



## Registry Services

# Decisions Reviewable by the NSW Civil and Administrative Tribunal under the Associations Incorporation Act 2009

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# 1. Policy Statement

NSW Fair Trading is responsible for administering the *Associations Incorporation Act 2009* (the Act). This policy document is concerned with the decisions under the Act that are subject to review by the NSW Civil and Administrative Tribunal (NCAT).

## 1.1 Objectives

The key objectives of this policy are:

- to identify the decisions or directions that may be made under the Act that could be subject to a review by the NSW Civil and Administrative Tribunal (NCAT), and
- to outline the review process.

## 1.2 Scope

This policy applies to all officers exercising delegated authority under the *Associations Incorporation Act 2009*.

## 1.3 Ethical conduct

All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the agency's Code of Ethics and Conduct.

Staff must ensure they do not have an actual or perceived conflict of interest with any organisation or member of a relevant organisation. Those staff who have, or may be perceived to have, a vested interest in the outcome of a decision should disclose any conflict to their manager and discuss whether they should exclude themselves from any role in the decision.

## 2. Policy Components

### 2.1 Responsibilities

Each of the following parties has specific assigned responsibilities under this policy:

- Secretary/Commissioner for Fair Trading
- Executive Director, Licensing & Funds
- Director, Registry & Accreditation
- Registry Services Staff under delegation
- Reviewable Decisions Unit

#### 2.1.1 Secretary/Commissioner for Fair Trading

The Secretary has responsibilities and functions under the Act. Within the meaning of the Act, Secretary means:

- (a) the Commissioner for Fair Trading, Department of Customer Service, or
- (b) if there is no such position in the Department, the Secretary of the Department.

#### 2.1.2 Executive Director, Licensing & Funds

The Executive Director, Licensing & Funds is responsible for:

- ensuring that staff understand and comply with this policy (see 1.2 Scope)
- monitoring compliance with this policy.

#### 2.1.3 Director, Registry & Accreditation

The Director, Registry & Accreditation is responsible for:

- ensuring that Registry Services officers understand and comply with this policy
- administering and updating this policy.

#### 2.1.4 Registry Services officers under delegation

Officers are responsible for making decisions under the Act and in accordance with delegated authority and understanding the impact in making those decisions.

### **2.1.5 Reviewable Decisions Unit**

Officers are responsible for conducting internal reviews of administrative decisions under delegated authority, in accordance with the requirements of the *Administrative Decisions Review Act 1997* (ADR Act).

## 3. Legislative framework

### 3.1 Reviewable decisions under the *Associations Incorporation Act 2009*

Section 104 of the Act provides that decisions or directions by the Secretary under the following sections are reviewable by the NSW Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997* (ADR Act):

- section 7: a decision to refuse incorporation
- section 11: a direction to adopt a new name
- section 12: a decision to refuse a change of name or alteration of objects or constitution
- section 16: a decision to refuse a reservation of name
- section 61A: a decision to give a certificate to wind up association
- section 73: a direction to an association to apply for cancellation of registration
- section 74: a decision to refuse an application for cancellation of an association's registration
- section 76: cancellation of registration
- section 79: a decision to refuse an application for transfer of registration

### 3.2 The initial decision

A delegate of the Secretary who makes a decision or gives a direction under the sections listed in item 3.1 must advise the person affected by the decision of their review rights. If reasons are not provided with the decision the person affected by it has a statutory right under section 49 of the ADR Act to request reasons for the decision. The delegate is required to provide a written statement of reasons why the decision was made 'as soon as practicable' and in any event within 28 days of receiving the request.

The statement of reasons must set out the findings on material questions of fact, the delegate's understanding of the law and the reasoning process that led to the decision.

## 4. The Review Process

### 4.1 Internal review

Before making an application to the NSW Civil and Administrative Tribunal the person affected by a decision made under the sections listed in item 3.1, should seek an internal review of that decision (section 53 of the ADR Act). This does not apply to a decision to give a certificate to wind up an association under section 61A or to cancel an association's registration under section 76 of the Act where an application for review should be made with the NSW Civil and Administrative Tribunal.

Fair Trading's Reviewable Decisions Unit conducts the internal review of an administrative decision in accordance with the requirements of the ADR Act. An internal review is undertaken by an officer who is suitably qualified to deal with the issues raised by the application and who was not substantially involved in making the decision.

### 4.2 Requesting an internal review

A request for an internal review must:

- be in writing and include an Australian address for the applicant
- be lodged within 28 days of notification of the original decision
- include reasons as to why the recipient believes the original decision was unreasonable, unfair or incorrect
- include relevant material supporting the review application
- be emailed to the Reviewable Decisions Unit at [revdec@customerservice.nsw.gov.au](mailto:revdec@customerservice.nsw.gov.au) or posted to PO Box 972 Parramatta NSW 2124

The Reviewable Decisions Unit has 21 days from receipt of the review application to complete the review and provide the determination to the applicant.

The reviewer may affirm the original decision, vary the decision or set aside the decision and replace it with a new decision made by the reviewer.

Once an internal review application has been lodged, all communication concerning that internal review is with the Reviewable Decisions Unit.

### **4.3 NSW Civil and Administrative Tribunal (NCAT)**

If the applicant is not satisfied with the internal review then they have the right to seek an external review of the original decision with the NSW Civil and Administrative Tribunal (NCAT).

In certain circumstances the NCAT may deal with an application even though the applicant has not applied for an internal review (section 55 (4)(a) or (b) of the ADR Act).

Further information can be obtained from the NCAT on 1300 06 228 or

[www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)



## 5. Related documents

Issuer	Reference	Document Name
NSW Government	No 7	<i>Associations Incorporation Act 2009</i> <i>Associations Incorporation Regulation 2016</i>
Commissioner for Fair Trading		<i>Associations Incorporation Act 2009</i> Instrument of Delegation dated 13 April 2018
NSW Government	No 2	<i>Civil and Administrative Tribunal Act 2013</i>
NSW Government	No 76	<i>Administrative Decisions Review Act 1997</i>
Department of Customer Service	September 2015	Code of Ethics and Conduct

## 6. Document Control

### 6.1 Document Approval

Name & Position	Signature	Date
Christine Gowland, Director, Registry & Accreditation		
Suzanne Crowle, Executive Director, Licensing & Funds		

### 6.2 Review Date

This guide will be reviewed as required.