

NORTHERN TERRITORY OF AUSTRALIA

**NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE
TRIBUNAL RULES 2016**

As in force at 23 November 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 23 November 2016

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL RULES 2016

Rules under the *Northern Territory Civil and Administrative Tribunal Act 2014*

1 Preliminary matters

- (1) These Rules may be cited as the *Northern Territory Civil and Administrative Tribunal Rules 2016* and commence on the date they are notified in the *Gazette*.
- (2) These Rules apply to all proceedings, whether commenced before or after the commencement of these Rules.
- (3) These Rules must be applied so as to give effect to the objectives of the Tribunal set out in section 10 of the Act.
- (4) In these Rules:

applicant, see rule 5(2).

approved form means a form approved by the rules committee under section 138(3)(b) of the Act and published on the Tribunal's website.

evidence summons, see rule 9(1).

initiating application, see rule 5(1).

ordinary application, see rule 8(1).

respondent, see rule 6(1).

response, see rule 6(1).

2 Dispensation

The Tribunal may at any time dispense with a requirement of these Rules.

3 Service of documents

- (1) This rule applies if the Act, another rule, or a direction by the Tribunal requires a person to serve a document in a proceeding on another person.
- (2) The person required to serve the document must take reasonable steps to bring it to the attention of the other person and must do so as soon as they reasonably can.
- (3) The Tribunal may endorse a document with a direction that it is to be served no later than a particular time, but that direction does not affect the obligation in subrule (2).
- (4) The Tribunal may require a person to provide evidence of the steps taken to serve a document.
- (5) For the Act and these Rules, a document is served on a person if the person required to serve it:
 - (a) brings the document to the person's attention; or
 - (b) serves the document in a way allowed by section 25 of the *Interpretation Act 1978* or section 109X of the *Corporations Act 2001 (Cth)*; or
 - (c) serves the document in a way directed by the Tribunal.
- (6) The Tribunal may refuse to take action in a proceeding if it is not satisfied that a person has been served with a document in accordance with this rule.
- (7) A person must advise the Tribunal without delay if the person is unable, despite reasonable efforts, to serve a document in accordance with this rule.
- (8) The Tribunal may regard a document as served on a person even if there is no conclusive evidence that the person is aware of the document or its contents.

4 Form of documents

- (1) This rule applies if an Act or regulation, or another rule, requires a party to file or serve a document in a proceeding.
- (2) If there is no approved form for the document:
 - (a) the Tribunal may accept a document that contains the substance of the matters required by the relevant Act, regulation or rule; or

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- (b) the Tribunal may make a direction regarding the form the document is to take.

5 Commencing a proceeding – initiating application

- (1) This rule applies to an application commencing a proceeding in the Tribunal's original jurisdiction or review jurisdiction (an **initiating application**).
- (2) A person wishing to commence a proceeding (the **applicant**) must file an initiating application in the approved form with the Tribunal.

Note for subrule (2)

The current approved form for an initiating application is Form 1.

- (3) If the Registrar accepts an initiating application:
 - (a) the Registrar must endorse it with:
 - (i) a unique proceeding number; and
 - (ii) the date of acceptance; and
 - (iii) the date and time for the initial directions hearing under rule 7, compulsory conference (see section 108 of the Act) or the hearing of the proceeding; and
 - (b) the Registrar must affix the seal of the Tribunal to the application.
- (4) If the Tribunal gives directions at the time the initiating application is accepted, the Registrar must attach those directions to the sealed initiating application.
- (5) The applicant must serve a copy of the sealed initiating application and any directions mentioned in subrule (4) on each other party to the proceeding (see section 127 of the Act).

6 Response to an initiating application

- (1) A person served with an initiating application who wishes to oppose it or who otherwise wishes to be heard in relation to it (the **respondent**) must:
 - (a) file a response in the approved form with the Tribunal; and

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- (b) serve a copy of the response on each other party named in the initiating application.

Note for subrule (1)(a)

The current approved form for a response is Form 2.

- (2) Subject to subrule (3), a person may include in a response a claim for relief against the applicant.
- (3) A claim mentioned in subrule (2) may only concern a matter over which the Tribunal has jurisdiction.
- (4) The Tribunal may disallow a claim mentioned in subrule (2) if the Tribunal is of the opinion that the claim is not sufficiently connected to the matters raised by the initiating application that it should be dealt with in the same proceeding.
- (5) If a person served with an initiating application does not file a response to it, the Tribunal may proceed on the basis that the person does not oppose the relief or remedy sought in the initiating application.
- (6) The Tribunal may order in a particular proceeding that a party need not file a response.

7 Initial directions hearing

- (1) Unless the Tribunal otherwise directs, an initial directions hearing must be attended by each applicant and respondent (or by their representatives as prescribed under section 130 of the Act).
- (2) The purpose of the initial directions hearing is to enable the Tribunal to:
 - (a) identify the areas of agreement and disagreement between the parties; and
 - (b) identify the types of evidence the parties intend to rely on in the proceeding and make directions requiring the parties to provide that evidence to each other and to the Tribunal; and
 - (c) make any other directions the Tribunal considers conducive to a prompt and efficient resolution of the proceeding, including appropriate directions about alternative dispute resolution; and
 - (d) fix a date for any compulsory conferences under section 107 of the Act; and
 - (e) fix a date for the hearing of the proceeding.

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- (3) The Tribunal may conduct an initial directions hearing despite the absence of a party.

Note for subrule (3)

The Tribunal may adjourn an initial directions hearing – see section 57 of the Act.

- (4) The Tribunal may conduct a compulsory conference without first holding an initial directions hearing.

Note for subrule (4)

For compulsory conferences – see Part 4, Division 4, Subdivision 1 of the Act.

8 Ordinary applications

- (1) This rule applies in relation to an application (an **ordinary application**) in a proceeding other than:

- (a) an initiating application; or
- (b) an application for an evidence summons.

- (2) A person wishing to make an ordinary application must file with the Tribunal:

- (a) an ordinary application in the approved form; and
- (b) a copy of the evidence the person relies on in support of the ordinary application.

Note for subrule (2)(a)

The current approved form for an ordinary application is Form 3.

- (3) If the ordinary application appears to be related to a matter over which the Tribunal has jurisdiction:

- (a) the Tribunal must endorse each copy of the ordinary application with:
 - (i) the date of issue; and
 - (ii) a date (if any) for the hearing of the ordinary application; and

- (b) the Tribunal must affix the seal of the Tribunal to the ordinary application.

- (4) The Tribunal must provide a copy of the sealed ordinary application and any accompanying evidence to the person making the ordinary application.

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- (5) The person making the ordinary application must serve on each other party to the proceeding a copy of the sealed ordinary application and any accompanying evidence.
 - (6) A party served with a copy of the sealed application who wishes to oppose it, or otherwise wishes to be heard in relation to it, must:
 - (a) file with the Tribunal a copy of the evidence on which the party relies; and
 - (b) serve a copy of the evidence on each other party to the application.
 - (7) The Tribunal may conduct the hearing of an ordinary application despite the absence of a party served with a copy of the sealed application.
 - (8) This rule does not prevent the Tribunal:
 - (a) hearing an ordinary application made otherwise than in compliance with this rule, including one made orally; or
 - (b) dealing, in an appropriate case, with an ordinary application without a hearing.

9 Evidence summonses

- (1) This rule applies when a party applies under section 89 of the Act for the issue of a summons requiring a person to appear before the Tribunal to give evidence or to produce evidentiary material (an **evidence summons**).
- (2) The party must file with the Tribunal:
 - (a) an application for an evidence summons in the approved form; and
 - (b) a draft evidence summons in the approved form.

Note for subrule (2)

The current approved form for an application for an evidence summons is Form 4 and for an evidence summons is Form 5.
- (3) The Tribunal may do any one or more of the following:
 - (a) issue the evidence summons in the form applied for;
 - (b) issue the evidence summons in a form amended by the Tribunal;

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- (c) issue the evidence summons on conditions, including conditions regarding payment of the recipient's costs of complying with the evidence summons;
 - (d) request the party applying for the evidence summons to provide further information in support of the application for the issue of the evidence summons;
 - (e) refuse to issue the evidence summons.
- (4) If the Tribunal issues the evidence summons:
- (a) the Tribunal must endorse a copy of the evidence summons with:
 - (i) the date of issue; and
 - (ii) for an evidence summons requiring a person to appear and give evidence, the date on which and the place at which the person must appear; and
 - (iii) for an evidence summons requiring the production of evidentiary material, the date by which and the place at which the material must be produced; and
 - (iv) any amendments made by the Tribunal; and
 - (v) any conditions imposed by the Tribunal; and
 - (b) the Tribunal must affix the seal of the Tribunal to the copy of the evidence summons.
- (5) The Tribunal must provide a copy of the sealed evidence summons to the party who applied for the summons.
- (6) Despite rule 3, the evidence summons must be served on the person required to comply with it by giving the original sealed summons to:
- (a) if the recipient is an individual – the individual; or
 - (b) if the recipient is a body – an executive officer of the body; or
 - (c) a person authorised to accept service of documents on behalf of the recipient.
- (7) A person may apply to the Tribunal for an order:
- (a) setting aside an evidence summons; or
 - (b) allowing extra time to comply with an evidence summons; or

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- (c) limiting the scope of evidentiary material required to be produced under an evidence summons; or
 - (d) requiring the party who applied for the evidence summons to pay all or part of the costs of complying with the evidence summons (whether or not the summons was issued on a condition regarding costs).
- (8) An application under subrule (7) is an ordinary application.

10 Costs

- (1) This rule applies to costs orders under Part 4, Division 6 of the Act.
- (2) For section 132(2)(d) of the Act, in deciding whether to make a costs order for a proceeding or part of a proceeding, the Tribunal must take into account:
- (a) the extent to which a failure by a party to comply with these Rules or a direction by the Tribunal has resulted in a waste of money or time; and
 - (b) whether the failure to make a costs order for the out-of-pocket expenses reasonably incurred by a successful party would substantially deprive that party of relief.
- (3) A person seeking a costs order for a proceeding or part of a proceeding:
- (a) may do so by making an ordinary application; and
 - (b) must include in the evidence in support of the application an itemisation of the costs and disbursements in respect of which the order is sought.
- (4) For subrule 10(2)(b), if a fee charged by a service provider for service of process and travelling allowance exceeds the sheriff fee, the excess is taken not to be reasonably incurred.
- (5) In this rule:

out-of-pocket expenses means one or more of the following expenses:

- (a) the fee prescribed by the Regulations for filing an initiating application;
- (b) a fee charged by a service provider for filing a document;

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- (c) a fee charged by a service provider for service of process and travelling allowance;
 - (d) a fee charged by a service provider for a search to locate a person or thing;
 - (e) a fee charged by a service provider for a business name search or company search.

service provider means:

- (a) the sheriff; or
- (b) a private bailiff, process server, inquiry agent or commercial agent.

sheriff, see section 4 of the *Sheriff Act 1962*.

sheriff fee means the fee payable to the sheriff for service of process as prescribed in the Schedule, items 1 to 4, to the *Sheriff Regulations 1967*.

successful party, for a proceeding or part of a proceeding, means a party who has substantially succeeded against another party in the proceeding or part.

11 Matters in which Registrar may constitute Tribunal

For section 22 of the Act, the following matters or classes of matters are specified as ones in which the President may provide for the Registrar to constitute the Tribunal:

- (a) matters that come within the Tribunal's original jurisdiction;
- (b) directions hearings and compulsory conferences in matters that come within the Tribunal's review jurisdiction.

12 Order that decision maker provide reasons

- (1) An application made under section 36(1) of the Act for an order that a decision maker provide reasons must be made by way of an initiating application and must be served on the decision maker in accordance with rule 3.
- (2) The Registrar may, on acceptance of the application, appoint a date for the hearing of the application.

13 Extension of time

For section 68(1) of the Act, the Tribunal may on its own initiative, or on an ordinary application by a party, extend or shorten a time limit imposed by the Act, another Act or these Rules, for doing something in relation to a proceeding.

14 Intervention

For section 129(3)(a) of the Act, the Tribunal may grant a person leave to intervene in a proceeding or part of a proceeding on any of the following grounds:

- (a) that participation by the person is likely to assist the Tribunal in reaching a decision on a matter, or the matters, in issue;
- (b) that participation by the person will not substantially delay the proceeding or add substantially to the cost to any party of the proceeding;
- (c) if the person could instead be joined as a party to the proceeding under section 128 of the Act, that a grant of leave to intervene is preferable.

15 Reopening of proceeding

- (1) This rule applies to applications under section 80 of the Act to reopen a proceeding.
- (2) A party may apply to reopen a proceeding by an ordinary application filed with the Registrar no later than 4:30 pm 28 days after the date of the relevant proceeding.
- (3) The time specified in subrule (2) may be extended under rule 13 only in exceptional circumstances.

16 Electronic communications

Steps or actions under these Rules may be taken by electronic means, unless doing so would cause inconvenience or hardship to a party.

17 Repeal of rules

All Rules made under section 138(3)(a) of the Act and in force immediately before the commencement of these Rules are repealed.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2 LIST OF LEGISLATION***Northern Territory Civil and Administrative Tribunal Rules (SL No. 11, 2016)***

| | |
|-----------|-------------|
| Notified | 31 May 2016 |
| Commenced | 31 May 2016 |

Northern Territory Civil and Administrative Tribunal Amendment Rules 2016 (SL No. 42, 2016)

| | |
|-----------|------------------|
| Notified | 23 November 2016 |
| Commenced | 23 November 2016 |

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: rr 1, 3 and 10.

4 LIST OF AMENDMENTS

| | |
|------|-----------------------|
| r 10 | sub No. 42, 2016, s 3 |
|------|-----------------------|