



Australian Capital Territory

# **ACT Civil and Administrative Tribunal Procedure Rules 2009**

**NI2009-39**

made under the

**ACT Civil and Administrative Tribunal Act 2008**

**Republication No 1**

**Effective: 2 February 2009 – 4 December 2009**

Republication date: 2 February 2009

Rules not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *ACT Civil and Administrative Tribunal Procedure Rules 2009*, made under the *ACT Civil and Administrative Tribunal Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any commencement, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial amendments

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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## Contents

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	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of rules	2
3	Dictionary	2
4	Notes	2
<b>Part 2</b>	<b>Directions</b>	
5	Direction-making power	3
<b>Part 3</b>	<b>Representatives</b>	
6	Removing representatives	4

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R1 ACT Civil and Administrative Tribunal Procedure Rules contents 1  
02/02/09 2009

Effective: 02/02/09-04/12/09

	Page
<b>Part 4</b>	<b>Abuse of process</b>
7	Rejecting documents—abuse of process etc 5
<b>Part 5</b>	<b>Mental Health (Treatment and Care) Act 1994</b>
8	Meaning of <i>mental health order</i> —pt 5 6
9	Extended time to ask for statement of reasons—Act, s 60 (1) (b) 6
<b>Part 6</b>	<b>Appeals within tribunal</b>
10	Application—pt 6 7
11	Notice of appeal—requirements 7
12	Notice of appeal—time for filing 8
13	Application to have appeal removed to Supreme Court 8
14	Registrar to give documents to respondent 9
15	Conduct of appeal 9
16	Appeal conference 10
17	Directions hearing 10
18	Failure to comply with directions 11
19	Appeals to tribunal—general powers 11
20	Application for leave to appeal out of time 12
21	Registrar to give application to respondent 12
22	Time for filing etc respondent’s affidavits for leave to appeal out of time 12
23	Parties to appeal 13
24	Insufficient material 14
25	Abandonment of ground of appeal 14
26	Discontinuance of appeal 15
27	Dismissal by consent 15
<b>Dictionary</b>	16
<b>Endnotes</b>	
1	About the endnotes 17
2	Abbreviation key 17







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## Part 1 Preliminary

### 1 Name of rules

These rules are the *ACT Civil and Administrative Tribunal Procedure Rules 2009*.

### 3 Dictionary

The dictionary at the end of these rules is part of these rules.

*Note 1* The dictionary at the end of these rules defines certain terms used in the rules, and includes references (*signpost definitions*) to other terms defined elsewhere in these rules.

For example, the signpost definition '*mental health order*, for part 5 (Mental Health (Treatment and Care) Act 1994)—see rule 8.' means that the term 'mental health order' is defined in that rule.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire rules unless the definition, or another provision of the rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in these rules is explanatory and is not part of these rules.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## Part 2                      Directions

### 5                      Direction-making power

- (1) The tribunal may make directions for the procedures or practices to be followed in relation to an application to the tribunal.

*Note 1*    The tribunal for the exercise of a function is made up of the presidential members (see the Act, s 93).

*Note 2*    Power to make a direction includes power to make different provision for applications or different categories of application (see Legislation Act, s 48).

- (2) A direction is a notifiable instrument.

*Note*       A notifiable instrument must be notified under the Legislation Act.

## Part 3 Representatives

### 6 Removing representatives

- (1) This rule applies if a party to a proceeding in the tribunal is being represented by someone else (the *representative*).
- (2) The tribunal may, by order, stop the representative from taking any further part in the proceeding.
- (3) However, the tribunal may only make an order under subrule (2) if satisfied that—
  - (a) the representative does not have sufficient knowledge of the issues in dispute in the proceeding to allow the representative to effectively represent the party at the hearing of the proceeding; or
  - (b) the representative does not have sufficient authority to bind the party; or
  - (c) the representative's representation is inconsistent with the objects of the Act.

*Note 1* The tribunal must observe natural justice and procedural fairness (see the Act, s 7).

*Note 2* The objects of the Act are in the Act, s 6.

## Part 4 Abuse of process

### 7 Rejecting documents—abuse of process etc

- (1) This rule applies if a document lodged with the tribunal appears to the registrar on its face to be an abuse of the tribunal's process or to be frivolous or vexatious.
- (2) The registrar may—
  - (a) reject the document; or
  - (b) refer the document to the tribunal for directions about how to deal with it.
- (3) If the registrar refers the document to the tribunal, the tribunal may direct the registrar to—
  - (a) accept the document; or
  - (b) reject the document.

## Part 5 Mental Health (Treatment and Care) Act 1994

### 8 Meaning of *mental health order*—pt 5

In this part:

*mental health order*—

- (a) means any of the following orders under the *Mental Health (Treatment and Care) Act 1994*:
  - (i) a psychiatric treatment order;
  - (ii) a restriction order;
  - (iii) a community care order;
  - (iv) an electroconvulsive therapy order; and
- (b) includes a psychiatric treatment order, restriction order or community care order made by the tribunal under the *Mental Health (Treatment and Care) Act 1994*, section 36L.

### 9 Extended time to ask for statement of reasons—Act, s 60 (1) (b)

- (1) This rule applies if the tribunal makes a mental health order on an application.
- (2) The time for a party to ask for a written statement of reasons for the making of the order under the Act, section 60 (1) (b) is 28 days.

## Part 6 Appeals within tribunal

### 10 Application—pt 6

This part applies to an appeal under the Act, section 79 (2) from a tribunal decision on an original application.

### 11 Notice of appeal—requirements

A notice of appeal to the tribunal must state—

- (a) the appellant's name, postal address, email address and contact telephone numbers; and
- (b) if the appellant is represented by someone else—the name, postal address, email address and contact telephone numbers of the representative; and
- (c) the ACAT file number; and
- (d) the date of the decision appealed from and the date the appellant received the decision; and
- (e) the reasons for the appeal, including the following:
  - (i) the nature of the case;
  - (ii) whether the appellant will seek to put further evidence before the tribunal;
  - (iii) if further evidence is to be put before the tribunal—briefly the nature of the evidence and what is sought to be proved;
  - (iv) briefly, but specifically, the grounds relied on in support of the appeal; and

- (f) the order sought; and
- (g) whether the appellant intends to apply for the appeal to be removed to the Supreme Court.

**12 Notice of appeal—time for filing**

- (1) A notice of appeal to the tribunal must be filed in the tribunal not later than 28 days after the day the decision is made, or any further time the tribunal allows.

*Note* An application for further time may be made before or after the 28-day period (see Legislation Act, s 151C).

- (2) An application for further time must be accompanied by an affidavit showing—
  - (a) the nature of the case in summary form; and
  - (b) each question involved; and
  - (c) the reasons why the extension of time should be given.

**13 Application to have appeal removed to Supreme Court**

- (1) This rule applies to an application under the Act, section 83 to remove an appeal to the Supreme Court.
- (2) The application must be filed in the tribunal not later than 28 days after the day the notice of appeal is given to the respondent.

**14 Registrar to give documents to respondent**

- (1) The registrar must give the respondent—
  - (a) a copy of the notice of appeal; and
  - (b) a notice stating that if the respondent intends to apply to have the appeal removed to the Supreme Court, the respondent must, not later than 28 days after the day the notice of appeal is given to the respondent file an application to have the appeal removed to the Supreme Court, either alone or jointly with the appellant.
- (2) The registrar need not act under subrule (1) if the appeal president—
  - (a) gives the applicant for an appeal written notice under the Act, section 80 (1); and
  - (b) has not decided whether to take action under the Act, section 80 (2).

**15 Conduct of appeal**

- (1) The appeal president must set a date for—
  - (a) a conference for an appeal (an *appeal conference*); or
  - (b) a directions hearing for an appeal.
- (2) However, subrule (1) does not apply if—
  - (a) the appeal president—
    - (i) gives the applicant for an appeal written notice under the Act, section 80 (1); and
    - (ii) has not decided whether to dismiss the appeal under the Act, section 80 (2); or
  - (b) an application to have the appeal removed to the Supreme Court has been made but not decided.

**16 Appeal conference**

- (1) If the appeal president sets a date for an appeal conference, the registrar must give the parties notice of the date.
- (2) The appellant and each respondent must attend the appeal conference.
- (3) At the appeal conference, the tribunal may do any of the following:
  - (a) make inquiries, or require further information from a party;
  - (b) give the directions it considers appropriate to have the appeal made ready for hearing;
  - (c) adjourn the conference.
- (4) The tribunal may at any time amend or revoke a direction made under this rule.
- (5) The tribunal may amend or revoke a direction made under this rule on application by a party or on its own initiative.

**17 Directions hearing**

- (1) If the appeal president sets a date for a directions hearing under rule 15, the registrar must give the parties notice of the date.
- (2) The appellant and each respondent must attend the directions hearing.
- (3) At the directions hearing, the tribunal may—
  - (a) give the directions it considers appropriate to have the appeal made ready for hearing; or
  - (b) adjourn the directions hearing.
- (4) The tribunal may at any time amend or revoke a direction made under this rule.



- (5) The tribunal may amend or revoke a direction made under this rule on application by a party or on its own initiative.

## **18 Failure to comply with directions**

- (1) If the appellant fails to comply with a direction, the appeal president may—
- (a) dismiss the appeal; or
  - (b) stay the appeal until the appellant complies with the direction; or
  - (c) if the direction requires information to be provided—proceed with the appeal in the absence of the information.
- (2) If a respondent fails to comply with a direction, the appeal president may—
- (a) enter judgment by default in favour of the appellant; or
  - (b) if the direction requires information to be provided—proceed with the appeal in the absence of the information.

## **19 Appeals to tribunal—general powers**

For an appeal to the tribunal, the tribunal—

- (a) has all the powers and duties of the tribunal that made the order appealed from; and
- (b) may draw inferences of fact; and
- (c) may receive further evidence about questions of fact, either orally in a hearing, by affidavit or in another way; and
- (d) may make an order confirming, amending or setting aside the order of the tribunal appealed from; and
- (e) may make any other order it considers appropriate.

**20 Application for leave to appeal out of time**

- (1) This rule applies if a person wants to appeal from a decision of the tribunal out of time.
- (2) The person must apply to the tribunal for leave to appeal.
- (3) The application for leave to appeal must be accompanied by—
  - (a) an affidavit showing—
    - (i) the nature of the case; and
    - (ii) the questions involved; and
    - (iii) the reasons why leave should be given; and
  - (b) the draft notice of appeal.
- (4) If the applicant wants to present the applicant's case for leave in writing, the application must state that the applicant wants to do so.

**21 Registrar to give application to respondent**

If an application for leave to appeal is filed in the tribunal, the registrar must give the respondent a copy of—

- (a) the application; and
- (b) the applicant's affidavit; and
- (c) the draft notice of appeal.

**22 Time for filing etc respondent's affidavits for leave to appeal out of time**

If a respondent to an application for leave to appeal out of time wants to present evidence, the respondent must file the respondent's affidavits not later than 14 days after the day the application is given to the respondent.

**23 Parties to appeal**

- (1) A person must be included as a respondent to an appeal if the person—
  - (a) appeared or was given leave to appear before the tribunal in the proceeding (the *original proceeding*) in which the order appealed from was made; and
  - (b) would be directly affected by the order sought by the notice of appeal, or is interested in maintaining the order appealed from.
- (2) If an unincorporated organisation or association appeared or was given leave to appear before the tribunal in the original proceeding—
  - (a) a reference in subrule (1) to a person is a reference to someone acting (other than as a legal practitioner) for the organisation or association; and
  - (b) subrule (1) (b) is taken to require that the interests of the organisation or association, found out from its objects or purposes, would be directly affected by the order sought by the notice of appeal or by the maintenance of the order appealed from.
- (3) The tribunal may order that—
  - (a) a person (whether or not a party to the original proceeding) be included or removed as a party to the appeal; or
  - (b) a person directly affected by the appeal be included or substituted as a party.
- (4) However, a person may be made an appellant only with the person's consent.

- (5) If the tribunal orders the inclusion or substitution of someone as a party to the appeal, it may adjourn the hearing of the appeal and make any order it considers appropriate about the conduct of the appeal.

**24 Insufficient material**

If the tribunal considers that it has insufficient material before it to allow it to make a decision on the appeal, it may give 1 or more of the following directions:

- (a) that the appeal be adjourned for further consideration;
- (b) a direction about the issues to be decided that it considers appropriate;
- (c) a direction about the accounts to be taken, or inquiries made, that it considers appropriate;
- (d) that the appeal proceed on the material available to the tribunal.

**25 Abandonment of ground of appeal**

- (1) This rule applies if an appellant wants to abandon a ground of appeal.
- (2) The appellant must give notice to each other party to the appeal that the ground of appeal will not be relied on.
- (3) The notice must be given as soon as possible but within a reasonable time before the day set for the start of the hearing.

**26 Discontinuance of appeal**

- (1) An appellant may discontinue the appeal or a part of the appeal—
  - (a) without the tribunal's leave, at any time before the hearing of the appeal; or
  - (b) only with the tribunal's leave, at the hearing or after the hearing and before judgment.
- (2) The appellant may discontinue the appeal by filing a notice of discontinuance in the tribunal.
- (3) If the appeal or a part of the appeal is discontinued—
  - (a) the appeal or part of the appeal is abandoned by the appellant; and
  - (b) the discontinuance does not affect any other appellant in the appeal.

**27 Dismissal by consent**

- (1) The parties to an appeal may agree that the appeal be dismissed by consent.
- (2) If the parties agree about the substantive orders the tribunal will be asked to make by consent, but do not agree about the order for costs, the tribunal may—
  - (a) make the orders agreed by the parties by consent; and
  - (b) list the appeal for hearing in relation to costs only.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- exercise
- function
- proceeding.

*Note 3* Terms used in this regulation have the same meaning that they have in the *ACT Civil and Administrative Tribunal Act 2008* (see Legislation Act, s 148.) For example, the following terms are defined in the *ACT Civil and Administrative Tribunal Act*, dict:

- party
- presidential member
- registrar
- rules
- tribunal.

***appeal conference***—see rule 15.

***mental health order***, for part 5 (Mental Health (Care and Treatment) Act 1994)—see rule 8.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **ACT Civil and Administrative Tribunal Procedure Rules 2009 NI2009-39**

notified LR 30 January 2009

r 1, r 2 commenced 30 January 2009 (LA s 75 (1))

remainder commenced 2 February 2009 (r 2 and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### 4 Amendment history

#### **Commencement**

r 2 from LA s 89 (4)

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