

Civil and Administrative Tribunal Rules 2014

[2014-26]



New South Wales

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Civil and Administrative Tribunal Rules 2014



New South Wales

Part 1 Preliminary

1 Name of rules

These rules are the *Civil and Administrative Tribunal Rules 2014*.

2 Commencement

These rules commence on the day on which they are published on the NSW legislation website.

3 Interpretation

(1) In these rules—

address for service—see rule 16.

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.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of these rules.

- (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.

4 Application of rules

- (1) These rules replace the *NCAT Interim Rules 2014* set out in the former Schedule 3 to the *Civil and Administrative Tribunal Regulation 2013*.

Note—

The *NCAT Interim Rules 2014* were repealed by the former clause 11 of the *Civil and Administrative Tribunal Regulation 2013* on the day on which these rules came into force.

- (2) Any act, matter or thing that, immediately before the repeal of the *NCAT Interim Rules 2014*, had effect under those Rules continues to have effect under these rules.
- (3) 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.
- (4) 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.

5 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

6 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.

7 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.

8 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

9 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*.

10 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 22.

- (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.

11 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.

12 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

13 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 any other means, including 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 seventh 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*.

14 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.

15 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

16 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.

17 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.

18 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.

19 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.

20 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.

21 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.

22 Rejection of incorrectly lodged documents

- (1) Without limiting rule 10, 20 or 21, 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 has not been fully paid.

(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

23 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 of the Tribunal 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](#).

24 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 of the Tribunal 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
 - (a1) in the case of an administrative review application under section 55 of the [Privacy and Personal Information Protection Act 1998](#)—the period of 28 days after—
 - (i) if an internal review under section 53 of that Act is completed within 60 days from the day on which the application for the internal review was received by the public sector agency concerned—the day on which the applicant was notified of the result of the internal review, or
 - (ii) if an internal review under section 53 of that Act is not completed within that 60-day period—the day on which the 60-day period expires or the day on which the applicant was notified of the result of the internal review (whichever is the later), 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.

25 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).
- (4A) For the purposes of subrule (4), the day on which reasons are given is the day on which reasons are first given, whether orally or in writing.
- (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.

26 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

27 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).

28 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).

29 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.

30 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

31 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.

32 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.

33 Costs of representation may be disclosed

Without limiting rule 31(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

34 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 6 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.

35 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 15 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.

36 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.

36A Hearings not required in certain circumstances

Proceedings for an interlocutory or ancillary decision are prescribed for the purposes of section 50(1)(d) of the Act if—

(a) the parties consent to the making of the decision, or

(b) in the case of an order made under section 43(3) of the Act—the Tribunal determines, on application by a party to proceedings or on its own motion, that it is not appropriate to hold a hearing due to the urgency of the matter.

Note—

Section 50(1)(d) of the Act enables the Tribunal rules to prescribe circumstances in which hearings are not

required for proceedings in the Tribunal.

Part 9 Determination of proceedings

37 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.

38 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.

38A Costs in internal appeals

- (1) This rule applies to an internal appeal lodged on or after 1 January 2016 if the provisions that applied to the determination of costs in the proceedings of the Tribunal at first instance (the **first instance costs provisions**) differed from those set out in

section 60 of the Act because of the operation of—

- (a) enabling legislation, or
- (b) the Division Schedule for the Division of the Tribunal concerned, or
- (c) the procedural rules.

- (2) Despite section 60 of the Act, the Appeal Panel for an internal appeal to which this rule applies must apply the first instance costs provisions when deciding whether to award costs in relation to the internal appeal.

39 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](#).

40 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 Functions of registrars

41 Registrars may make certain interlocutory decisions of Tribunal

- (1) A registrar may, at the direction of the President or a Division Head, make any of the following interlocutory decisions of the Tribunal on behalf of the Tribunal—
 - (a) a decision under section 41 of the Act concerning the extension of the period of time for the doing of a thing under legislation in connection with proceedings,
 - (b) a decision under section 45 of the Act concerning the granting or revocation of leave for a person to represent a party to proceedings,

- (c) a decision under section 45(4)(a) or (b) of the Act concerning the appointment of a person to act as guardian ad litem for a party, or represent a party, in proceedings,
- (d) a decision under section 45(4)(c) of the Act concerning the making of an order for a party to be separately represented in proceedings,
- (e) a decision under section 55(1)(a) or (d) of the Act concerning the dismissal of proceedings,
- (f) a decision under section 64(1)(d) of the Act concerning the making of an order prohibiting or restricting the disclosure of evidence or documents in proceedings,
- (g) a decision under clause 10 of Schedule 6 (Guardianship Division) to the Act concerning the granting of consent for the withdrawal of an application in proceedings,
- (h) a decision concerning the setting aside of a summons or excusing compliance with a summons in connection with proceedings,
- (i) a decision concerning the granting of access to documents or things produced in compliance with a summons in proceedings.

Note—

See also clause 8 (Certain guardianship functions may be exercised by registrar) of Schedule 6 to the Act.

- (1A) Proceedings for a decision by a registrar under subrule (1) are prescribed for the purposes of section 50(1)(d) of the Act.

Note—

Section 50(1)(d) of the Act enables the Tribunal rules to prescribe circumstances in which hearings are not required for proceedings in the Tribunal.

- (2) The President or a Division Head may direct a registrar to refer the making of such a decision in a particular matter to the Tribunal. The registrar must comply with such a direction.
- (3) A registrar may refer a particular matter to the Tribunal if the registrar considers it would be more appropriate for the Tribunal to deal with the matter.
- (4) A decision of the Tribunal made by a registrar under this rule is declared to be internally appellable for the purposes of section 32 of the Act if the decision would have been an internally appellable decision for the purposes of the Act had it been made by the Tribunal rather than the registrar.

Note—

Section 32(6) of the Act provides that if a decision of a registrar is an internally appealable decision, the provisions of the Act relating to the making and determination of an internal appeal are taken to apply as

if—

- (a) any reference to the Tribunal at first instance (however expressed) included a reference to a registrar, and
- (b) any requirement concerning the granting of leave to appeal against particular kinds of decisions of the Tribunal or on particular grounds extended to decisions of the same kind made by a registrar or grounds of the same kind.

Section 80(2) of the Act requires the leave of the Appeal Panel for an internal appeal against an interlocutory decision of the Tribunal at first instance.

Part 11 Miscellaneous

42 Inspections of documents in Registry

- (1) Subject to the Act and this rule, a party to proceedings is, on payment of the applicable fee (if any), entitled to inspect documents in the Registry relating to the proceedings.

Note—

This rule also has effect subject to any relevant enabling legislation—see rule 4(3).

- (2) Subject to the Act and this rule, a registrar may, on payment of the applicable fee (if any), permit a person who is not a party to proceedings in the Tribunal to inspect public access documents in the Registry relating to proceedings in the Tribunal that are finally determined.
- (3) It is sufficient compliance with subrule (1) or (2) if the party or person is given, on payment of the applicable fee (if any), a copy of the document instead of access to the original document.
- (4) A registrar may impose such conditions as the registrar considers appropriate in relation to the granting of access under this rule to a public access document (or a copy of such a document) by a person who is not a party to proceedings in the Tribunal.
- (5) There is no entitlement under this rule to give or be given access to a document in the Registry (or a copy of such a document) 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, or

- (e) the document is or includes a note or working paper produced by or for a member in relation to any proceedings.

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](#).

- (6) A registrar may permit a person who would otherwise have no entitlement to be given access to a document (or a copy of a document) because of subrule (5) to inspect (or be given a copy of) parts of the document that do not contain or include the privileged material or other material which may not to be disclosed.
- (7) For the purposes of this rule, proceedings in the Tribunal are **finally determined** if—
 - (a) the Tribunal has completed all the processes necessary to decide the substantial merits of the proceedings (including, where required, the giving of reasons for the decision and the determination of costs), and
 - (b) no further internal appeal or appeal to a court in respect of the proceedings is available because—
 - (i) legislation does not provide for such an appeal against decisions in the proceedings, or
 - (ii) the period for lodging such an appeal or an application for leave to appeal in respect of the proceedings has expired (ignoring any period that may be available by way of extension of time to appeal or seek leave to appeal), or
 - (iii) an appeal lodged in respect of the proceedings has been determined.
- (8) In this rule—

public access document means any of the following—

 - (a) an originating document or reply,
 - (b) a statement, affidavit or document admitted into evidence in proceedings held in public,
 - (c) a transcript (if available) of proceedings held in public,
 - (d) a record (other than a sound recording) of any order made or other decision given in proceedings,
 - (e) a record of the reasons given for a decision made in proceedings.