
- (2) Different lists may be compiled for different types of matters or to take account of other factors.
- (3) A person may be included in a list under this section 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 a list compiled under this section 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 must 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 subsection (1)(b) may be—
 - (a) a listed mediator, or
 - (b) a registrar, or
 - (c) a member, or
 - (d) another person that the Tribunal considers to be qualified to act as the mediator.
- (3) Without limiting subsections (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 payable by the parties to the proceedings in proportions agreed among themselves or, failing agreement, in the way ordered by the Tribunal.
- (2) In this section—
costs of mediation includes the costs payable to the mediator.

9 Agreements and arrangements arising from mediation sessions

- (1) Without limiting the Act, section 59, the Tribunal may make orders to give effect to an agreement or arrangement arising out of a mediation session.
- (2) On an application for an order under this section, a party may call evidence, including evidence from the mediator and another person engaged in the mediation, as to—
 - (a) the fact that an agreement or arrangement has been reached, and
 - (b) the substance of the agreement or arrangement.
- (3) This Part does not affect the enforceability of another 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) The same privilege in relation to defamation as exists in relation to judicial proceedings, and a document produced in judicial proceedings, exists in relation 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.
- (2) The privilege conferred by subsection (1) 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 this Schedule, section 11.
- (3) Subject to this Schedule, section 9(2)—
 - (a) evidence of a statement or admission made in a mediation session is not admissible in legal proceedings before a 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 a copy of the document, is not admissible in evidence in legal proceedings before a court or other body.
- (4) Subsection (3) does not apply in relation to evidence or a document—
 - (a) if the persons in attendance at, or identified during, the mediation session and, for a document, all persons specified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings commenced in relation to an act or omission in connection with which a disclosure has been made as referred to in this Schedule, section 11(1)(c).
- (5) In this section—

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.

11 Confidentiality

- (1) A mediator may disclose information obtained in connection with the administration or execution of this Part only in 1 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 section 9(2),
 - (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
 - (d) if the disclosure is reasonably required for the purpose of referring a party or parties to a mediation session to a 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 the 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 subsection (1) permits a mediator to refuse to comply with a requirement of a kind referred to in subsection (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 other than under this Part

This Part does not prevent—

- (a) the parties to proceedings from agreeing to and arranging for mediation of a matter other 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 the *Civil and Administrative Tribunal Act 2013*, section 37.

Schedule 2 Fees

section 5

Part 1 Adjustment of fees for inflation

1 Calculation of fee units

- (1) For this Schedule, a *fee unit* is—
 - (a) in the financial year 2022–2023—\$103.05, and
 - (b) in each subsequent financial year—the amount calculated as follows—
$$\$103.05 \times \frac{A}{B}$$
where—

A is the CPI number for the December quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the December quarter of 2021.
- (2) The amount of a fee unit must be rounded to the nearest cent and an amount of 0.5 cent must be rounded down.
- (3) The amount of a fee must be rounded to the nearest dollar and an amount of 50 cents must be rounded down.
- (4) If the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, the amount for the previous financial year applies instead.
- (5) As soon as practicable after the CPI number for the December quarter is first published by the Australian Bureau of Statistics, the Secretary of the Department of Communities and Justice must—
 - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of the amount can be published on the NSW legislation website, and
 - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this section.
- (6) This section operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this section.
- (7) In this section—

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

Part 2 Fees payable

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee in fee units	Corporation fee
1	Lodgment of a general application in residential proceedings	0.52	Double the standard fee
2	Lodgment of a general application in strata proceedings, unless otherwise specified in this Schedule—		
	(a) if the application includes an application for an interim order under the <i>Strata Schemes Management Act 2015</i> , section 231	2.16	Double the standard fee
	(b) otherwise	1.08	Double the standard fee
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	0.52	Double the standard fee
	(b) if the amount claimed or in dispute is more than \$10,000 but not more than \$30,000	1.08	Double the standard fee
	(c) if the amount claimed or in dispute is more than \$30,000	2.79	Double the standard fee
4	Lodgment of a general application for a decision under the <i>Retail Leases Act 1994</i>	1.07	Double the standard fee
5	Lodgment of a general application or external appeal in other proceedings—		
	(a) for an appeal required to be determined by an Appeal Panel	4.38	Double the standard fee
	(b) for an application or appeal required to be determined in a Division by 2 or more Division members	2.23	Double the standard fee
	(c) otherwise	1.07	Double the standard fee
6	Lodgment of an administrative review application—		
	(a) for an application required to be determined by 2 or more members	2.23	Double the standard fee
	(b) otherwise	1.07	Double the standard fee
7	Lodgment of an internal appeal	4.38	Double the standard fee
8	Lodgment of a set aside application	1.08	Double the standard fee
9	Lodgment of a general application under the <i>Community Land Management Act 2021</i> for an order under that Act, Part 11, Division 4 for settlement of a dispute or complaint—		

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee in fee units	Corporation fee
	(a) if the application includes an application for an interim order under that Act, section 192	2.16	Double the standard fee
	(b) otherwise	1.08	Double the standard fee
10	Issue of a summons for production or to give evidence, or both	0.48	—
11	Request for production to the Tribunal of documents held by a court	0.55	—
12	Retrieval of a document or file from archives	0.85	—
13	Provision of copy or certified copy of decision or written reasons	0.85	—
14	Other services, including access to documents in the registry of the Tribunal, determined by the principal registrar	0.45	—
