



New South Wales

Civil and Administrative Tribunal Amendment Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Civil and Administrative Tribunal Act 2013* (*the Act*) following a statutory review in relation to the following matters—

- (a) the disclosure of reports, including sound recordings and transcripts, of proceedings, and names of persons involved in proceedings, of the Civil and Administrative Tribunal of New South Wales (the *Tribunal*),
- (b) the correction of obvious errors in the text of decisions of the Tribunal,
- (c) the provision of material relevant to proceedings in the Tribunal,
- (d) contempt of the Tribunal for failure to comply with a summons,
- (e) the reallocation of matters allocated by default to the Administrative and Equal Opportunity Division of the Tribunal,
- (f) the reconstitution of the Tribunal after consideration of a matter by the Tribunal has commenced,
- (g) the provision of written reasons for decisions of the Tribunal at the request of a party to proceedings,
- (h) the functions and constitution of the Occupational Division of the Tribunal in relation to the *Legal Profession Uniform Law Application Act 2014* and the *Legal Profession Uniform Law (NSW)*,
- (i) the functions and constitution of the Guardianship Division of the Tribunal.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

Schedule 1[2] makes it clear that the President may give or revoke a direction about the members who are to constitute the Tribunal.

Schedule 1[3] makes it clear that the duty of the Tribunal to ensure material relevant to proceedings is disclosed to the Tribunal applies only to the extent it is practicable for the Tribunal to comply with the duty.

Schedule 1[4] allows the President of the Tribunal to replace a member constituting the Tribunal if the President directs the member not to take part in proceedings. **Schedule 1[5]** provides that the President must not make a direction without first consulting the member, if practicable, and being satisfied the direction is in the interests of justice and achieving the expeditious and efficient conduct of the proceedings. The direction must also be otherwise appropriate having regard to the objects of the Act. The President may give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced. **Schedule 1[6]** makes a related amendment.

Schedule 1[7] provides that the Tribunal is not required to give written reasons for certain minor procedural decisions of the Tribunal that do not have a final or determinative impact on the rights of a party.

Schedule 1[8] makes it clear that the power of the President or presiding member of the Tribunal to direct a registrar to correct obvious errors in the text of a notice of a decision of the Tribunal extends to the correction of inconsistencies between the stated name of a person and the name stated on the person's identification.

Schedule 1[9] makes it clear that the power of the Tribunal to make an order prohibiting or restricting the publication or broadcast of a report of proceedings in the Tribunal extends to sound recordings and transcripts of proceedings. **Schedule 1[10]** makes a consequential amendment.

Schedule 1[11] makes it clear that a report, including a sound recording or transcript, of proceedings authorised by the Tribunal to be provided to a party to the proceedings for the party's use only is not an official report of the proceedings exempt from the prohibition on publication.

Schedule 1[12] makes it clear that a person is guilty of contempt of the Tribunal if the person fails, without reasonable excuse, to comply with a summons issued for the purposes of the Act.

Schedule 1[13] allows the President of the Tribunal to reallocate a matter from the Administrative and Equal Opportunity Division of the Tribunal to another Division of the Tribunal if the matter is not specifically allocated to another Division of the Tribunal under the Act. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[14] makes it clear that functions relating to the *Legal Profession Uniform Law Application Act 2014* are allocated to the Occupational Division of the Tribunal. **Schedule 1[15] and [17]** make consequential amendments.

Schedule 1[16] makes it clear that the requirements for the constitution of the Tribunal when conducting a hearing into a complaint for the purposes of the *Legal Profession Uniform Law (NSW)* are limited to proceedings initiated in the Tribunal by a designated local regulatory authority against a respondent lawyer under the *Legal Profession Uniform Law (NSW)*, section 300.

Schedule 1[18] and [19] update outdated cross-references.

Schedule 1[20] provides that the Tribunal may be constituted by 1 or 2 members, rather than 3 members, when determining an urgent application for authorisation of a guardian to override a patient's objection to the carrying out of treatment. The amendment also provides that the Tribunal may be constituted by 1 or 2 members, rather than 3 members, in exercising its functions for the purposes of determining a request to withdraw an application from the Guardianship Division.

Schedule 1[21] provides that the duty of the Tribunal to observe the principles in the *Guardianship Act 1987*, section 4 when exercising functions of the Guardianship Division for the purposes of the *Guardianship Act 1987* extends to the Tribunal when exercising functions of the Guardianship Division under other Acts. **Schedule 1[22]** makes a consequential amendment.

Schedule 1[23] provides that the Tribunal may dispense with a requirement to serve notice of a hearing under the *Guardianship Act 1987* if compliance with the requirement would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application to which the hearing relates.



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Civil and Administrative Tribunal Amendment Bill 2023

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New South Wales

Civil and Administrative Tribunal Amendment Bill 2023

No. , 2023

A Bill for

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

The Legislature of New South Wales enacts—

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1 Name of Act

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

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2 Commencement

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

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Schedule 1	Amendment of Civil and Administrative Tribunal Act 2013 No 2	1
		2
[1] Section 17 Division Schedule for a Division of Tribunal		3
Insert after section 17(2)(c)—		4
(c1) the reallocation from the Division to another Division of functions of the Tribunal in relation to enabling legislation,		5 6
[2] Section 27 Constitution of Tribunal		7
Omit “President may give directions”.		8
Insert instead “President may give or revoke a direction”.		9
[3] Section 38 Procedure of Tribunal generally		10
Insert “, as far as practicable,” after “ensure” in section 38(6)(a).		11
[4] Section 52 Reconstitution of Tribunal during proceedings		12
Insert at the end of section 52(1)(c)—		13
, or		14
(d) is directed by the President not to take part in the proceedings.		15
[5] Section 52(2A) and (2B)		16
Insert after section 52(2)—		17
(2A) The President must not make a direction under subsection (1)(d) in relation to a member unless the President—		18 19
(a) has consulted the member, if it is reasonably practicable to do so, and		20
(b) is satisfied that making the direction is—		21
(i) in the interests of justice, and		22
(ii) in the interests of achieving the expeditious and efficient conduct of the proceedings, and		23 24
(iii) otherwise appropriate having regard to the objects of this Act.		25
(2B) The President may give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced.		26 27 28
[6] Section 52(3)		29
Omit “so reconstituted”. Insert instead “reconstituted under this section”.		30
[7] Section 62 Tribunal to give notice of decision and provide written reasons on request		31
Insert after section 62(2)—		32
(2A) Subsection (2) does not apply to the following decisions of the Tribunal—		33
(a) a decision to make an order dispensing with a hearing of the Tribunal under section 50(2),		34 35
(b) a decision to grant an adjournment,		36
(c) a decision under section 60 not to award costs, except where a party has argued there are special circumstances warranting an award of costs,		37 38
(d) a decision to award costs in proceedings of either of the following kinds—		39 40

	(i) proceedings for the exercise of a function of the Consumer and Commercial Division of the Tribunal,	1 2
	(ii) an internal appeal against a decision of the Consumer and Commercial Division of the Tribunal,	3 4
	(e) if the parties have consented to the making of an order—a decision to make the order,	5 6
	(f) other minor procedural decisions that do not have a final or determinative impact on the rights of a party.	7 8
[8]	Section 63 Power to correct errors in decisions of Tribunal	9
	Insert at the end of section 63(3)(d)—	10
	, or	11
	(e) there is an inconsistency between the name of a person stated in the text of the notice or statement and the name stated on the person’s birth certificate or other form of identification.	12 13 14
[9]	Section 64 Tribunal may restrict disclosures concerning proceedings	15
	Insert “, including a sound recording or transcript,” after “report” in section 64(1)(b).	16
[10]	Section 65 Publication of names or identification of persons involved in certain proceedings	17 18
	Insert “, including a sound recording or transcript,” after “report” in section 65(3).	19
[11]	Section 65(3A)	20
	Insert after section 65(3)—	21
	(3A) A report, including a sound recording or transcript, of proceedings authorised by the Tribunal to be provided to a party to the proceedings for the party’s use only is not an official report of the proceedings for subsection (3).	22 23 24
[12]	Section 73 Contempt of Tribunal	25
	Insert after section 73(2)—	26
	(2A) Without limiting subsection (2), a person is guilty of contempt of the Tribunal if the person fails, without reasonable excuse, to comply with a summons issued for the purposes of this Act.	27 28 29
[13]	Schedule 3 Administrative and Equal Opportunity Division	30
	Insert after clause 3(2)—	31
	(3) The President may, if the President considers it appropriate, reallocate a function of the Division allocated under subclause (1)(b) to another Division of the Tribunal.	32 33 34
[14]	Schedule 5 Occupational Division	35
	Insert in alphabetical order in clause 4(1)—	36
	<i>Legal Profession Uniform Law Application Act 2014</i>	37
[15]	Schedule 5, clause 18, heading	38
	Omit the heading. Insert instead—	39
	18 Division functions under legal profession legislation	40

[16] Schedule 5, clause 18(1)	1
Omit “a hearing into a complaint for the purposes of the <i>Legal Profession Uniform Law (NSW)</i> ”.	2 3
Insert instead “proceedings initiated under the <i>Legal Profession Uniform Law (NSW)</i> , section 300 in relation to a complaint”.	4 5
[17] Schedule 5, clause 18(2)	6
Omit the subclause. Insert instead—	7
(2) The Tribunal, when exercising other Division functions for the purposes of the <i>Legal Profession Uniform Law Application Act 2014</i> or the <i>Legal Profession Uniform Law (NSW)</i> , including making ancillary or interlocutory decisions of the Tribunal, must be constituted by 1 or more Division members, at least 1 of whom has a judicial qualification or a professional qualification.	8 9 10 11 12
[18] Schedule 5, clause 29(1)(a)(i)	13
Omit “section 198”. Insert instead “section 204”.	14
[19] Schedule 5, clause 29(1)(a)(ii)	15
Omit “section 199”. Insert instead “section 205”.	16
[20] Schedule 6 Guardianship Division	17
Insert after clause 4(2)—	18
(2A) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members when exercising its substantive Division functions for the purposes of determining an application under the <i>Guardianship Act 1987</i> , section 46A if—	19 20 21 22
(a) the application is made during the exercise of substantive Division functions for the purposes of a provision referred to in subclause (2)(a)–(c) in relation to the person who is the subject of the application, or	23 24 25 26
(b) the application is urgent.	27
(2B) For subclause (2A), an application is <i>urgent</i> if the Tribunal considers a delay caused by the operation of subclause (1) would be likely to cause a real, material and imminent risk of harm to the person who is the subject of the application.	28 29 30 31
(2C) Despite subclause (1), the Tribunal may be constituted by 1 or 2 Division members in exercising its substantive Division functions for the purposes of clause 10.	32 33 34
[21] Schedule 6, clause 5(1)	35
Omit “for the purposes of the <i>Guardianship Act 1987</i> ”.	36
[22] Schedule 6, clause 5(1)	37
Omit “section 4 of that Act”. Insert instead “the <i>Guardianship Act 1987</i> , section 4”.	38
[23] Schedule 6, clause 6A	39
Insert after clause 6—	40

6A Tribunal may dispense with notice of hearing

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

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