

# Civil and Administrative Tribunal Regulation 2013

[2013-718]



New South Wales

## Status Information

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### Authorisation

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## Contents

<b>Part 1 Preliminary</b> .....	3
1 Name of Regulation .....	3
2 Commencement .....	3
3 Definitions .....	3
<b>Part 2 Fees and witness allowances and expenses</b> .....	3
4 Definitions .....	3
5 Fees generally .....	4
6 Circumstances where no fee or reduced fee is payable .....	5
7 Allowances and expenses of witnesses .....	6
8 Costs and expenses of compliance.....	6
<b>Part 3 Miscellaneous</b> .....	7
9 Additional power to set aside or vary decision determining proceedings.....	7
10 Representation by members of Guardian Ad Litem Panel.....	8
11 (Repealed) .....	8
<b>Schedule 1 Resolution processes</b> .....	9
<b>Schedule 2 Fees</b> .....	13
<b>Schedule 3 (Repealed)</b> .....	15

# Civil and Administrative Tribunal Regulation 2013



New South Wales

## 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 (Repealed)**



## **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)

	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee</b>
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 <a href="#">Dividing Fences Act 1991</a>	\$61
5	Lodgment of a general application for decision under <a href="#">Retail Leases Act 1994</a>	\$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
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 (Repealed)**