1.7 Administrative Appeals Tribunal

1.14 Administrative Decisions Tribunal

In production, entries for these similarly named but very different tribunals became conflated. Section 1.7 has been re-written for the AAT, and a new section 1.14 added for the ADT.

Chapter 6

Corporations List

A new Practice Note SC Eq 4 commenced on 1 May 2006. The original version of Chapter 6 was written before 1 May 2006, based on the former version of Practice Note SC Eq 4, but due to production delays, was rendered obsolete by the time of printing in October 2006.

The entire chapter has been re-written to reflect current practice.

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An electronic copy of the Guide and all Supplements can be obtained at http://tinyurl.com/8a4oe

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1.7 Administrative Appeals Tribunal

The Administrative Appeals Tribunal (AAT) provides independent, merits review of a wide range of administrative decisions made by the Australian (Commonwealth) government, and some non-government bodies.

The AAT was established by the Administrative Appeals Tribunal Act 1975 (Cth) (AAT Act). The AAT Act and the Administrative Appeals Tribunal Regulations 1976 set out the Tribunal's powers, functions and procedures. The AAT maintains a website at www.aat.gov.au

The AAT does not have a general power to review any decision made under Commonwealth legislation. The Tribunal can only review a decision if an Act, regulation or other legislative instrument provides specifically that the decision is subject to review by the Tribunal. Jurisdiction is generally conferred by the enactment under which the original decision was made and extends to decisions made under more than 400 separate Acts and legislative instruments.

The jurisdiction of the AAT depends upon the existence of a decision, which is broadly defined in s3(3) of the AAT Act, and includes:

1. Making orders.
2. Giving certificates and permissions.
3. Issuing certificates.
4. Imposing conditions.
5. Making declarations; and
6. Doing or refusing to do any other act or thing.

The meaning of decision is derived from the enactment that is the source of the decision itself. The decision under review need not be valid in terms of the powers upon which the administrator relies, but need only be made in the intended or purported exercise of the power conferred by the enactment.

The AAT is made up of 6 divisions:

1. General Administrative Division.
2. Medical Appeals Division.
3. Security Appeals Division.
4. Taxation Appeals Division.
5. Valuation and Compensation Division.
6. Veterans Appeals Division.

Decisions in the areas of social security, taxation, veterans' affairs and workers' compensation constitute the bulk of the AAT's workload. However, the AAT also reviews decisions in areas such as bankruptcy, civil aviation, corporations law, customs, freedom of information, immigration and citizenship, industry assistance and security assessments undertaken by the Australian Security Intelligence Organisation.

Usually, the AAT will hold one or two conferences with parties to discuss the issues in dispute, identify any further material that the parties may wish to obtain and explore whether the matter can be settled. Referral to another form of ADR such as mediation, case appraisal or neutral evaluation may also be made. In the absence of a resolution being reached, a hearing will be conducted by the AAT.

Hearings are conducted by a panel comprising one, two or three tribunal members. The members of the AAT include former judges, lawyers and persons with specialist knowledge such as accountants, doctors or former members of the Australian Defence Force.
1.14 Administrative Decisions Tribunal

The Administrative Decisions Tribunal (ADT) is a New South Wales tribunal whose main functions include:

(a) To review specific administrative decisions of New South Wales Government agencies.

(b) To resolve discrimination disputes.

(c) To resolve retail lease disputes.

(d) To exercise disciplinary and regulatory functions over a range of professional and occupational groups, including lawyers.

The ADT is established by the Administrative Decisions Tribunal Act 1997 (ADT Act). It maintains a website at http://tinyurl.com/25yjfe (the actual URL is inconvenient).

Like the AAT, the jurisdiction of the ADT must be specifically conferred upon it by another New South Wales enactment giving it power to act as an original decision-maker. The enactment must provide that applications may be made to the ADT for the review of decisions made in the exercise of functions conferred or imposed upon it, by or under the enactment: s38(1)(b) of the ADT Act. If the enactment provides that the ADT’s jurisdiction to review a decision is subject to certain conditions, those conditions must be satisfied before the ADT undertakes the review: s38(3) ADT Act.

Section 113 of the ADT Act provides a right to appeal an original decision or reviewable decision made by the ADT to the Appeal Panel. An appeal may be made on any question of law, and with leave of the Appeal Panel, may extend to a review the merits of the decision. The Appeal Panel can affirm or set aside the decision, remit the matter to the ADT to be heard again or may substitute a decision: s114 ADT Act.

There are 6 divisions of the ADT, and an Appeal Panel:

1. General Division (including the Guardianship and Protected Estates List).
2. Community Services Division.
3. Revenue Division.
4. Legal Services Division.
5. Equal Opportunity Division.
6. Retail Leases Division.
7. Appeal Panel.

6 Proceedings in the Corporations List

6.1 Introduction

Proceedings under the Corporations Act 2001 (Cth) (the “Act”) are usually brought in the Supreme Court or the Federal Court, although there are also certain claims which can be brought in inferior Courts. This chapter focuses on proceedings in the Supreme Court. Procedure in the Federal Court is very similar due to the uniform rules for proceedings under the Corporations Act.

Matters arising under the Corporations Act often have 2 characteristics: they are short, and they need to be resolved swiftly. Thus many company applications are disposed of on a final basis within a relatively short time of commencement and without cross-examination. Claims
for damages or compensation or other relief for breach of directors’ duties tend to be exceptions because they need to be fully pleaded and are typically neither short nor urgent.

The Supreme Court has a Corporations List which is part of the Equity Division. Corporations matters include proceedings and interlocutory applications that arise out of the Act or the Supreme Court (Corporations) Rules 1999, or seek relief under any of those provisions, and proceedings relating to other incorporated bodies such as co-operatives and incorporated associations. A Judge of the Equity Division is assigned to corporations matters as Corporations Judge for the time being, on a full-time basis. The Corporations Judge can be approached on any day for duty applications in Corporations matters, and is available to hear or give directions in such applications at 10:00am and 2:00pm or otherwise by arrangement. Other applications should swiftly come before the Registrar’s Corporations List, which is run by the Registrar in Equity at 11:00am each day, except Wednesday.

Generally, originating process and supporting affidavits are filed in the registry, and the matter is given a date in the Registrar’s Corporations List. Many company applications can be (and are expected to be) dealt with, or be ready to be set down for hearing, on the first return date. For example, winding up applications and applications to set aside statutory demands are typically dealt with in this manner.

In many respects the procedure in corporations matters is similar to the procedure in the general list of the Equity Division, although there are special rules (Supreme Court (Corporations) Rules 1999) and special forms for filed documents (Supreme Court (Corporations) Rules 1999 Forms). In corporations list matters, these rules should always be consulted, along with Supreme Court Practice Note SC Eq 4.

### 6.2 Before Court

In preparing the matter, be sure to consult:

1. Practice Note SC Eq 4, which sets out the operation of the corporations list. Practitioners appearing in the corporations list are expected to be familiar with this Practice Note.

2. The Supreme Court (Corporations) Rules 1999 and the prescribed forms. These rules are part of a uniform scheme. Note that the Federal Court has corresponding rules; and

3. The Corporations Matters webpage at [http://tinyurl.com/26k7ab](http://tinyurl.com/26k7ab).

If an application is not made in a proceedings already commenced in Court, proceedings are commenced by filing an Originating Process (not a Summons); in any other case (whether final or interlocutory relief is claimed), proceedings are commenced by filing an Interlocutory Process.

Check whether the matter can be dealt with by a Registrar, and if not, whether it can be dealt with by an Associate Judge. The powers of Associate Judges are set out in Schedule D to the Supreme Court Rules, and include applications to set aside a statutory demand. The powers of Registrars are set out in Delegation to Registrars pursuant to section 13 of the Civil Procedure Act 2005 which can be accessed at [http://tinyurl.com/364t95](http://tinyurl.com/364t95).

If it would assist the Judge, you should provide brief written submissions and evidentiary materials in advance. Email communications with the Corporations Judge should be addressed to Corporations_Judge@courts.nsw.gov.au.

### 6.3 In Court

If the matter is not ready for hearing, then you should have short minutes prepared (preferably agreed between the parties) to stand the matter over, and make any other necessary directions so that the matter is prepared for hearing.

If the matter is ready for hearing and can be resolved by a Registrar (such as winding up and some interlocutory disputes), then, when the matter is called, you should tell the Registrar that it is ready to proceed and be ready to run it either immediately, or at the end of the list. Lengthier applications are generally stood down to the end of the list.
If the matter is ready for hearing but the matter cannot be resolved by a Registrar, then it must be resolved by the Corporations Judge, the Duty Judge, or an Associate Justice of the Equity Division. You will need to seek a referral from the Registrar to the Corporations Judge, the Duty Judge, or to an Associate Judge. Before the matter is called, at the beginning of the list the Registrar calls for referrals. You should then tell the Registrar that your matter is ready to proceed before the Corporations Judge, the Duty Judge, or an Associate Judge. If you fail to do this at the beginning of the list then it is likely that the matter will be stood over to another day.

If the matter is urgent, and ready to be heard, then it will be referred to the Corporations Judge. If the matter is not urgent, but is to be heard by the Corporations Judge, then it will be stood over to The Monday Corporations List. This list runs on Mondays, and operates principally as a call over list for corporations matters, dealing with such matters as general case management, directions for the filing of evidence and resolution of procedural issues, although short procedural applications and urgent applications may also be dealt with.