



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.