

# Administrative Decisions Tribunal Rules 1998 (2009 SI 1)

[2009-1]



New South Wales

## Status Information

### Currency of version

Repealed version for 7 December 2012 to 31 December 2013 (accessed 18 July 2024 at 2:17)

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**

These Rules were repealed by Sch 2.4 to the [Civil and Administrative Tribunal Amendment Act 2013 No 94](#) with effect from 1.1.2014.

- **Note**

The [Administrative Decisions Tribunal Rules 1998](#), made as Schedule 1 to the [Administrative Decisions Tribunal Rules \(Transitional\) Regulation 1998](#), are on and from 1.1.2009 taken to be rules of the Tribunal that had been made by the Rule Committee under the [Administrative Decisions Tribunal Act 1997 No 76](#). See clause 45 of Schedule 5 to the [Administrative Decisions Tribunal Act 1997](#).

### 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](#).

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# Administrative Decisions Tribunal Rules 1998 (2009 SI 1)



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## Chapter 1 Preliminary

### 1 Name of rules

These rules are the *Administrative Decisions Tribunal Rules 1998*.

### 2 Commencement

These rules commence on 6 October 1998.

### 3 Definitions

In these rules:

**approved form**, in relation to a document, means the form approved for that document by the President or Registrar from time to time.

**original proceedings** means proceedings in the Tribunal for an original decision.

**Registry** means:

- (a) an office of the Registrar, or
- (b) such other place approved by the President or the Registrar for the lodgment of documents.

**review proceedings** means proceedings in the Tribunal for a review of a reviewable decision.

**the Act** means the *Administrative Decisions Tribunal Act 1997*.

#### Note—

The following expressions are also defined in section 3 of the Act and, by operation of section 11 of the *Interpretation Act 1987*, have the same meanings in these rules:

administrator	judicial member
Appeal Panel	judicial officer

appealable decision	member
application	non-judicial member
assessor	original decision
decision	parties
Deputy President	practising legal practitioner
Division	President
Division member	presidential judicial member
Divisional Head	Registrar
enactment	relevant Divisional Head
exercise	reviewable decision
function	Rule Committee
interested person	rules of the Tribunal or rules
internal review	Tribunal

#### **4 Application of rules**

The Tribunal, the President or a Divisional Head may dispense with compliance with any requirement of these rules, either before or after the occasion for compliance arises.

#### **5 Notes**

The notes in the text of these rules do not form part of these rules.

## **Chapter 2 Documentation**

#### **6 Address for service**

An application, a reply to an application or any other initiating document lodged with the Tribunal must contain an address for service in respect of the party by whom the document is lodged and that address must include a place and telephone number in New South Wales.

#### **7 Stamping and lodgment of documents**

If an application 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 application (or summons),  
and
- (b) the application or summons must be sealed with the seal of the Tribunal.

**Note—**

Section 138 (2) of the Act provides that a notice or other document may be served on the Tribunal by leaving it at, or by sending it by post to (or a document that is required or permitted to be lodged with the Tribunal may be lodged at):

- (a) the office of the Registrar, or
- (b) if the Registrar has more than one office, any one of those offices.

## **8 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 Registrar may make any approved form available to any person on request.

## **9 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 its own devising, but only if it contains such information as may be required by the Registrar.

## **10 Registrar may accept documents that are not in approved form**

- (1) The Tribunal or 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 Registrar may require the person 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 Registrar under this rule is taken to be duly lodged for the purposes of these rules.

## **11 Tribunal or Registrar may accept documents that are not duly completed**

- (1) With the approval of the Tribunal or the 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 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.

## **12 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 Registrar may require the party to furnish the Tribunal with such proof of its service as the Tribunal or Registrar may require.

## **12A 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 may direct that, instead of service, such steps be taken as are specified by the Tribunal for the purpose of bringing the document to the notice of the person concerned.
- (2) The Tribunal 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 may direct that the document be taken to have been served on that person on a date specified by the Tribunal.

## **Chapter 3 Commencement and conduct of proceedings (other than appeals)**

### **Part 1**

#### **13 (Repealed)**

### **Part 2 General rules**

#### **Division 1 Commencement of proceedings**

##### **14 Applications for original decisions**

- (1) For the purposes of section 42 (b) of the Act, an application to the Tribunal for an original decision must:
  - (a) be in or to the effect of the approved form, and
  - (b) be duly completed, and
  - (c) be lodged at the Registry, and
  - (d) be accompanied by the applicable fee (if any) for the application.
- (2) An application for an original decision need not specify the Division to which the function of determining the application is allocated by the Act. However, if the appropriate Division is not specified, the Registrar may complete the application form

accordingly.

- (3) Unless the enactment under which the application is made provides otherwise, the application must be made to the Tribunal within 28 days from the day on which the applicant became entitled under the enactment 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*.

#### **15 Applications for reviews of reviewable decisions**

- (1) For the purposes of section 55 (1) (c) of the Act, an application to the Tribunal for a review of a reviewable decision must:
  - (a) be in or to the effect of the approved form, and
  - (b) be duly completed, and
  - (c) be lodged at the Registry, and
  - (d) be accompanied by the applicable fee (if any) for the application.
- (2) An application for the review of a reviewable decision need not specify the Division to which the function of determining the application is allocated by the Act. However, if the appropriate Division is not specified, the Registrar may complete the application form accordingly.

#### **16 Referral by Ombudsman of legal questions for advisory opinion**

- (1) A referral to the Tribunal by the Ombudsman of a legal question for an advisory opinion under section 35C of the *Ombudsman Act 1974* must:
  - (a) be in writing and dated, and
  - (b) be signed by the Ombudsman, and
  - (c) specify the legal question in respect of which the Tribunal's opinion is sought, and
  - (d) specify factual circumstances (whether actual or hypothetical) in respect of which the Ombudsman seeks to have the legal question concerned considered by the Tribunal, and
  - (e) be lodged with the Registry.
- (2) The President or the Tribunal may, at any time, request the Ombudsman:
  - (a) to provide additional information in respect of a referral, or
  - (b) to clarify any issue or other matter arising in any such referral, or

(c) to serve such persons as the President or Tribunal may specify with a copy of the referral.

- (3) The Tribunal may permit any person that it considers has an interest in the determination of the legal question referred to it by the Ombudsman to make submissions to the Tribunal concerning that question.

## **17 Notice of lodgment and service of applications**

- (1) For the purposes of section 72 of the Act, the Registrar must endeavour, within 28 days (if possible) from the day of the lodgment of an application with the Tribunal, to ensure that each party (other than the applicant) to original proceedings or review proceedings is served (in accordance with section 138 of the Act) with a notice of the application required by section 72 of the Act.

### **Note—**

Section 72 of the Act provides that the Registrar must cause notice of an application to the Tribunal to be served on any party (other than the applicant) to the proceedings within such time and in such manner as may be prescribed by the rules of the Tribunal.

- (2) The Tribunal or the Registrar may direct an applicant to serve a sealed copy of an application for an original decision or a review of a reviewable decision on another party within such time as the Tribunal or Registrar may specify.
- (3) The Registrar may undertake to effect service of a sealed copy of any such application on behalf of an applicant either at the same time as the notice referred to in subrule (1) is served or subsequently.

## **18 Notice in reply to application**

- (1) Subject to subrule (3), a respondent to an application may lodge a notice in reply to the application with the Tribunal setting out the respondent's response to the application.
- (2) A notice in reply must be in or to the effect of the approved form.
- (3) The Tribunal may direct a respondent to lodge a notice in reply to an application in such manner and within such period as it may direct.
- (4) A respondent who lodges a notice in reply must serve on the applicant a copy of the reply before, at the same time as or as soon as practicable after lodging the notice.

## **Division 2 Conduct of proceedings**

### **19 Directions hearings**

- (1) At a directions hearing authorised by a judicial member under section 73 (6) of the Act, the member authorised to hold the hearing may give directions as to the steps to be taken in the proceedings concerned.

- (2) Without limiting subrule (1), any one or more of the following directions may be given at a directions hearing:
- (a) a direction to a party to provide any other party or the Tribunal with further particulars of any allegation or claim made in the proceedings,
  - (b) a direction to a party to lodge further documents with the Tribunal,
  - (c) a direction to a party to make available to any other party a copy of a specified document (not being a document that is privileged from production or cannot otherwise be disclosed under the Act),
  - (d) a direction revoking or varying any direction made at a previous directions hearing,
  - (e) if proceedings concern a referral of a matter to the Tribunal—a direction that any report by the party referring the matter to the Tribunal be made available to any party,
  - (f) a direction as to the hearing date for the proceedings.

## **20 Issue of summons**

- (1) An application by a party to proceedings for a summons under section 84 must be made in or to the effect of the approved form.
- (2) An applicant for a summons must provide the Registry with the following completed copies of the proposed summons:
- (a) one copy for the file of the Tribunal,
  - (b) one copy for service on the person proposed to be named in the summons,
  - (c) one copy for the applicant,
  - (d) one copy each for all of the other parties to the proceedings.
- (3) If a summons is issued, the summons (and any sealed copies of the summons required to be served under subrule (6)) 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 the Registrar, or
  - (b) where the summons is issued on the application of a party—by or on behalf of that party.
- (4) The summons must be served on the person named in the summons at least 5 days (or within such other period as the Registrar may direct) before the return date

specified in the summons.

**Note—**

Rule 42A makes provision for the reckoning of time for the purposes of these rules.

- (5) If a summons is issued on the application of a party to proceedings, that party must, at the time the summons is served, cause to be paid or tendered to the person named in the summons a sum of money payable to the person in accordance with section 141 of the Act.

**Note—**

Section 141 of the Act provides that a person (other than a public servant) who is required to appear or give evidence before the Tribunal is entitled to be paid such allowances and expenses as are ascertained in accordance with a scale of allowances and expenses prescribed by the regulations. Clause 12 of the [Administrative Decisions Tribunal \(General\) Regulation 2004](#) provides for the prescribed scale of allowances and fees for witnesses required to appear or give evidence before the Tribunal.

- (6) 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 (7).
- (7) A sealed copy of the summons is not required to be served under subrule (6) on a party to proceedings if the party applied for the summons or is the person named in the summons.

## **20A Granting and revocation of leave for agent to represent party**

- (1) This rule provides for the circumstances in which it is appropriate under section 71 of the Act for the Tribunal to grant, refuse or revoke leave for an agent to represent a party in proceedings, or part of proceedings, in the Tribunal.

**Note—**

Section 71 (3A) of the Act provides that the rules of the Tribunal may make provision for or with respect to the following matters:

- (a) the circumstances in which it is, or is not, appropriate for the Tribunal to grant leave for an agent to represent a party,
  - (b) the circumstances in which it is, or is not, appropriate for the Tribunal to revoke any such leave.
- (2) It is appropriate for the Tribunal to grant leave to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that the person has:
    - (a) a sufficient degree of competence to provide effective representation for the party, and
    - (b) the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings.
  - (3) It is appropriate for the Tribunal to refuse leave to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that the person does not have the qualities referred to in subrule (2).

- (4) It is appropriate for the Tribunal to revoke leave granted to a person to represent a party as the party's agent in proceedings if the Tribunal is satisfied that:
- (a) the party no longer consents to the person representing the party as the party's agent, or
  - (b) the person applied for leave to represent that party as the party's agent without the consent of the party, or
  - (c) the person does not have the qualities referred to in subrule (2) to act as the party's agent, or
  - (d) the party is, or has become, an incapacitated person within the meaning of section 71 of the Act.

**Note—**

Section 71 of the Act enables the Tribunal to appoint a person to represent a party who is an incapacitated person.

- (5) Nothing in this rule limits the matters that the Tribunal may take into account in deciding whether it is, or is not, appropriate for the Tribunal to grant, refuse or revoke leave for a person to represent a party as the party's agent in proceedings.

## **Part 3**

### **21-38 (Repealed)**

## **Chapter 4 Appeals to an Appeal Panel**

### **39 Manner of making an internal appeal or an external appeal**

- (1) For the purposes of section 113 (4) of the Act, an internal appeal may be made by lodging a notice of appeal with the Tribunal.
- (1A) For the purposes of section 118B (3) of the Act, an external appeal may be made by lodging a notice of appeal with the Tribunal.
- (2) A notice of appeal must be:
- (a) in or to the effect of the approved form, and
  - (b) duly completed, and
  - (c) accompanied by the applicable fee (if any) for the lodgment of the appeal.
- (3) 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.

#### **40 Notice of reply to internal appeal or external appeal**

- (1) A respondent to an internal appeal must lodge a notice in reply with the Tribunal setting out the respondent's response to the notice of appeal within 21 days after being served with the notice of appeal.
- (1A) A respondent to an external appeal must lodge a notice in reply with the Tribunal setting out the respondent's response to the notice of appeal within 21 days after being served with the notice of appeal.
- (2) A notice in reply must be in or to the effect of the approved form.
- (3) A respondent who lodges a notice in reply must serve on the applicant a copy of the reply before, at the same time as or as soon as practicable after lodgment of the notice.

#### **41 Parties to an internal appeal**

- (1) For the purposes of section 67 (3) of the Act, the parties to an internal appeal to an Appeal Panel against an original decision of the Tribunal are as follows:
  - (a) if the appellant was the only party in the original proceedings below—the appellant and the Minister administering the enactment under which the application for the original decision concerned was made,
  - (b) in any other case—the persons who were parties to proceedings before the Tribunal for the original decision as specified in section 67 (1) of the Act.
- (2) For the purposes of section 67 (3) of the Act, the parties to an internal appeal to an Appeal Panel against a decision of the Tribunal determining review proceedings are the persons who were parties to the proceedings as specified in section 67 (2) of the Act.

#### **41A Parties to an external appeal**

- (1) For the purposes of section 67 (2A) (d) of the Act, the persons who were parties to the original proceedings are also parties to an external appeal.
- (2) For the purposes of section 67 (2C) of the Act, the Tribunal may designate a respondent or other person to assist the Tribunal in external appeal proceedings.

### **Chapter 5 Miscellaneous**

#### **42 Access to documents or things in Registry**

- (1) Subject to the Act, the Registrar may (in consultation with the President) permit any person to do any one or more of the following on such terms as the Registrar may specify:

- (a) take a document out of the Registry,
  - (b) search for a document in the Registry,
  - (c) inspect any document or thing in the Registry,
  - (d) make a copy of a document in the Registry,
  - (e) have any other kind of access to a document or thing in the Registry as is specified by the Registrar.
- (2) A person may have access to a document or thing in the Registry only in accordance with any permission given under subrule (1) or as otherwise authorised by or under the Act.

**Note—**

Section 58 of the Act requires the Registrar to grant to applicants for a review of a reviewable decision reasonable access to documents lodged under that section with the Tribunal by the administrator concerned.

- (3) A party to proceedings may not search for or inspect in the Registry any document relating to the proceedings if:
- (a) the Tribunal has ordered that the document not be disclosed without the consent of the Tribunal, or
  - (b) the disclosure of the document to the party is otherwise prohibited by or under the Act or another law.

**Note—**

See, in particular, Part 1 of Chapter 8 to the Act, which contains provisions concerning the disclosure of information for the purposes of the Act.

#### **42A Reckoning of time**

- (1) Any period of time fixed by these rules, or by any order or other decision of the Tribunal or the 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 subrule, 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.

#### **43 Extension and abridgment of time**

- (1) The Tribunal may, by order, extend or abridge any time fixed by these rules or by any order, on such terms as it specifies.
- (2) The Tribunal may extend the time under subrule (1) before or after the time expires whether or not an application for the extension is made before the time expires.
- (3) This rule does not authorise the Tribunal to extend the time for making an application for an original decision or a review of a reviewable decision otherwise than in accordance with sections 44 and 57 of the Act.

#### **44 Fixing time period**

If no time is fixed by 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.

#### **45 Delegation of functions of President**

For the purposes of clause 13 of Schedule 3 to the Act, the following functions of the President may be delegated to the Registrar or a Deputy Registrar of the Tribunal:

- (a) the function of the President under section 25 (3) of the Act of determining the places and times for sittings of the Tribunal,
- (b) the functions of the President under section 106 (Mediators and neutral evaluators) of the Act,
- (c) the functions of the President under section 140 (Return of documents after proceedings concluded) of the Act.

#### **Note—**

Section 49 of the *Interpretation Act 1987* contains general provisions concerning the exercise of powers of delegation conferred by an Act or instrument.

#### **46 Persons authorised to sign summons**

For the purposes of section 84 (2) of the Act, a summons may also be signed by any of the following persons:

- (a) a judicial member of the Tribunal,
- (b) a Deputy Registrar of the Tribunal.