

ACT Civil and Administrative Tribunal

Practice Note Number 2 of 2020

3 February 2020



Adjournments

The ACT Civil and Administrative Tribunal makes the following practice note under the *ACT Civil and Administrative Tribunal Procedures Rules 2020*.

A handwritten signature in blue ink, appearing to read 'K Soper'.

Registrar K Soper

Dated 3 February 2020

Note The practice note begins below the line. The information above the line is a summary of the key issues only.

Adjournments

When a preliminary conference, mediation or hearing is rescheduled or postponed, this is called an adjournment. This practice note sets out when and how a party can seek an adjournment, the principles that apply to an adjournment request and how the tribunal considers the request.

Key points

- Adjournments are not granted very often.
- A request for an adjournment must be made at the earliest possible opportunity. The party requesting the adjournment must provide enough information so the request can be properly considered.
- Do not assume that an adjournment will be granted, even if all the parties agree to the adjournment.
- If an adjournment is not granted and a party does not attend, orders may be made in the party's absence.

Options other than an adjournment

Before asking the tribunal for an adjournment, a party must consider other options such as:

- Asking for permission to take part by telephone

Note The Act, section 45 (Taking part other than in person), Rule 64 (Taking part other than in person) and Practice Note 3 of 2020 (Taking part by telephone) apply.

- Appointing an authorised representative to attend on the party's behalf.

Note The Act, section 30 (Representation) and Division 2.5.2 of the Rules (Authorised representatives) apply to authorised representatives.

Framework

- This practice note is made under rule 7 of the *ACT Civil and Administrative Tribunal Procedures Rules 2020*.
- The tribunal may excuse a person from complying with this practice note or make a direction in a proceeding which overrides this practice note.
- Legislation that applies to this practice note is:
 - The *ACT Civil and Administrative Tribunal Act 2008* (the Act), section 6 (Objectives of Act) and section 7 (Principles applying to Act); and

- Rule 63 (Adjournment) of the *ACT Civil and Administrative Tribunal Procedures Rules 2020* (the Rules).
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Application

- (1) This practice note applies to proceedings in all jurisdictions and commences on 3 February 2020.

General principle

- (2) To facilitate the quick resolution of applications and in line with the Act, section 6 (Objects of the Act) and section 7 (Principles applying to the Act), adjournments are granted sparingly.

Note Rule 63 provides that the tribunal may adjourn a preliminary conference, mediation, hearing or other tribunal proceeding on application by a party or on its own initiative.

When to request an adjournment

- (3) A party must request an adjournment at the earliest possible opportunity and no later than five business days before the preliminary conference, mediation or hearing.
- (4) If an adjournment request is received less than five business days before the matter is listed before the tribunal, there may not be time to consider the request. Instead, a decision about the request may be made on the day (of the preliminary conference, mediation or hearing) by the Member or Registrar. The party seeking the adjournment should attend the preliminary conference, mediation or hearing in person or by telephone to request the adjournment.

Requirement to consult with each other party

- (5) Before asking the tribunal for an adjournment, the party seeking an adjournment must —
 - (a) tell each other party—
 - (i) that they are seeking an adjournment; and
 - (ii) why they are seeking an adjournment; and
 - (iii) the length of the adjournment they are seeking; and
 - (b) ask:
 - (i) if the other party consents to the adjournment; and
 - (ii) if the other party opposes the adjournment the reason why; and
 - (iii) if the other party would suffer a disadvantage or prejudice if the adjournment is granted; and

- (iv) if there is any other matter the other party wants the tribunal to take into account in considering the request for an adjournment.
- (6) When asking the tribunal for an adjournment, the requesting party must tell the tribunal the response of each other party to the matters in (5)(b).

How to ask for an adjournment

- (7) Unless the tribunal directs otherwise, a request for an adjournment must be made in writing to the tribunal.

Note 1 A request for adjournment may be made by email or by lodging the approved form Application for Interim or other Orders. The Rules, rule 62 applies to applications for interim or other orders.

Note 2 Correspondence sent to the tribunal must be copied to all other parties: see Practice Note 1 of 2020 Communicating with the Tribunal.

- (8) The tribunal will consider an oral request for an adjournment where it is necessary or convenient to do so.
- (9) A party asking for an adjournment must:
 - (a) tell the tribunal each of the matters set out in paragraph (5)(b) above; and
 - (b) tell the tribunal if the request is urgent, and if it is, the reason why it is urgent; and
 - (c) give the tribunal and each other party any documents or evidence that support the adjournment request.

Note Evidence provided in support of an adjournment request should have enough detail to support the request.

- (9) If a party is giving the tribunal information, a document or evidence that is confidential in relation to an adjournment request, the party must:
 - (a) state on the information, document or evidence, or a covering note, that it is confidential; and
 - (b) ask the tribunal to make an order under the Act, s 39 (Hearings in private or partly in private).

Note Under the Act, section 38 (Hearings usually in public) information provided to the tribunal is publically available unless the tribunal makes an order under the Act, section 39 (Hearings in private or partly in private). To apply for a hearing in private or partly in private or documents not to be publicly available, see the Rules, Rule 62.

How does the tribunal consider an adjournment request?

- (10) A request for an adjournment may be considered in chambers on the basis of the information provided by the parties and without a hearing.
- (11) In considering a request for an adjournment, the tribunal must take into account:

- (a) the Act, section 6 (Objects of Act) and section 7 (Principles applying to the Act);
- (b) the reason for the adjournment;
- (c) any disadvantage the requesting party or the public might suffer if the adjournment is not granted;
- (d) the attitude of each party to the adjournment;
- (e) any prejudice to each other party or, where relevant, to the public if the adjournment is granted;
- (f) the length of the adjournment;
- (g) any other relevant matter.

(12) The proceedings will remain listed until the adjournment request is considered and the parties are notified of the outcome of the request.

(13) If the proceedings are adjourned, parties will be told the new date for the proceeding.

