

Administrative

**Review Tribunal**



## **Administrative Review Tribunal Performance Standard for Non-Judicial Members**

---

I, the Hon Justice Emilios Kyrou AO, President of the Administrative Review Tribunal, determine the following performance standard under section 202 of the *Administrative Review Tribunal Act 2024*.

Dated                    14 October 2024

The Hon Justice Emilios Kyrou AO

President

---

## TABLE OF CONTENTS

<b>STANDARDS OF PERFORMANCE .....</b>	<b>3</b>
Part 1. Introduction.....	3
Part 2. Definitions and Interpretation .....	3
Part 3. Time spent undertaking Tribunal Case Work .....	5
Part 4. Timely delivery of decisions.....	5
Part 5. Refusing allocated work.....	6
Part 6. Professional development and training .....	7
Part 7. Meeting the Standard .....	7
Part 8. Non-compliance with the Standard.....	7
<b>ACTION TO ASSIST MEMBERS TO MEET THE STANDARD .....</b>	<b>8</b>
Part 9. Support measures and adjustments to the Standard .....	8
<b>PROCESS FOR DEALING WITH POSSIBLE BREACHES OF THE STANDARD.....</b>	<b>9</b>
Part 10. Role of Members' Leaders and General Counsel .....	9
Part 11. President's powers .....	9
<b>SESSIONAL MEMBERS .....</b>	<b>11</b>
Part 12. Application of the Standard to Sessional Members .....	11
<b>COMMENCEMENT AND TRANSITIONAL PROVISIONS .....</b>	<b>12</b>
Part 13. Commencement of the Standard .....	12
Part 14. Transitional provisions.....	12

# STANDARDS OF PERFORMANCE

## Part 1. Introduction

- 1.1 This Performance Standard (*Standard*) is determined and published by the President under section 202 of the *Administrative Review Tribunal Act 2024 (Act)*. The Standard is for general members, senior members and non-judicial deputy presidents (each a *Member*) of the Administrative Review Tribunal (*Tribunal*).
- 1.2 The Standard contains the minimum performance standards with which a Member must comply. It also sets out the actions that may be taken in relation to Members meeting the Standard, and the actions that may be taken if the President<sup>1</sup> forms the opinion that a Member may have engaged in conduct that may constitute a breach of the Standard. To avoid confusion between individual performance standards and the Standard as a whole, the individual standards will be referred to as standards of performance.
- 1.3 The Standard is an important means by which the Tribunal pursues the objective in section 9 of the Act, including promoting public trust and confidence in the Tribunal.
- 1.4 The Standard applies in addition to any legal obligations to which a Member is subject, including those in the Act. Nothing in the Standard limits the President's powers or functions in the Act, the Rules or any other legislation.
- 1.5 The President may at any time provide written guidelines in relation to any aspect of the Standard.

## Part 2. Definitions and Interpretation

- 2.1 In this Standard, the following definitions apply in addition to those set out in Part 1:

*Applicable Decision Delivery Benchmark* in relation to a Tribunal Case Event conducted by a Member for which the Member must deliver a Decision and a Statement of Reasons for the Decision, means:

- (a) where that Tribunal Case Event was conducted in a List — the number of days within which the Member must Deliver the decision and the Statement of Reasons for the decision in that List; or
- (b) where that Tribunal Case Event was conducted in a Jurisdictional Area without a List — the number of days within which the Member must Deliver the decision and the Statement of Reasons for the decision in that Jurisdictional Area.

*Approved Reason* means a circumstance arising in an individual case which is outside of a Member's control, will prevent the Member from meeting the Applicable Decision Delivery

---

<sup>1</sup> Where relevant, references to the President in the Standard include a person to whom the President has delegated, in accordance with section 279 of the Act, one or more of the President's powers that are referred to in the Standard and a person authorised by the President or a delegate under section 203(2)(a)(vi).

Benchmark, and has been approved by the Member's Leader in writing in accordance with any guidelines for approval provided by the President to Members' Leaders.

**Deliver** in relation to a decision of a Member means give to the parties the decision and a Statement of Reasons for the decision.

**Full-time Salaried Member** means a salaried member who performs the Member's duties on a full-time basis by working 10 business days each fortnight.

**JAL** means jurisdictional area leader as that expression is defined in section 4 of the Act.

**Jurisdictional Area** has the same meaning as in the Act.

**List** means a list established by the President under section 196(2) of the Act.

**List Leader** means a deputy president or a senior member assigned by the President to lead one or more Lists under section 198(1) of the Act.

**Maximum Period** means the period after a decision becomes a Reserved Decision that is 3 times the number of days which constitute the Applicable Decision Delivery Benchmark.

**Member's JAL** means the JAL of the Jurisdictional Area which is the first Jurisdictional Area specified in Column 2 of the table in the Schedule to the *Administrative Review Tribunal (Assignment of Members to Jurisdictional Areas) No.1 of 2024*, as amended from time to time.

**Member's Leader** means:

- (a) if the Member is a JAL—the President;
- (b) if the Member is a List Leader and not a JAL—the Member's JAL; or
- (c) for all other Members—the Member's List Leader.

**Member's List Leader** means the List Leader whom the President has directed be primarily responsible for the Member's work arrangements and administrative arrangements.

**Note:** The *Administrative Review Tribunal (Responsibility for Members' Work and Administrative Arrangements) Direction No.1 of 2024* contains a direction that the List Leader of the List specified in Column 1 of the table in the Schedule to that instrument next to a Member's name is primarily responsible for the Member's work arrangements and administrative arrangements.

**Part-time Salaried Member** means a salaried member who has received approval from the President to perform the Member's duties on a part-time basis by working less than 10 business days each fortnight.

**Reserved Decision** means a decision and the Statement of Reasons for it which a Member did not Deliver on the last day of the hearing of a proceeding or any other Tribunal Case Event which requires the Delivery of a decision and a Statement of Reasons for the decision.

**Rules** has the same meaning as in the Act.

**Sessional Member** has the same meaning as in the Act.

**Statement of Reasons** has the same meaning as in the Act.

**Tribunal Case Event** has the same meaning as in the Act.

**Tribunal Case Work** means:

- (a) preparing for or conducting a Tribunal Case Event;
  - (b) writing a decision or Statement of Reasons; or
  - (c) any other work that is designated by the President as Tribunal Case Work which is allocated to a Member.
- 2.2 Where the hearing of a proceeding or any other Tribunal Case Event which requires the Delivery of a decision and a Statement of Reasons for the decision concludes and the Member does not Deliver a decision and a Statement of Reasons for the decision on the last day of the hearing, a **decision becomes a Reserved Decision** on the day after the last day of the hearing. That is so even if, after that day, the Tribunal receives further submissions or other material in relation to the proceeding.

### **Part 3. Time spent undertaking Tribunal Case Work**

- 3.1 A Full-time Salaried Member must undertake not less than 205 days of allocated Tribunal Case Work each financial year.
- 3.2 A Part-time Salaried Member must undertake not less than an equivalent number of days of allocated Tribunal Case Work each financial year calculated on a pro-rata basis.
- 3.3 A Sessional Member must, in each financial year, undertake the number of days of Tribunal Case Work that the Tribunal allocates to the Sessional Member provided that this number does not exceed the number of days that the Sessional Member has agreed with the Tribunal to be available to undertake such work.

**Note:** The Tribunal does not guarantee that it will allocate a minimum number of days of Tribunal Case Work to Sessional Members.

- 3.4 The President may approve in writing an adjustment in accordance with Part 9 to the number of days of allocated Tribunal Case Work that a Member must undertake if:
- (a) there are acceptable reasons why the Member will not complete the number of days of allocated Tribunal Case Work; and
  - (b) it is appropriate, in all the circumstances, that approval be granted.

### **Part 4. Timely delivery of decisions**

- 4.1 A Member is expected to meet the Applicable Decision Delivery Benchmark in each case unless there is an Approved Reason for not doing so.

- 4.2 A Member must not have more than 5 Reserved Decisions which do not meet the Applicable Decision Delivery Benchmark at any one time. Reserved Decisions for which there is an Approved Reason for not meeting the Applicable Decision Delivery Benchmark are not counted for this purpose.
- 4.3 A Member must not exceed the Applicable Decision Delivery Benchmark in more than 15% of cases finalised by the Member each financial year. Cases for which there was an Approved Reason for not meeting the Applicable Decision Delivery Benchmark are not counted for this purpose.
- 4.4 The President may approve in writing an adjustment to [4.2] or [4.3] in accordance with Part 9 if the Member is or was incapable of meeting the Applicable Decision Delivery Benchmark(s) for personal reasons beyond the Member's control.
- 4.5 Subject to [4.6], a Member must not have any Reserved Decision that has not been Delivered prior to the expiration of the Maximum Period.
- 4.6 The President may grant a Member's written request to Deliver a decision after the expiration of the Maximum Period – by way of an adjustment in accordance with Part 9 – if the President is satisfied that:
- (a) there are acceptable reasons why the Reserved Decision will not be Delivered prior to the expiration of the Maximum Period;
  - (b) the Member has proposed a date for Delivery of the Reserved Decision which is reasonable; and
  - (c) it is appropriate, in all the circumstances of the case, that an adjustment be granted.

## **Part 5. Refusing allocated work**

- 5.1 A Member must not refuse any Tribunal Case Work allocated to the Member by the Tribunal unless:
- (a) the Act, the Rules or the Practice Directions require the Member to do so; or
  - (b) the Member is otherwise required by law to do so, including the law relating to recusal.

**Note 1:** The President can revoke a direction that the Member constitute the Tribunal for the purposes of a proceeding following acceptance of a recommendation made by the Member's Leader under Part 9. The Member will not be treated as contravening the obligation at [5.1] in this situation.

**Note 2:** Section 218(2) of the Act prohibits members from constituting the Tribunal in certain circumstances.

## **Part 6. Professional development and training**

- 6.1 Members must take reasonable steps to keep informed of developments in substantive and procedural matters relevant to their Tribunal work. Members must also take reasonable steps to maintain and enhance the knowledge, skills and personal attributes necessary for the performance of their duties to a high standard, including conducting fair and just hearings and Delivering timely and high-quality decisions.
- 6.2 Members must take reasonable steps to be proficient in the use of the Tribunal's case management systems, other information technology systems, and online research tools to enable them to perform their functions efficiently and to a high standard.
- 6.3 If during the term of a Member's appointment as a Member the Member is also authorised to conduct practice as a member of a regulated profession (such as the legal profession or the healthcare profession), the Member must comply with any mandatory continuing professional development requirements of that profession.
- 6.4 A Member must undertake any training and education programs which the President designates as mandatory for the Member, all members or for a class of members which includes the Member.

## **Part 7. Meeting the Standard**

- 7.1 Where a Member believes that there are circumstances (such as a medical condition) which will prevent the Member from meeting the Standard, the Member must:
  - (a) as soon as practicable, give the Member's Leader written notice of those circumstances together with any supporting documentary evidence; and
  - (b) if requested, meet with the Member's Leader to discuss whether it would be appropriate to seek an adjustment or implement any measures under Part 9.
- 7.2 Where a Member is not meeting the Standard, the Member must:
  - (a) not unreasonably refuse an offer to assist the Member to meet the Standard which is made by the Member's Leader, the Member's JAL or the President;
  - (b) if requested, meet with the Member's Leader to discuss whether it would be appropriate to seek an adjustment or implement any measures under Part 9; and
  - (c) if requested, provide any information that the Member's Leader reasonably requires to make an informed decision about whether to seek an adjustment or implement any measures under Part 9.

## **Part 8. Non-compliance with the Standard**

- 8.1 A Member's non-compliance with Parts 3 to 7 may constitute a breach of the Standard.

## ACTION TO ASSIST MEMBERS TO MEET THE STANDARD

### Part 9. Support measures and adjustments to the Standard

- 9.1 The Tribunal may support Members to meet the Standard by providing training, counselling, mentoring or other support measures as appropriate.
- 9.2 A Member's Leader must keep a record of any measures taken in respect of a Member under [9.1] in the form of an email that is sent to the Member and copied to the General Counsel.
- 9.3 A Member's Leader may recommend that the President grant a Member an adjustment to the Standard having regard to the following considerations:
- (a) the objectives and operational needs of the Tribunal;
  - (b) the circumstances of the Member;
  - (c) whether any information provided by the Member in support of the proposed adjustment is adequate and reliable;
  - (d) whether the proposed adjustment will be effective in assisting the Member to meet the Standard without any further adjustments in the future;
  - (e) any written guidelines provided by the President;
  - (f) the desirability of consistency and fairness in the treatment of Members;
  - (g) the need to ensure that adjustments do not become routine or commonplace but are granted only when appropriate; and
  - (h) any other relevant matter.
- 9.4 An adjustment granted to a Member in accordance with the Standard constitutes a temporary dispensation from a standard of performance that would otherwise apply to the Member during the currency of the adjustment and does not constitute a variation or amendment to the Standard.
- 9.5 The President is not bound by any recommendation made by a Member's Leader.
- 9.6 The President may at any time review any adjustment that the President has granted to a Member and terminate the adjustment prospectively after giving the Member:
- (a) 7 days' prior notice of the proposed termination and the reasons for it; and
  - (b) an opportunity to make submissions on whether the adjustment should be terminated.



# PROCESS FOR DEALING WITH POSSIBLE BREACHES OF THE STANDARD

## **Part 10. Role of Members' Leaders and General Counsel**

10.1 Where, following receipt of information from the President or any other source, a Member's Leader forms the opinion that a Member may be having difficulty meeting the Standard, the Member's Leader must first consult the Member to determine whether the Member requires support in accordance with Part 9.

10.2 The Member's Leader must (after consulting the Member's JAL if the Member's Leader is not the Member's JAL) inform the General Counsel if the Member's Leader considers that, despite any support provided in accordance with Part 9, it would be open to the President to form the opinion that the Member may have engaged in conduct that may constitute a breach of the Standard.

10.3 The General Counsel will assess the information provided by the Member's Leader and may:

- (a) seek further information from the Member's Leader;
- (b) where the General Counsel forms the opinion that the conduct alleged against the Member cannot possibly constitute a breach of the Standard—advise the Member's Leader that the alleged conduct falls outside the scope of the Standard; or
- (c) make recommendations to the President about the steps to be taken in relation to the Member's alleged conduct which, having regard to the nature and seriousness of the Member's alleged conduct and the principles of natural justice, may include:
  - (i) any of the steps set out in section 203(2) of the Act;
  - (ii) the President temporarily restricting the Member's duties under section 203(3) of the Act; or
  - (iii) the President giving a direction to the Member under section 200(1) of the Act relating to the performance of the Member's duties.

10.4 The General Counsel may exercise any powers of the President that the President delegates to the General Counsel or that the General Counsel is authorised to exercise by the President or a delegate for the purposes of section 203(2)(a)(vi) of the Act.

## **Part 11. President's powers**

11.1 If the President forms the opinion that a Member may have engaged in conduct that may constitute a breach of the Standard on the basis of information that has come to the President's attention from any source, the President may decide, having regard to the

nature and seriousness of the Member's alleged conduct and the principles of natural justice, which steps to take without:

- (a) having first received a recommendation from the General Counsel; or
- (b) accepting any recommendation made by the General Counsel.

11.2 The President may take no action, or no further action, in relation to a Member's conduct where:

- (a) the President is not satisfied that the Member has breached the Standard; or
- (b) the President believes that no action is required having regard to the nature and extent of the Member's conduct.

11.3 Where the President is satisfied that a Member has breached the Standard but is not satisfied that the breach constitutes a serious breach, the measures that the President may take in accordance with section 203(2)(a)(vii) of the Act include:

- (a) counselling the Member;
- (b) recommending that the Member be assisted by a person acting as the Member's mentor for a specified period;
- (c) reprimanding the Member;
- (d) directing the Member under section 200(1) of the Act to undertake counselling of a particular type;
- (e) directing the Member under section 200(1) of the Act to undertake training or further education of a particular type; and
- (f) temporarily restricting the Member's duties under section 203(3) of the Act until such time as the Member complies with any such direction if the President reasonably believes that doing so is in the public, or the Tribunal's interest.

11.4 Where the President is satisfied that a Member's conduct constitutes a serious breach of the Standard for the purposes of section 221 of the Act, the President will notify the Attorney-General as soon as possible.

## SESSIONAL MEMBERS

### **Part 12. Application of the Standard to Sessional Members**

12.1 Arrangements for Sessional Members informing the Tribunal of their availability to undertake Tribunal Case Work and the allocation of Tribunal Case Work to them may vary as between Jurisdictional Areas and Lists.

12.2 This Standard applies to Sessional Members subject to the following modifications:

- (a) Part 5 applies only where a Sessional Member has agreed with the Tribunal to be available to undertake Tribunal Case Work for a number of days in a particular period, such as per week, per fortnight or per month. In such a case, the Sessional Member must not refuse any Tribunal Case Work allocated to the Sessional Member for those days.
- (b) [8.1] is modified to read as follows in relation to Sessional Members: ‘A Sessional Member’s non-compliance with Parts 3 to 7, as modified by Part 12, may constitute a breach of the Standard.’

## COMMENCEMENT AND TRANSITIONAL PROVISIONS

### **Part 13. Commencement of the Standard**

13.1 Part 4 has effect from 3 February 2025.

13.2 All other Parts have effect from the date this Standard is signed.

### **Part 14. Transitional provisions**

14.1 Because the Tribunal commenced operation on 14 October 2024 and will not be operational for the whole of the financial year ending 30 June 2025, the 205 days of allocated Tribunal Case Work set out at [3.1] will not apply for the financial year ending 30 June 2025. Instead, the number of days of allocated Tribunal Case Work that will apply for the period from 14 October 2024 until 30 June 2025 will be 146, calculated as follows:

- (a) There are 260 calendar days between 14 October 2024 and 30 June 2025 (inclusive of both days).
- (b) There are 365 calendar days in the financial year ending 30 June 2025.
- (c) 71.23% represents the proportion of days in the financial year ending 30 June 2025 that the Tribunal will be in operation.
- (d) 71.23% of 205 days of allocated Tribunal Case Work equals 146 days of allocated Tribunal Case Work.

14.2 For the period from 3 February 2025 until 30 June 2025:

- (a) [3.3] is modified by substituting ‘in the period from 3 February 2025 until 30 June 2025’ for ‘in each financial year’;
- (b) [4.3] is modified by substituting ‘in the period from 3 February 2025 until 30 June 2025’ for ‘each financial year’.