

I certify that this is a copy of the authorised version of this Statutory Rule as at 13 April 2022, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 13 April 2022.

Robyn Webb
Chief Parliamentary Counsel
Dated 21 April 2022

TASMANIA

TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL RULES 2021

STATUTORY RULES 2021, No. 86

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TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL RULES 2021

I, MALCOLM SCHYVENS, the President of the Tasmanian Civil and Administrative Tribunal, make the following rules under section 92(1)(a) of the *Tasmanian Civil and Administrative Tribunal Act 2020*.

PART 1 – PRELIMINARY

1. Short title

These rules may be cited as the *Tasmanian Civil and Administrative Tribunal Rules 2021*.

2. Commencement

These rules take effect on the day on which their making is notified in the *Gazette*.

3. Interpretation

(1) In these rules –

Act means the *Tasmanian Civil and Administrative Tribunal Act 2020*;

approved form means a form approved from time to time by the President or the Registrar.

(2) A word or phrase in these rules that is used in the Act has, unless the contrary intention appears, the same meaning as the word or phrase has in the Act.

4. Dispensation from rules

- (1) The Tribunal or the President may dispense with compliance with any requirement of these rules, either before or after the occasion for compliance arises.
- (2) A Division Head may dispense with compliance with any requirement of these rules, either before or after the occasion for compliance arises, in relation to proceedings of the Tribunal that relate to the Division.
- (3) A registrar may, at the direction of the President, constitute the Tribunal for the purposes of this rule.

PART 2 – COMMENCEMENT OF PROCEEDINGS

5. Applications

- (1) An application to the Tribunal under, or for the purposes of, the Act or a relevant Act must be –
 - (a) in, or to the effect of, the approved form; and
 - (b) duly completed; and
 - (c) lodged in a registry; and
 - (d) lodged with the fee prescribed in the regulations under the Act or under the relevant Act.
- (2) Subrule (1) does not apply, in relation to an application under a relevant Act, to the extent of an inconsistency with the provisions of the relevant Act, or regulations made under a relevant Act, under or for the purposes of which the application is made.
- (3) An application to the Tribunal under, or for the purposes of, the Act or a relevant Act is not required to specify the Division of the Tribunal to which the function of determining the application is allocated under the Act, but if the appropriate Division is not specified, or the incorrect Division is specified, a registrar may complete or alter the application form accordingly.

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- (4) Unless the Tribunal grants an extension of time under these rules or under a relevant Act, an application must be made –
- (a) if the Act or a relevant Act specifies a period within which the application is to be made – within the period so specified; or
 - (b) in any other case – within 28 days from the day on which the applicant became entitled under the Act or the relevant Act to make the application.

6. Reply to application or appeal

- (1) In this rule –

relevant application or appeal means an application, appeal, or application for review of a decision, in relation to which the Tribunal has made a direction under subrule (2).

- (2) If the Tribunal so directs, this rule applies to the following:
- (a) an application made to the Tribunal in its original jurisdiction;
 - (b) an appeal, or an application for review of a decision, made to the Tribunal in its review jurisdiction.
- (3) Subject to subrule (5), a respondent to a relevant application or appeal may lodge with the Tribunal a reply to the application or appeal,

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setting out the respondent's response to the relevant application or appeal.

- (4) A reply must be –
 - (a) in or to the effect of the approved form; and
 - (b) duly completed; and
 - (c) lodged at a registry.
- (5) The Tribunal may direct a respondent to lodge a reply to a relevant application or appeal in the manner, and within the period, that the Tribunal directs.
- (6) Unless the Tribunal grants an extension under these rules or the relevant Act, a reply must be lodged –
 - (a) if the Tribunal has given a direction under subrule (5) as to the period in which the reply must be lodged – within the period directed; or
 - (b) in any other case – within 14 days from the day on which the respondent was notified of the relevant application or appeal.
- (7) A respondent who lodges a reply must serve on the applicant or appellant a copy of the reply before, at the time, or as soon as practicable after, lodging the reply.

PART 3 – PARTIES AND REPRESENTATION

7. Parties

- (1) The following persons are taken to be parties to proceedings for the purposes of an application under the *Guardianship and Administration Act 1995* in relation to a guardianship order or a proposed guardianship order, including for a review, advice, or direction, in relation to such an order or in relation to a person who has been appointed guardian:
 - (a) the person in relation to whom a person is nominated to be, or in relation to whom a person has been, appointed guardian;
 - (b) the applicant or applicants;
 - (c) the person who is, or is nominated to be, appointed as the guardian;
 - (d) the Public Guardian.
- (2) The following persons are taken to be parties to proceedings for the purposes of an application under the *Guardianship and Administration Act 1995* in relation to an appointment of an enduring guardian, including for a review, advice or direction in relation to an enduring guardianship:
 - (a) the appointor, or purported appointor, of the enduring guardian;
 - (b) the applicant or applicants;

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- (c) the Public Guardian;
 - (d) the Public Trustee.
- (3) The following persons are taken to be parties to proceedings for the purposes of an application under the *Guardianship and Administration Act 1995* in relation to an administration order or a proposed administration order, including a review, advice, or direction, in relation to such an order or in relation to a person who has been appointed as an administrator:
- (a) the person in relation to whom a person is nominated to be, or in relation to whom a person has been, appointed as the administrator;
 - (b) the person who is, or is nominated to be, the administrator;
 - (c) the Public Guardian;
 - (d) the Public Trustee.
- (4) The following persons are taken to be parties to an application under the *Guardianship and Administration Act 1995* for consent to medical or dental treatment:
- (a) the person to whom the application relates;
 - (b) the applicant or applicants;
 - (c) the medical practitioner who is to carry out the medical or dental treatment;

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- (d) the person who is, under that Act, the person responsible for the person to whom the application relates;
 - (e) the Public Guardian.
- (5) The following persons are taken to be parties to proceedings for the purposes of an application under the *Powers of Attorney Act 2000* in relation to the grant of an enduring power of attorney or advice or direction in relation to an enduring power of attorney:
 - (a) the donor, or purported donor, of the power of attorney;
 - (b) the attorney, or purported attorney, in relation to the power;
 - (c) the applicant or applicants;
 - (d) the Public Guardian;
 - (e) the Public Trustee.
- (6) The following persons are taken to be parties to proceedings for the purposes of an application under the *Wills Act 2008* in relation to a statutory will, within the meaning of that Act, or a proposed statutory will:
 - (a) the proposed testator, within the meaning of that Act, in relation to the will;
 - (b) a guardian or administrator in relation to the proposed testator;
 - (c) the applicant or applicants;

- (d) any person who would be entitled to receive any part of the estate of the proposed testator;
- (e) any person who may be likely to make an application under the *Testator's Family Maintenance Act 1912*;
- (f) any person for whom the proposed testator might reasonably be expected to make provision under a will;
- (g) the Public Guardian.

8. Representation by Australian legal practitioners

- (1) If a party to proceedings who has, under section 98(1)(b) of the Act or a provision of a relevant Act, a right to be represented by an Australian legal practitioner has instructed an Australian legal practitioner to represent the party, the Australian legal practitioner must, as soon as practicable, in the approved form, notify the Tribunal, and each other party to the proceedings, that the Australian legal practitioner is to represent the party who so instructed the practitioner.
- (2) If a relevant Act requires the leave of the Tribunal to be obtained for a party to proceedings of the Tribunal to be represented by an Australian legal practitioner, the Tribunal, in granting the leave, may impose the conditions in relation to representation of the party that the Tribunal thinks fit, including requiring the disclosure of the estimated cost of the

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representation, by the Australian legal practitioner, of the party.

- (3) The Tribunal may revoke leave granted for an Australian legal practitioner to represent a party, if the Tribunal is satisfied that –
- (a) the party no longer consents to the Australian legal practitioner representing the party; or
 - (b) the party is, or has become, incapable of instructing the Australian legal practitioner; or
 - (c) any other grounds are present that the Tribunal considers sufficient to justify the revocation.

9. Grant and revocation of leave for person, other than Australian legal practitioner, to represent party

- (1) In dealing with an application, for the purposes of section 98(1)(c) of the Act, for leave to be granted to a person, other than an Australian legal practitioner, to represent a party to proceedings, the Tribunal is, subject to the requirements of the relevant Act for the purposes of which the application is made, to have regard to –
- (a) such of the following circumstances as the Tribunal considers are relevant to the proceedings:

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- (i) whether the proposed representative has sufficient knowledge of the issues in dispute to enable the proposed representative to represent the applicant effectively before the Tribunal;
 - (ii) whether the proposed representative has the ability to deal fairly and honestly with the Tribunal and other persons involved in the proceedings;
 - (iii) whether the proposed representative is vested with sufficient authority to bind the party; and
- (b) any other circumstances that the Tribunal considers relevant.
- (2) The Tribunal may revoke leave granted to a person to represent a party to proceedings only if the Tribunal is satisfied that –
- (a) the party no longer consents to the person representing the party; or
 - (b) the person applied for leave to represent the party without the consent of the party; or
 - (c) the person does not have the qualities referred to in subrule (1)(a); or

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- (d) the party is, or has become, incapable of instructing the representative; or
- (e) any other grounds are present that the Tribunal considers sufficient to justify the revocation.

**PART 4 – RECKONING, EXTENSION AND
ABRIDGEMENT OF TIME**

10. Reckoning of time

- (1) Subject to the provisions of a relevant Act, any period of time fixed by these rules, or by any order or other decision of the Tribunal or a 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 rule, the period in question, being a period of 5 days or less, would include a day or part of a day on which a registry is closed, that day is to be excluded from the period.
- (4) If the last day for doing a thing is, or a thing is to be done on, a day on which a registry is closed, the thing may be done on the next day on which the registry is open.
- (5) Section 29 of the *Acts Interpretation Act 1931* does not apply to these rules.

11. Tribunal may extend or abridge time

The Tribunal may extend or abridge the time in which an action, in relation to any proceedings, may be taken, or must be taken, under these rules, the Act or a relevant Act.

PART 5 – SERVICE AND DOCUMENTS

12. Address for service

- (1) A document by which proceedings of the Tribunal are commenced, or a reply, lodged with the Tribunal by a person or body must contain an address for service of the person or body.
- (2) An address for service of a person or body may be –
 - (a) the address of a place –
 - (i) at which documents in the proceedings may be left for the person or body during ordinary business hours; and
 - (ii) to which documents in the proceedings may be posted for the person or body; or
 - (b) an email address or mobile phone number.

13. Stamping and lodgement of documents

If a document by which proceedings of the Tribunal are commenced, or a reply, is lodged with the Tribunal, or a summons is issued by the Tribunal –

- (a) the date of lodgement of the document, or issue of the summons, must be

recorded on the document or summons;
and

- (b) the document or summons may be sealed with the seal of the Tribunal.

14. Approved form for documents generally to be used

- (1) Subject to these rules and any relevant Act, any document to be used in proceedings is to be in, or to the effect of, the approved form, if any.
- (2) The Registrar may make any approved form available to any person on request.

15. Form of documents if no approved form

- (1) If there is no approved form for a document to be used in proceedings, a person or body may use a form of the person's or body's own devising, but only if it contains the information required by a registrar.
- (2) The Tribunal or a registrar may, if the Tribunal or registrar considers it appropriate to do so, accept any application or other document for lodgment with the Tribunal even though the document is not in accordance with the approved form or the form required under the relevant Act, as the case may be.
- (3) Before accepting a document under subrule (2), the Tribunal or a registrar may require the person or body on whose behalf the document is being lodged, to give the Tribunal or registrar the further information as the Tribunal or registrar

requires, within the period specified by the Tribunal or registrar.

- (4) A document accepted by the Tribunal or a registrar under subrule (2) is taken to be duly lodged.

16. Tribunal or registrar may accept documents that are not duly completed

- (1) A document that is not duly completed may, with the approval of the Tribunal or a registrar, be accepted for lodgement.
- (2) Before accepting for lodgement a document that is not duly completed, the Tribunal or registrar may require the person or body 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 the period specified by the Tribunal or registrar.

17. Rejection of incorrectly lodged documents

- (1) Without limiting rule 14 or 15, the Tribunal or a registrar may reject a document that has been lodged with the Tribunal (whether in hard copy or by electronic method), if –
 - (a) the document is not in, or to the effect of, the approved form, has not been duly completed or does not comply with any other requirement of these rules, the Act or a relevant Act, in relation to the document; or

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- (b) the applicable fee, if any, for the lodgement of the document has not been fully paid.
- (2) The Tribunal or a registrar may dismiss any application or appeal that has been commenced by means of a document that is rejected under this rule.
- (3) The dismissal of an application or appeal under this rule does not prevent the applicant or appellant from recommencing proceedings by lodging another application or appeal that complies with the requirements of these rules or any other applicable legislation.

PART 6 – COSTS

18. Costs

- (1) Subject to an order of the Tribunal and the provisions of a relevant Act, if the Tribunal has not ordered the payment, in relation to proceedings, of a lump sum in costs –
 - (a) costs, in relation to the proceedings, awarded by the Tribunal are to be assessed –
 - (i) at the percentage, determined by the Tribunal, of the scale of costs applicable from time to time for the purposes of the *Supreme Court Civil Procedure Act 1932*; or
 - (ii) if no other percentage is determined by the Tribunal – at 75% of the scale of costs applicable from time to time for the purposes of the *Supreme Court Civil Procedure Act 1932*; and
 - (b) if costs are not agreed by the parties, the Tribunal may, on the application of a party, determine the amount of costs payable.
- (2) In determining the costs to be awarded to a party to proceedings, the Tribunal may take into account that the party did not accept an offer as

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favourable as, or more favourable than, the Tribunal's order or decision in the proceedings.

- (3) A registrar may, at the direction of the President, constitute the Tribunal for the purposes of this rule.

PART 7 – MISCELLANEOUS

19. Applications for review where party absent from hearing

- (1) A person may not, except with the permission of the Tribunal, make more than one application under section 116(2) of the Act in respect of the same matter.
- (2) An application, under section 116(2) of the Act, in relation to a decision may only be made within 7 days after the decision is made, unless an extension of the period is granted under rule 11.

20. Issue of summons

- (1) An application by a party to proceedings for a summons under section 104 of the Act must be made in, or to the effect of, the approved form.
- (2) If a summons is issued under section 104 of the Act, the summons, and any sealed copies of the summons required to be served under subrule (4), must be served on the person named in the summons –
 - (a) if the summons is issued at the direction of the Tribunal – by or on behalf of a registrar; or
 - (b) if the summons is issued on the application of a party – by or on behalf of that party.

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- (3) The summons must be served on the person named in the summons at least 5 days, or within a shorter or longer period that the registrar directs, before the return date specified in the summons, unless the person named in the summons has agreed to the later service of the summons.
 - (4) 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 set out in subrule (5).
 - (5) A sealed copy of the summons is not required to be served under subrule (4) on a party to proceedings if the party applied for the summons or is the person named in the summons.
 - (6) A person who is summoned to attend and produce a document or thing is not required to attend the Tribunal if –
 - (a) the person delivers or sends the summons or a copy of it, and the document or thing, to a registrar at the address specified for the purpose in the summons; and
 - (b) the document or thing is received not less than 2 clear days before the date specified in the summons for attendance.
 - (7) Unless a summons specifically requires the production of the original, the person summoned may produce a copy of any document required by the summons to be produced.

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- (8) A copy of a document for the purposes of subrule (6) or (7) may be –
- (a) a photocopy; or
 - (b) in any electronic form that the party who applied for the summons has indicated will be acceptable.

20A. Amounts payable to person summoned

- (1) In this rule –

costs amount, in relation to a person to whom a summons is issued by the Tribunal, means –

- (a) for each day on which the person is required to attend before the Tribunal in accordance with the summons – the witness allowance, in relation to the summons, specified in subrule (6); and
- (b) the amount, of the reasonable costs of complying with the summons, that is greater than the witness allowance in relation to the summons and that –
 - (i) is agreed between the person and the party who applied for the summons to be issued; or

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- (ii) if the person and the party do not agree as to the amount of those costs – is determined by the Tribunal under subrule (5);

loss and expenses amount, in relation to a person to whom a summons is issued by the Tribunal, means a reasonable amount, for any loss or expense incurred by the person in complying with the summons (being an amount that is not included in the costs amount, in relation to the summons, whether or not the party is liable under subrule (2) to pay the costs amount to the person), that –

- (a) is agreed between the person and the party who applied for the summons to be issued; or
- (b) if the person and the party do not agree as to the amount – is determined by the Tribunal under subrule (5);

relevant officer means –

- (a) a State officer or a State employee; and
- (b) a police officer of this State, another State, a Territory or the Commonwealth; and

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- (c) an officer, or employee, of another State or a Territory or the Commonwealth; and
 - (d) an officer, or employee, of a council or a local government body of another State or a Territory.
- (2) If a summons is, on the application of a party to proceedings, issued by the Tribunal to a person, the party is liable to pay to the person –
 - (a) the costs amount in relation to the summons; and
 - (b) the loss and expenses amount in relation to the summons.
- (3) Despite subrule (2), if a person to whom a summons is issued by the Tribunal on the application of a party is a relevant officer and the person is to appear before the Tribunal in that capacity, the party is not liable under that subrule to pay to the person the costs amount in relation to the summons, except in relation to any day that is a day on which –
 - (a) the person is required to appear before the Tribunal; and
 - (b) the person will be on leave from his or her employment or engagement as a relevant officer.
- (4) A person to whom a summons is, on the application of a party, issued by the Tribunal is

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not required to appear before the Tribunal in accordance with the summons on a day unless –

- (a) the party has paid to the person, before the end of a reasonable period before the day, the costs amount, in relation to the summons, that the party is liable to pay under subrule (2); or
- (b) the person has, before that day, accepted an undertaking by the party to pay to the person the costs amount, in relation to the summons, that the party is liable to pay under subrule (2); or
- (c) if –
 - (i) the party has, before the end of a reasonable period before the day, given to the person an undertaking to pay to the person the costs amount, in relation to the summons, that the party is liable to pay under subrule (2); and
 - (ii) the person has notified the party in writing before that day that the person does not accept the undertaking –

the party has paid to the person, before that day, the costs amount, in relation to the summons, that the party is liable to pay under subrule (2).

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- (5) The Tribunal, on the application of a party who has applied to the Tribunal for the issue of a summons to a person, or of a person to whom a summons has been issued by the Tribunal, may determine either or both of the following in relation to the summons:
- (a) the costs amount in relation to the summons;
 - (b) the loss and expenses amount in relation to the summons.
- (6) For the purposes of this rule, the witness allowance is \$100 for each day on which the person is required to attend before the Tribunal in accordance with the summons.
- (7) If the Tribunal, on its own motion, issues a summons to a person to attend before the Tribunal in proceedings –
- (a) the Tribunal may determine –
 - (i) which party or parties to the proceedings are to be taken, for the purposes of this rule, to have applied to the Tribunal for the issue of the summons to the person; and
 - (ii) the costs amount, or the loss and expenses amount, or both, in relation to the summons; and
 - (iii) the proportions of the costs amount, or the loss and expenses

amount, or both, in relation to the summons, that the party is liable to pay to the person; and

- (b) each party in relation to whom such a determination is made is to be taken, for the purposes of this rule –
 - (i) to have applied to the Tribunal for the issue of the summons to the person; and
 - (ii) to be liable under subrule (2) to pay to the person the proportion, of the amounts determined under paragraph (a)(ii), that the Tribunal has determined under paragraph (a)(iii) the party is liable to pay to the person.

21. Application for correction of mistakes under section 119 of Act

An application under section 119 of the Act for the Tribunal to correct a decision or a statement of reasons must be given to the Tribunal within 21 days of the applicant receiving notice of the decision or the statement and must also include –

- (a) details of the relevant proceedings, decision or statement of reasons; and
- (b) details of the claimed mistake, error or defect.

22. When registrar may constitute Tribunal

A registrar may, at the direction of the President or a Division Head, constitute the Tribunal for the purpose of making any of the following decisions of the Tribunal:

- (a) a decision under section 98, or clause 8 of Part 8 of Schedule 2 to the Act or clause 7 of Part 4 of Schedule 3 to the Act, relating to the grant or revocation of leave for a person to represent a party to proceedings;
- (b) a decision under section 98 of the Act relating to the appointment of a person to act as guardian ad litem, or represent a party, in proceedings;
- (c) a decision of the Tribunal under rule 11 to extend or abridge a period of time;
- (ca) a determination by the Tribunal for the purposes of rule 20A;
- (d) a decision under section 88 of the Act;
- (e) a decision to give a direction under section 81(2) or (3) of the Act or to make a determination under section 123(2) of the Act;
- (f) a decision relating to the setting aside of a summons or excusing compliance with a summons in relation to proceedings;

- (g) a decision relating to the grant of access to documents or things produced in compliance with a summons in proceedings.

23. Opening hours of registry

- (1) A registry is to be open between the hours, and on the days, that the President determines.
- (2) The Registrar may determine the classes of proceedings in relation to which a document may be filed outside the hours determined under subrule (1).
- (3) A registrar may accept any document filed outside the hours determined under subrule (1), if the document relates to proceedings that are within a class of proceedings to which a determination under subrule (2) relates.

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These rules were made by the President of the Tasmanian Civil and Administrative Tribunal on 5 November 2021.

MALCOLM SCHYVENS
President

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 8 November 2021.

These rules are administered in the Department of Justice.

NOTES

The foregoing text of the *Tasmanian Civil and Administrative Tribunal Rules 2021* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 13 April 2022 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
<i>Tasmanian Civil and Administrative Tribunal Rules 2021</i>	S.R. 2021, No. 86	8.11.2021
<i>Tasmanian Civil and Administrative Tribunal Amendment Rules 2022</i>	S.R. 2022, No. 13	13.4.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Rule 20A	Inserted by S.R. 2022, No. 13
Rule 22	Amended by S.R. 2022, No. 13