

Passed by both Houses



New South Wales

# Civil and Administrative Tribunal Amendment Bill 2023

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2023*



New South Wales

## **Civil and Administrative Tribunal Amendment Bill 2023**

Act No \_\_\_\_\_, 2023

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An Act to make miscellaneous amendments to the *Civil and Administrative Tribunal Act 2013* following a statutory review.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Civil and Administrative Tribunal Amendment Act 2023*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## **Schedule 1      Amendment of Civil and Administrative Tribunal Act 2013 No 2**

**[1] Section 17 Division Schedule for a Division of Tribunal**

Insert after section 17(2)(c)—

- (c1) the reallocation from the Division to another Division of functions of the Tribunal in relation to enabling legislation,

**[2] Section 27 Constitution of Tribunal**

Omit “President may give directions”.

Insert instead “President may give or revoke a direction”.

**[3] Section 38 Procedure of Tribunal generally**

Insert “, as far as practicable,” after “ensure” in section 38(6)(a).

**[4] Section 52 Reconstitution of Tribunal during proceedings**

Insert at the end of section 52(1)(c)—

, or

- (d) is directed by the President not to take part in the proceedings.

**[5] Section 52(2A) and (2B)**

Insert after section 52(2)—

(2A) The President must not make a direction under subsection (1)(d) in relation to a member unless the President—

- (a) has consulted the member, if it is reasonably practicable to do so, and  
(b) is satisfied that making the direction is—  
    (i) in the interests of justice, and  
    (ii) in the interests of achieving the expeditious and efficient conduct of the proceedings, and  
    (iii) otherwise appropriate having regard to the objects of this Act.

(2B) The President may give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced.

**[6] Section 52(3)**

Omit “so reconstituted”. Insert instead “reconstituted under this section”.

**[7] Section 62 Tribunal to give notice of decision and provide written reasons on request**

Insert after section 62(2)—

(2A) Subsection (2) does not apply to the following decisions of the Tribunal—

- (a) a decision to make an order dispensing with a hearing of the Tribunal under section 50(2),  
(b) a decision to grant an adjournment,  
(c) a decision under section 60 not to award costs, except where a party has argued there are special circumstances warranting an award of costs,  
(d) a decision to award costs in proceedings of either of the following kinds—

- (i) proceedings for the exercise of a function of the Consumer and Commercial Division of the Tribunal,
- (ii) an internal appeal against a decision of the Consumer and Commercial Division of the Tribunal,
- (e) if the parties have consented to the making of an order—a decision to make the order,
- (f) other minor procedural decisions that do not have a final or determinative impact on the rights of a party.

**[8] Section 63 Power to correct errors in decisions of Tribunal**

Insert at the end of section 63(3)(d)—

, or

- (e) there is an inconsistency between the name of a person stated in the text of the notice or statement and the name stated on the person's birth certificate or other form of identification.

**[9] Section 64 Tribunal may restrict disclosures concerning proceedings**

Insert “, including a sound recording or transcript,” after “report” in section 64(1)(b).

**[10] Section 65 Publication of names or identification of persons involved in certain proceedings**

Insert “, including a sound recording or transcript,” after “report” in section 65(3).

**[11] Section 65(3A)**

Insert after section 65(3)—

- (3A) A report, including a sound recording or transcript, of proceedings authorised by the Tribunal to be provided to a party to the proceedings for the party's use only is not an official report of the proceedings for subsection (3).

**[12] Section 73 Contempt of Tribunal**

Insert after section 73(2)—

- (2A) Without limiting subsection (2), a person is guilty of contempt of the Tribunal if the person fails, without reasonable excuse, to comply with a summons issued for the purposes of this Act.

**[13] Schedule 3 Administrative and Equal Opportunity Division**

Insert after clause 3(2)—

- (3) The President may, if the President considers it appropriate, reallocate a function of the Division allocated under subclause (1)(b) to another Division of the Tribunal.

**[14] Schedule 5 Occupational Division**

Insert in alphabetical order in clause 4(1)—

*Legal Profession Uniform Law Application Act 2014*

**[15] Schedule 5, clause 18, heading**

Omit the heading. Insert instead—

**18 Division functions under legal profession legislation**

**[16] Schedule 5, clause 18(1)**

Omit “a hearing into a complaint for the purposes of the *Legal Profession Uniform Law (NSW)*”.

Insert instead “proceedings initiated under the *Legal Profession Uniform Law (NSW)*, section 300 in relation to a complaint”.

**[17] Schedule 5, clause 18(2)**

Omit the subclause. Insert instead—

- (2) The Tribunal, when exercising other Division functions for the purposes of the *Legal Profession Uniform Law Application Act 2014* or the *Legal Profession Uniform Law (NSW)*, including making ancillary or interlocutory decisions of the Tribunal, must be constituted by 1 or more Division members, at least 1 of whom has a judicial qualification or a professional qualification.

**[18] Schedule 5, clause 29(1)(a)(i)**

Omit “section 198”. Insert instead “section 204”.

**[19] Schedule 5, clause 29(1)(a)(ii)**

Omit “section 199”. Insert instead “section 205”.

**[20] Schedule 6 Guardianship Division**

Insert after clause 4(2)—

- (2A) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members when exercising its substantive Division functions for the purposes of determining an application under the *Guardianship Act 1987*, section 46A if—
- (a) the application is made during the exercise of substantive Division functions for the purposes of a provision referred to in subclause (2)(a)–(c) in relation to the person who is the subject of the application, or
- (b) the application is urgent.
- (2B) For subclause (2A), an application is *urgent* if the Tribunal considers a delay caused by the operation of subclause (1) would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application.
- (2C) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members in exercising its substantive Division functions for the purposes of clause 10.

**[21] Schedule 6, clause 5(1)**

Omit “for the purposes of the *Guardianship Act 1987*”.

**[22] Schedule 6, clause 5(1)**

Omit “section 4 of that Act”. Insert instead “the *Guardianship Act 1987*, section 4”.

**[23] Schedule 6, clause 6A**

Insert after clause 6—

**6A Tribunal may dispense with notice of hearing**

The Tribunal may dispense with a requirement to serve notice of a hearing under the *Guardianship Act 1987*, section 10 or 25I if the Tribunal considers compliance with the requirement would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application to which the hearing relates.