



# Administrative Decisions Tribunal

New South Wales

## RIGHTS OF APPEAL AGAINST A DECISION OF THE ADMINISTRATIVE DECISIONS TRIBUNAL (ADT)

### APPEALS TO THE APPEAL PANEL AGAINST A DECISION OF A DIVISION OF THE ADT

#### 1. Can I appeal against a decision of a Division of the ADT?

Generally your appeal rights against decisions of the Tribunal are set out in Chapter 7 of the *Administrative Decisions Tribunal Act 1997*. The appeal right is usually to the Appeal Panel of the Tribunal. There are some exceptions which are listed in question 9.

Section 113 of the *Administrative Decisions Tribunal Act 1997* provides:

#### **Section 113 Right to appeal against appealable decisions of the Tribunal**

*(1) A party to proceedings in which an appealable decision of the Tribunal is made may appeal to the Tribunal constituted by an Appeal Panel.*

*(2) An appeal under this Part:*

- (a) may be made on any question of law, and*
- (b) with the leave of the Appeal Panel, may extend to a review of the merits of the appealable decision.*

*(2A) Despite subsections (1) and (2), an appeal does not lie to an Appeal Panel of the Tribunal against the exercise of an interlocutory function (within the meaning of section 24A) by of the Tribunal except by leave of the Appeal Panel.*

*(2B) For the purposes of determining whether to grant leave under subsection (2A), and for determining the appeal if leave is granted, the Appeal Panel may be constituted by:*

- (a) one presidential judicial member—if the interlocutory function was exercised by the Tribunal constituted by a Deputy President or by one or more members other than the President, or*
- (b) in accordance with section 24—if the interlocutory function was exercised by the President.*

*(2C) The provisions of subsection (2B):*

- (a) have effect despite any other requirement of this Act or any other enactment relating to the constitution of an Appeal Panel for the exercise of its functions, and*
- (b) do not prevent a differently constituted Appeal Panel from determining*

*whether to grant leave to appeal under subsection (2A) or determining the appeal if the Panel is duly constituted to exercise that function apart from subsection (2B).*

*(2D) Subsection (2B) has effect despite section 24A.*

*(3) An appeal under this Part must be made:*

- (a) within 28 days after the Tribunal gives the party oral reasons or written reasons for the appealable decision (whichever is the later), or*
- (b) within such further time as the Appeal Panel may allow.*

*(4) An appeal under this Part is to be made in the manner prescribed by the rules of the Tribunal.*

## **2. What is a 'question of law'?**

It is not possible to give an exact definition of 'a question of law' but the following are some examples:

- applying the wrong statutory provision to the facts of the case
- misinterpreting the words in a statutory provision
- making a finding of fact where there is no evidence to support that finding
- not giving a party an adequate opportunity to present their case
- not giving a party an adequate opportunity to respond to any relevant information which is against them; and
- not giving a party reasonable notice of the hearing.

A question of law is NOT

- that you disagree with the decision
- that the decision maker accepted the evidence of other witnesses and did not accept your evidence or the evidence of people who supported you
- the meaning of an ordinary word in a statute (as opposed to the meaning of a legal or technical word).

## **3. Leave to review the merits of a decision**

The reference to 'leave' means that the Appeal Panel has a discretion whether to allow an appeal to re-open the decision, regardless of whether there is a question of law raised or an error of law shown. A persuasive reason would need to be given to the Appeal Panel for reopening the merits of a decision and thereby putting at risk the original decision and exposing to further litigation and costs the party who was successful previously.

## **4. Is there anything I need before I can lodge my notice of appeal?**

Yes, you will need a copy of the decision that you want to appeal. If you have only been given an ex tempore decision, that is, a decision given orally, you can request written reasons for the decision. You have 28 days from the date that you receive your Notice of Decision to request written reasons.

## **5. How do I lodge my notice of appeal?**

You will need to complete a Notice of Appeal Form which is available from the Registry or can be downloaded from the Tribunal's website.

To lodge your notice of appeal you can either post it into the Registry or you can lodge it in person. The filing fee for lodging a notice of appeal is \$301.00 payable at the time of filing your appeal. You can pay by cash or debit card (in person only), by cheque, money order or credit card.

You are required to serve on all other parties to your appeal a copy of the Notice of Appeal which has been stamped by the Tribunal 'Filed and dated' as soon as practicable after lodging the notice.

## **6. How many copies of documents do I have to have?**

- The original for the Tribunal's file, plus
- Three copies – one for each member of the Appeal Panel
- A copy (ies) for each party to the proceedings.

## **7. What happens once I have lodged my notice of appeal?**

The Tribunal has issued a Practice Note to assist parties to an appeal. Please contact the registry for a copy or you can download Practice Note 5 from the ADT website.

## **8. Can costs be awarded against me?**

Yes, section 88 of the Administrative Decisions Tribunal Act, 1997 makes provision for costs to be awarded in certain circumstances. Parties should note that where an appeal is lodged and the Appeal Panel considers the appeal was without any real prospect of success, costs might be awarded against the appellant. Costs may be awarded against unsuccessful appellants in Retail Leases cases even where the appeal has raised reasonably arguable questions of law. The Tribunal has issued a Guideline on Costs. It can be downloaded from the website under Practice and Procedure.

## **9. Do all decisions from Divisions of the Tribunal have a right of appeal to the Appeal Panel?**

No. In some cases the relevant legislation provides for a direct right of appeal to the Supreme Court of New South Wales instead of the Appeal Panel. For example,

- a decision under the *Commission for Children and Young People Act 1998*;
- a decision under section 329 of the *Local Government Act 1993*;
- a decision in respect to an unconscionable conduct claim under the *Retail Leases Act 1994* commenced in the Tribunal before 1 January 2006;
- a decision or order under the *Legal Profession Act 2004*; and
- an original decision or order under the *Architects Act 2003*, *Veterinary Surgeons Act 1986*, *Surveying Act 2002* or *Building Professionals Act 2005*

A decision granting or refusing leave to proceed under the *Anti-Discrimination Act 1977* cannot be the subject of an appeal to the Appeal Panel. Likewise a decision on an application to set aside a decision of specialist retail valuers cannot be appealed.

An appeal from any interlocutory orders or decisions of the Tribunal may only proceed with leave of the Appeal Panel. Interlocutory decisions include:

- stays or adjournments;
- prohibition or restriction of the disclosure, broadcast or publication of matters by order under section 75;
- summonses;
- extensions of time for any matter (including for the lodgment of applications or appeals);
- evidential matters;
- disqualification of members;
- joinder of parties to proceedings.

Under section 729A(4) of the *Legal Profession Act 2004* appeals against interlocutory decisions, decisions made with consent and decisions as to costs may be made to the Supreme Court with leave.

## **APPEALS FROM THE APPEAL PANEL TO THE SUPREME COURT**

### **10. Can I appeal against a decision of the Appeal Panel of the ADT?**

Yes. Section 119 of the *Administrative Decisions Tribunal Act 1997* sets out your right of appeal.

#### **Section 119 Right of appeal to Supreme Court**

*(1) A party to proceedings before an Appeal Panel of the Tribunal may appeal to the Supreme Court, on a question of law, against any decision of the Appeal Panel in those proceedings.*

*(1A) Despite subsection (1), an appeal does not lie to the Supreme Court against any of the following decisions of the Appeal Panel except by leave of the Supreme Court:*

- (a) an interlocutory decision,*
- (b) a decision made with the consent of the parties,*
- (c) a decision as to costs.*

*(2) The Appeal Panel (or any of the members constituting the Appeal Panel) cannot be made a party to an appeal under this section. Rules of court made under the Supreme Court Act 1970 may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).*

*(3) An appeal by a person under this section must be made:*

- (a) within such time and in such manner as is prescribed by rules of court made under the Supreme Court Act 1970, or*
- (b) within such further time as the Supreme Court may allow.*