

# Civil and Administrative Tribunal Amendment Act 2013 No 94

[2013-94]



New South Wales

## Status Information

### Currency of version

Repealed version for 21 November 2013 to 1 January 2014 (accessed 17 July 2024 at 21:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.1.2014.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 January 2014

# Civil and Administrative Tribunal Amendment Act 2013 No 94



New South Wales

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# Civil and Administrative Tribunal Amendment Act 2013 No 94



New South Wales

An Act to amend the *Civil and Administrative Tribunal Act 2013* to make further provision with respect to the constitution and functions of the Tribunal and to rename and make related amendments to the *Administrative Decisions Tribunal Act 1997*; and for related purposes.

## 1 Name of Act

This Act is the *Civil and Administrative Tribunal Amendment Act 2013*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 2 commences on the establishment day within the meaning of the *Civil and Administrative Tribunal Act 2013*.

## Schedule 1 (Repealed)

## Schedule 2 Repeal and amendment of certain legislation relating to Administrative Decisions Tribunal

### 2.1 Administrative Decisions Legislation Amendment Act 1997 No 77

Repeal the Act.

### 2.2 Administrative Decisions Tribunal Act 1997 No 76

#### [1] Long title

Omit “to establish an Administrative Decisions Tribunal and provide for its functions”.

Insert instead “to provide for the administrative review by the Civil and Administrative Tribunal of certain decisions of administrators”.

**[2] Section 1 Name of Act**

Omit “*Administrative Decisions Tribunal Act 1997*”.

Insert instead “*Administrative Decisions Review Act 1997*”.

**[3] Section 3**

Omit the section. Insert instead:

**3 Objects of Act**

The objects of this Act are as follows:

- (a) to provide a preliminary process for the internal review of administratively reviewable decisions before the administrative review of such decisions by the Tribunal under this Act,
- (b) to require administrators making administratively reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for decisions of administrators on request,
- (c) to foster an atmosphere in which administrative review by the Tribunal is viewed positively as a means of enhancing the delivery of services and programs,
- (d) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

**[4] Section 4 Definitions**

Omit section 4 (1). Insert instead:

(1) In this Act:

***administrative review jurisdiction*** of the Tribunal—see section 9.

***administratively reviewable decision***—see section 7.

***administrator***—see section 8.

***decision***—see section 6.

***enabling legislation*** means legislation (other than this Act or any statutory rules made under this Act) that:

- (a) provides for applications to be made to the Tribunal with respect to a specified matter or class of matters, or
- (b) otherwise enables the Tribunal to exercise functions with respect to a specified

matter or class of matters.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**interested person** means a person who is entitled under enabling legislation to make an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision.

**internal review** means an internal review conducted under section 53.

**legislation** means an Act or a statutory rule.

**lodge** a document includes file a document.

**President** means the President of the Tribunal.

**procedural rules** has the same meaning as in the [Civil and Administrative Tribunal Act 2013](#).

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

**[5] Section 4 (2) and (3)**

Omit “an enactment” and “the enactment” wherever occurring.

Insert instead “enabling legislation” and “the enabling legislation”, respectively.

**[6] Section 4 (3)**

Omit “a reviewable decision or a decision that is subject to an external appeal”.

Insert instead “an administratively reviewable decision”.

**[7] Section 4 (4)**

Insert after section 4 (3):

(4) Notes included in this Act do not form part of this Act.

**[8] Section 5 What is an enactment?**

Omit the section.

**[9] Section 6 Meaning of “decision”**

Omit “an enactment” and “the enactment” wherever occurring.

Insert instead “enabling legislation” and “the enabling legislation”, respectively.

**[10] Sections 7-10**

Omit the sections.

**[11] Chapter 2**

Omit Chapters 2-4. Insert instead:

## **Chapter 2 Administrative review jurisdiction of Tribunal**

### **7 Meaning of “administratively reviewable decision”**

- (1) An **administratively reviewable decision** is a decision of an administrator over which the Tribunal has administrative review jurisdiction.
- (2) For the avoidance of doubt (and without limiting subsection (1) or section 6):
  - (a) the conduct of an administrator (or a refusal by an administrator to engage in conduct) is an administratively reviewable decision if enabling legislation identifies that conduct or refusal as conduct or refusal over which the Tribunal has administrative review jurisdiction, and
  - (b) in its application to any such conduct or refusal by an administrator, any reference in this Act (however expressed) to an administrator making an administratively reviewable decision includes a reference to an administrator engaging or refusing to engage in the conduct.

**Note—**

The jurisdiction conferred on the Tribunal by section 55 of the [Privacy and Personal Information Protection Act 1998](#) is an example of administrative review jurisdiction of the Tribunal over conduct.

### **8 Meaning of “administrator”**

- (1) An **administrator**, in relation to an administratively reviewable decision, is the person or body that makes (or is taken to have made) the decision under enabling legislation.

**Note—**

There are a number of circumstances in which a person or body is taken to have made a decision. See, for example, subsection (2) and sections 6 (2)–(5) and 9 (3) and (4).

- (2) The person or body specified by enabling legislation as a person or body whose decisions are administratively reviewable decisions is taken to be the only administrator in relation to the making of an administratively reviewable decision even if some other person or body also had a role in the making of the decision.

## 9 When administrative review jurisdiction is conferred

- (1) The Tribunal has **administrative review jurisdiction** over a decision (or class of decisions) of an administrator if enabling legislation provides that applications may be made to the Tribunal for an administrative review under this Act of any such decision (or class of decisions) made by the administrator:
  - (a) in the exercise of functions conferred or imposed by or under the legislation, or
  - (b) in the exercise of any other functions of the administrator identified by the legislation.
- (2) If enabling legislation makes provision for applications to be made to the Tribunal in respect of an administratively reviewable decision subject to certain conditions, the Tribunal has jurisdiction under the enabling legislation only if those conditions are satisfied.
- (3) A provision of enabling legislation that provides for a decision of an administrator to be administratively reviewable by the Tribunal under this Act extends to the following:
  - (a) a decision made by a person to whom the function of making the decision has been delegated,
  - (b) if the provision specifies the administrator by reference to the holding of a particular office or appointment—a decision by any person for the time being acting in, or performing any of the duties of, the office or appointment,
  - (c) a decision made by any other person authorised to exercise the function of making the decision.
- (4) If an administrator makes an administratively reviewable decision by reason of holding or performing the duties of an office or appointment and then ceases to hold or perform the duties of the office or appointment, this Act has effect as if the decision had been made by:
  - (a) the person for the time being holding or performing the duties of that office or appointment, or
  - (b) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the President (or another person authorised by the President) specifies.
- (5) Nothing in this section permits administrative review jurisdiction to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by another Act.

**[12] Chapter 5, heading**

Omit the heading. Insert instead:

Chapter 3 **Process for administrative reviews under this Act**

**[13] Chapter 5, Part 1**

Omit the Part.

**[14] Chapter 5, Parts 2 and 3**

Omit each term or expression specified in Column 1 of the following Table wherever occurring (including in definitions, headings and notes) and regardless of capitalisation.

Insert instead the term or expression specified in Column 2 opposite the term or expression specified in Column 1 with capitalisation that corresponds to that of the omitted term or expression:

**Table**

<b>Column 1</b>	<b>Column 2</b>
reviewable decisions	administratively reviewable decisions
a reviewable decision	an administratively reviewable decision
any other reference to reviewable decision	administratively reviewable decision

**[15] Section 48 Notice of decision and review rights to be given by administrators**

Omit “an enactment” from section 48 (2) (b) (iii). Insert instead “legislation”.

**[16] Section 53 Internal reviews**

Omit “relevant enactment” from section 53 (5A). Insert instead “relevant legislation”.

**[17] Section 53 (9), note**

Omit “a review”. Insert instead “an administrative review under this Act”.

**[18] Chapter 5, Part 3, Division 1, heading**

Omit “**review**”. Insert instead “**administrative review**”.

**[19] Section 55**

Omit sections 55–57. Insert instead:

**55 Making of applications**

- (1) An application for an administrative review under this Act of an administratively reviewable decision may only be made by an interested person.



- (2) Subject to enabling legislation, an application is to be made in the time and manner prescribed by the procedural rules.

**Note—**

The fees payable for applications are also prescribed by the regulations under the *Civil and Administrative Tribunal Act 2013*.

- (3) If the interested person was entitled to seek an internal review of the administratively reviewable decision, an application may not be made unless the person has duly applied for such an internal review and the review is taken to have been finalised under section 53 (9).
- (4) However, the Tribunal may deal with an application for the administrative review of an administratively reviewable decision even though the applicant has not duly applied for an internal review to which the applicant was entitled if the Tribunal is satisfied that:
- (a) the applicant made a late application for the internal review in circumstances where the person dealing with the application unreasonably refused to consider the application and the application to the Tribunal was made within a reasonable time following the administratively reviewable decision of the administrator concerned, or
  - (b) it is necessary for the Tribunal to deal with the application in order to protect the applicant's interests and the application to the Tribunal was made within a reasonable time following the administratively reviewable decision of the administrator concerned.
- (5) In determining whether a late application for internal review was unreasonably refused or whether an application to the Tribunal was made within a reasonable time for the purposes of subsection (4), the Tribunal is to have regard to:
- (a) the time when the applicant became aware of the making of the decision, and
  - (b) in a case to which subsection (4) (a) applies—the period prescribed by or under section 53 for the lodging of an application for an internal review, and
  - (c) such other matters as it considers relevant.
- (6) The Tribunal may also deal with an application even though the applicant has duly applied for an internal review of the decision to which the application relates, and the review is not finalised, if the Tribunal is satisfied that it is necessary for the Tribunal to deal with the application in order to protect the applicant's interests.

**[20] Section 58 Duty of administrator to lodge material documents with Tribunal where**

**decision reviewed**

Omit “Registrar” from section 58 (5). Insert instead “principal registrar”.

**[21] Section 58 (6)**

Omit “section 84” and “the Registrar”.

Insert instead “the *Civil and Administrative Tribunal Act 2013*” and “the principal registrar of the Tribunal”, respectively.

**[22] Section 58 (7)**

Omit the subsection. Insert instead:

- (7) Nothing in this section requires the disclosure of, or the granting of access to, any document (or a copy of a document) in contravention of any of the following:
- (a) an order made under section 59 (Objections to lodgment),
  - (b) an order made under section 64 (Tribunal may restrict disclosures concerning procedures) of the *Civil and Administrative Tribunal Act 2013*,
  - (c) section 66 (Effect of *Government Information (Public Access) Act 2009*) or section 67 (Privileged documents) of the *Civil and Administrative Tribunal Act 2013* (as applied by section 67 of this Act).

**[23] Section 59 Objections to lodgment**

Omit section 59 (2). Insert instead:

- (2) On any such application, the Tribunal may make an order that a copy of a document not be lodged with the Tribunal if:
- (a) it is satisfied that section 67 (Privileged documents) of the *Civil and Administrative Tribunal Act 2013* (as applied by section 67 of this Act) operates so as not to require the disclosure of the document, or
  - (b) it considers that, if an application were made under section 64 (Tribunal may restrict disclosures concerning procedures) of the *Civil and Administrative Tribunal Act 2013*, it would be appropriate to make an order under that section prohibiting or restricting the publication or disclosure of evidence of the document.

**[24] Section 60 Operation and implementation of decisions pending applications for administrative review**

Omit “a review” wherever occurring in section 60 (1) and (2).

Insert instead “an administrative review under this Act”.

**[25] Chapter 5, Part 3, Division 3, heading**

Omit “**review**”. Insert instead “**administrative review**”.

**[26] Section 63 Determination of administrative review by Tribunal**

Omit “a review” and “the review” wherever occurring in section 63 (1) and (3).

Insert instead “an administrative review under this Act” and “the administrative review”, respectively.

**[27] Section 63 (2)**

Omit “relevant enactment”. Insert instead “relevant legislation”.

**[28] Sections 64 (1) and (4) and 65 (1)**

Omit “a review” wherever occurring.

Insert instead “an administrative review under this Act”.

**[29] Section 66 Effect of administrative review decision**

Omit “a review” from section 66 (1).

Insert instead “an administrative review under this Act”.

**[30] Section 66 (2) (a)**

Omit “a review under this Chapter”.

Insert instead “an administrative review under this Act”.

**[31] Chapter 4**

Omit Chapters 6–8. Insert instead:

## **Chapter 4 Miscellaneous**

### **67 Application of certain provisions of [Civil and Administrative Tribunal Act 2013](#)**

The following provisions of the [Civil and Administrative Tribunal Act 2013](#) are taken to apply for the purposes of this Act in the same way as they apply for the purposes of the [Civil and Administrative Tribunal Act 2013](#):

(a) section 66 (Effect of [Government Information \(Public Access\) Act 2009](#)),

(b) section 67 (Privileged documents).

## **68 Notices, service and lodgment of documents**

The procedural rules may make provision for or with respect to the service, giving or lodgment of notices or documents for the purposes of this Act.

## **69 Offence: improper disclosure of information**

A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act, the *Civil and Administrative Tribunal Act 2013* or enabling legislation, or
- (c) for the purpose of any legal proceedings arising out of this Act, the *Civil and Administrative Tribunal Act 2013* or enabling legislation or any report of such proceedings, or
- (d) with other legal excuse.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units or imprisonment for 12 months, or both.

## **70 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

## **71 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

## **[32] Schedules 1-4**

Omit the Schedules.

**[33] Schedule 5, heading**

Omit the heading (including the source reference). Insert instead:  
Schedule 1 **Savings, transitional and other provisions**

**[34] Schedule 5, clause 1 (1)**

Insert at the end of the clause:

any other Act that amends this Act

**[35] Schedule 5, clause 1 (3)**

Omit “in the Gazette”. Insert instead “on the NSW legislation website”.

**[36] Schedule 5, clause 1A**

Insert after clause 1:

**1A References to ADT**

A reference to the Administrative Decisions Tribunal or the Tribunal established by this Act (however expressed) in a provision of this Schedule that was inserted before the establishment day (within the meaning of the *Civil and Administrative Tribunal Act 2013*) is a reference to the Administrative Decisions Tribunal that was formerly established under this Act when this Act was named the *Administrative Decisions Tribunal Act 1997*.

## **2.3 Administrative Decisions Tribunal Regulation 2009**

**[1] Clause 1 Name of Regulation**

Omit “*Administrative Decisions Tribunal Regulation 2009*”.

Insert instead “*Administrative Decisions Review Regulation 2009*”.

**[2] Clause 3 Definition**

Omit “*Tribunal*” from the definition of **the Act** in clause 3 (1). Insert instead “*Review*”.

**[3] Clauses 4 and 5**

Omit “Reviewable decisions”, “reviewable decisions” and “reviewable decision” wherever occurring (including headings).

Insert instead “Administratively reviewable decisions”, “administratively reviewable decisions” and “administratively reviewable decision”, respectively.

**[4] Clause 6 Witness allowances and expenses**

Omit the clause.

**[5] Clause 7 Oath to be taken by members of Tribunal**

Omit the clause.

**[6] Clause 8 Fees**

Omit the clause.

**[7] Schedule 1 Fees**

Omit the Schedule.

**2.4 Administrative Decisions Tribunal Rules 1998**

Repeal the Rules.