

South Australia

South Australian Civil and Administrative Tribunal Regulations 2015

under the *South Australian Civil and Administrative Tribunal Act 2013*

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Legislative history

1—Short title

These regulations may be cited as the *South Australian Civil and Administrative Tribunal Regulations 2015*.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *South Australian Civil and Administrative Tribunal Act 2013*.

4—Meaning of decision of the Tribunal

For the purposes of the definition of *decision* in section 3(1) of the Act, a decision of the Tribunal does not include the following interlocutory directions, determinations or orders in respect of the operation of sections 70 and 71 of the Act:

- (a) the adjournment of proceedings by the Tribunal or the refusal of the Tribunal to adjourn proceedings (including without limitation, such an order made in respect of a conference under section 50 of the Act);
- (b) a direction of the Tribunal under section 45(1) or (3) of the Act;
- (c) a direction of the Tribunal under section 60(2)(e), (f), (g) or (i) of the Act;
- (d) a determination of the Tribunal under section 67(1) or (2) of the Act;

- (e) a direction of the Tribunal to the Public Advocate under section 28 of the *Guardianship and Administration Act 1993* to conduct an investigation;
- (f) a decision of the Tribunal to authorise the publication of a report of proceedings under section 81(2) of the *Guardianship and Administration Act 1993*.

5—Review jurisdiction of Tribunal

- (1) For the purposes of section 34(2) of the Act, the following decisions are not reviewable decisions under section 34 of the Act:
 - (a) a decision that is the subject, or forms part, of a residential park dispute under the *Residential Parks Act 2007* (even if the decision is made by a park owner of a residential park who is an agency or instrumentality of the Crown);
 - (b) a decision that is the subject, or forms part, of a tenancy dispute under the *Residential Tenancies Act 1995* (even if the decision is made by a landlord who is the South Australian Housing Trust, a community housing provider who is an agency or instrumentality of the Crown, or some other agency or instrumentality of the Crown);
 - (c) a decision made by an administering authority of a retirement village that—
 - (i) is the subject of an application under section 31(8) of the *Retirement Villages Act 1987*; or
 - (ii) is the subject, or forms part, of a dispute between the administering authority and a resident of a retirement village under the *Retirement Villages Act 1987*,(even if the administering authority is an agency or instrumentality of the Crown);
 - (d) a decision made by an operator of a retirement village that—
 - (i) is the subject of an application under section 44(8) of the *Retirement Villages Act 2016*; or
 - (ii) is the subject, or forms part, of a dispute between the operator and a resident of a retirement village under the *Retirement Villages Act 2016*,(even if the operator is an agency or instrumentality of the Crown).
- (2) For the purposes of section 34(2) of the Act, the following decisions are reviewable decisions under section 34 of the Act:
 - (a) a decision that is the subject, or forms part, of a dispute or application under Schedule 2 clause 2 of the *Community Housing Providers (National Law) (South Australia) Act 2013*;
 - (b) a decision that is the subject, or forms part of a dispute or application under section 84 of the *South Australian Co-operative and Community Housing Act 1991* insofar as an application may be made under that section by a transitioning housing co-operative or transitioning housing association under Schedule 3 Part 4 of the *Community Housing Providers (National Law) (South Australia) Act 2013*.

(3) In this regulation—

administering authority of a retirement village, has the same meaning as in the *Retirement Villages Act 1987*;

community housing provider has the same meaning as in the *Community Housing Providers (National Law) (South Australia) Act 2013*;

landlord has the same meaning as in the *Residential Tenancies Act 1995*;

operator of a retirement village, has the same meaning as in the *Retirement Villages Act 2016*;

park owner of a residential park, has the same meaning as in the *Residential Parks Act 2007*;

resident of a retirement village, has the same meaning as in the *Retirement Villages Act 1987* or the *Retirement Villages Act 2016* (as the case requires);

residential park dispute has the same meaning as in the *Residential Parks Act 2007*;

South Australian Housing Trust includes a subsidiary of the South Australian Housing Trust within the meaning of the *South Australian Housing Trust Act 1995*;

tenancy dispute has the same meaning as in the *Residential Tenancies Act 1995*;

transitioning housing association has the same meaning as in Schedule 3 Part 4 clause 16 of the *Community Housing Providers (National Law) (South Australia) Act 2013*;

transitioning housing co-operative has the same meaning as in Schedule 3 Part 4 clause 15 of the *Community Housing Providers (National Law) (South Australia) Act 2013*.

6—Provision of reasons for decision or other documents or things by decision-maker

For the purposes of section 35(2) of the Act, the time prescribed for the provision of a written statement of reasons or other relevant document or thing referred to in that section is 21 days from the time the decision-maker receives notice that an application has been made to the Tribunal for a review of the decision-maker's decision.

7—Orders for costs of party etc in prescribed circumstances

For the purposes of section 57(3) of the Act, an order of the Tribunal to dismiss or strike out any proceedings under the following provisions are prescribed:

- (a) section 47(4) of the Act;
- (b) section 48(2) of the Act;
- (c) section 49(2) of the Act.

8—Service

- (1) For the purposes of section 87(3) of the Act, the Tribunal may order that a process, notice or other document required or authorised to be given to or served on a person relating to any proceedings before the Tribunal may—
 - (a) be given to the person personally; or

- (b) be left for the person at the person's last known or usual place of residence or business with someone apparently over the age of 16 years; or
 - (c) be transmitted by fax or email to a fax number or email address provided by the person to the Tribunal (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
 - (d) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.
- (2) If a person refuses to accept personal service of a notice or other document required or authorised to be served on the person under the Act, or a relevant Act for the purpose of proceedings before the Tribunal, the notice or document will be taken to have been served personally on the person if the person serving the notice or document—
- (a) puts it down in the person's presence; and
 - (b) tells the person what the notice or document is.
- (3) It is not necessary to show the original of the notice or document to the person being served.

9—Enforcement of monetary orders

A party to the proceedings, or a person in favour of whom the monetary order is otherwise made, is recognised for the purposes of section 89(1) of the Act.

10—Accessibility of evidence

- (1) For the purposes of section 90(2)(d) of the Act, the following classes of material are prescribed:
- (a) recordings of Tribunal proceedings in the form of an audio, video or other recording from which a visual image or sound can be produced;
 - (b) material concerning the personal affairs of a person, the general disclosure of which would be unreasonable;
 - (c) material that contains allegations or suggestions of criminal or other improper conduct on the part of a person, the truth of which has not been established by judicial process and the general disclosure of which would be unreasonable;
 - (d) material that contains matter consisting of information—
 - (i) concerning a person under the age of 18 years, or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age when the information was furnished; and
 - (ii) the general disclosure of which would be unreasonable having regard to the need to protect that person's welfare;
 - (e) material that contains matter consisting of information—
 - (i) concerning a person suffering from a mental illness, impairment or infirmity or concerning such a person's family or circumstances, or any information of any kind furnished by a person suffering from mental illness, impairment or infirmity when the information was furnished; and

- (ii) the general disclosure of which would be unreasonable having regard to the need to protect that person's welfare.
- (2) In this regulation—
- personal affairs* of a person includes that person's—
- (a) financial affairs;
 - (b) criminal records;
 - (c) marital or other personal relationships;
 - (d) employment records;
 - (e) personal qualities, attributes or health status.

11—Orders for costs of proceedings in prescribed circumstances

For the purposes of section 91(3)(b) of the Act, the Tribunal may, in respect of proceedings that come within the Tribunal's review jurisdiction, make an order for costs of proceedings against a party in the following circumstances:

- (a) if the Tribunal makes an order to dismiss or strike out all, or any part, of a proceeding under section 47(3) of the Act;
- (b) if the Tribunal makes an order to dismiss or strike out all, or any part, of a proceeding under section 47(4) of the Act;
- (c) if the Tribunal makes an order to dismiss or strike out a proceeding under section 48(2) of the Act;
- (d) if the Tribunal makes an order or determination under section 49(2) of the Act.

12—Annual report

Pursuant to section 92(3) of the Act, a report under section 92 of the Act must include the following particulars of all warrants issued by the Tribunal under the *Guardianship and Administration Act 1993* during the financial year to which the report relates:

- (a) the number of warrants issued during the financial year;
- (b) the status of the applicants for the warrants;
- (c) the age, sex and details of the mental incapacity of the persons to whom the warrants related;
- (d) the grounds on which the warrants were issued;
- (e) the action taken under the warrants.

13—Register of proceedings

The following information is to be included in the register of proceedings of the Tribunal:

- (a) the number allocated to the proceedings;
- (b) the date on which the proceedings commenced;
- (c) the names of the applicant and the other parties to the proceedings;

- (d) the relevant Act and the provision of that Act under which the proceedings are commenced;
- (e) if a matter is transferred to the Tribunal under the Act or another Act—
 - (i) the date of the transfer to the Tribunal; and
 - (ii) the name of the tribunal, court, body or other decision-maker from which the matter is transferred; and
 - (iii) the relevant Act and the provision of that Act under which the jurisdiction is conferred on the Tribunal;
- (f) whether a matter is referred to a conference or mediation under Part 4 Division 4 of the Act;
- (g) whether a matter is resolved by way of conference, mediation or settlement negotiations;
- (h) the details of any directions, determination or orders of the Tribunal;
- (i) whether a direction is given by the Tribunal requiring that a hearing or part of a hearing be held in private under section 60(2)(e) of the Act, and the grounds on which the direction is given;
- (j) details of a warrant issued in a matter by the Tribunal under section 69 of the *Guardianship and Administration Act 1993* including—
 - (i) the status of the applicant for the warrant; and
 - (ii) the age, sex and details of the mental incapacity of the person to whom the warrant relates; and
 - (iii) the ground on which the warrant was issued; and
 - (iv) the action that was taken under the warrant;
- (k) if the proceedings are withdrawn, the date on which they are withdrawn;
- (l) the final decision of the Tribunal and the date of that decision.

14—Fees

- (1) The following persons or bodies are not required to pay a fee prescribed for the purposes of the Act that would otherwise be payable:
 - (a) a Minister of the Crown;
 - (b) the Commissioner for Consumer Affairs;
 - (c) the Public Advocate;
 - (d) the Commissioner of Police;
 - (e) a public sector employee acting on behalf of a public sector agency under the *Public Sector Act 2009*;
 - (f) the South Australian Housing Trust.

- (2) Subject to subregulation (3), fees prescribed for the purposes of the Act, other than a fee prescribed for application for internal review of a decision of the Tribunal under section 70 of the Act, or provision of a transcript of proceedings, are not payable in relation to Tribunal proceedings in respect of—
- (a) the *Advance Care Directives Act 2013*; or
 - (b) the *Consent to Medical Treatment and Palliative Care Act 1995*; or
 - (c) the *Guardianship and Administration Act 1993*; or
 - (d) the *Mental Health Act 2009*.
- (3) A fee prescribed for application for internal review of a decision of the Tribunal under section 70 of the Act is not payable by an applicant in respect of proceedings under—
- (a) the *Advance Care Directives Act 2013*; or
 - (b) the *Consent to Medical Treatment and Palliative Care Act 1995*; or
 - (c) the *Guardianship and Administration Act 1993*; or
 - (d) the *Mental Health Act 2009*,
- if the applicant is the person who is the subject of the proceedings.
- (4) Subject to this regulation, a fee prescribed for the referral of a matter under the *Residential Parks Act 2007* or the *Residential Tenancies Act 1995* must be paid—
- (a) in the case of a matter referred to the Tribunal under section 29(6a) of the *Residential Parks Act 2007*—
 - (i) where the park owner has lodged a written notice of dispute—by the park owner; or
 - (ii) in any other case—by the third party (as referred to in that subsection);
 - (b) in the case of a matter referred to the Tribunal under any other provision of section 29 of the *Residential Parks Act 2007*—by the park owner;
 - (c) in the case of a matter referred to the Tribunal under section 63(7) of the *Residential Tenancies Act 1995*—
 - (i) where the landlord has lodged a written notice of dispute—by the landlord; or
 - (ii) in any other case—by the third party (as referred to in that subsection);
 - (d) in the case of a matter referred to the Tribunal under any other provision of section 63 of the *Residential Tenancies Act 1995*—by the landlord;
 - (e) in the case of a matter referred to the Tribunal under section 105M(8) of the *Residential Tenancies Act 1995*—
 - (i) where the rooming house proprietor has lodged a written notice of dispute—by the rooming house proprietor; or
 - (ii) in any other case—by the third party (as referred to in that subsection);

- (f) in the case of a matter referred to the Tribunal under any other provision of section 105M of the *Residential Tenancies Act 1995*—by the rooming house proprietor.
- (5) Unless a Presidential member otherwise determines, proceedings before the Tribunal are stayed until a fee that is payable by a person, being a fee that is prescribed for—
 - (a) application for the commencement of Tribunal proceedings; or
 - (b) referral of a matter to the Tribunal under section 29 of the *Residential Parks Act 2007*, section 63 of the *Residential Tenancies Act 1995* or section 105M of the *Residential Tenancies Act 1995*; or
 - (c) application for an internal review of a decision of the Tribunal under section 70 of the Act; or
 - (d) application for review of a decision by the Tribunal under section 169 or 296 of the *Local Government Act 1999*, section 25C of the *Valuation of Land Act 1971* or section 15 of the *Lobbyists Act 2015*,is paid, or payment is waived or postponed under this regulation.
- (6) The Registrar may, on the grounds of financial hardship, or if the Registrar considers it is in the interests of justice to do so in the circumstances of a particular case—
 - (a) waive, remit or refund a prescribed fee (or part of a prescribed fee) payable by a person; or
 - (b) postpone payment of a prescribed fee (or part of a prescribed fee) by a person until such time, and on such conditions (if any), as the Registrar thinks fit.
- (7) A member of the Tribunal may if the member considers it is in the interests of justice to do so in the circumstances of a particular case—
 - (a) waive, remit or refund a prescribed fee (or part of a prescribed fee) payable by a person; or
 - (b) postpone payment of a prescribed fee (or part of a prescribed fee) by a person until such time, and on such conditions (if any), as the member thinks fit.
- (8) For the purposes of subregulation (7), the reference to a member of the Tribunal is, where the Tribunal is constituted of a registrar or other member of staff of the Tribunal, taken to include a reference to that registrar or other member of staff.
- (9) The Registrar may require payment of a non-refundable deposit on account of an amount to which a person may become liable in respect of fees prescribed for the purposes of the Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2015	25	<i>Gazette 5.3.2015 p906</i>	29.3.2015 except rr 14(5)(a), (e), (f) & Sch 1 item 2(c)—9.5.2015: r 2
2016	138	<i>Gazette 23.6.2016 p2365</i>	1.7.2016: r 2
2016	267	<i>Gazette 24.11.2016 p4513</i>	11.12.2016: r 2
2017	151	<i>Gazette 22.6.2017 p2402</i>	1.7.2017: r 2
2017	283	<i>Gazette 26.9.2017 p4191</i>	1.12.2017: r 2
2018	15	<i>Gazette 30.1.2018 p584</i>	30.1.2018: r 2
2020	124	<i>Gazette 4.6.2020 p2954</i>	1.7.2020: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2016</i>
r 5		
r 5(1)	varied by 15/2018 r 4(1)	30.1.2018
r 5(3)		
operator	inserted by 15/2018 r 4(2)	30.1.2018
resident	varied by 15/2018 r 4(3)	30.1.2018
r 9	substituted by 267/2016 r 4	11.12.2016
r 14	deleted by 283/2017 r 4	1.12.2017
	inserted by 124/2020 r 4	1.7.2020
<i>Sch 1</i>	<i>substituted by 138/2016 r 4</i>	<i>1.7.2016</i>
	<i>substituted by 151/2017 r 4</i>	<i>1.7.2017</i>
	<i>deleted by 283/2017 r 5</i>	<i>1.12.2017</i>

Historical versions

1.7.2016
11.12.2016
1.7.2017
1.12.2017
30.1.2018