



Consumer and Commercial Division Guideline January 2018

Adjournments

When can hearings be postponed or delayed?

What does this Guideline explain?

1. This Guideline explains:
 - a) the general principles the Tribunal applies when a party asks it to postpone or delay (that is to “adjourn”) a hearing
 - b) when and how a party should ask for an adjournment
 - c) what the Tribunal will consider in deciding whether or not to allow an adjournment
 - d) what happens if the adjournment request is refused
 - e) the alternatives to requesting an adjournment
 - f) the possible costs of requesting or causing an adjournment.

It is very important to make any adjournment request as soon as you realise an adjournment is necessary. You cannot assume the Tribunal will allow an adjournment even if all the parties agree.

Definitions

2. Definitions that explain words or concepts used in this guideline are at the back of the guideline.

What are the general principles which the Tribunal will apply to any adjournment request?

3. The overriding principle is that when a date and time has been set for a hearing it will go ahead on that date and at that time, unless the Tribunal allows an adjournment.
4. In considering whether to allow an adjournment, the Tribunal will:
 - a) take into account the need to manage cases and hearings fairly and efficiently. This includes making sure cases are heard as soon as possible, and
 - b) allow an adjournment only if the party requesting it has a good reason and it is fair in all the circumstances to adjourn.

This means when a date is set for a hearing, the hearing will go ahead at the set time unless the Tribunal grants what is called an ‘adjournment’. An adjournment means the Tribunal moves the set hearing date or dates to a later set date or dates.

When and how should a party ask for adjournment?

5. Wherever there is time to do so, a party who wants to request an adjournment must make that request in writing to the Registrar of the relevant Division and that should be done as soon as they realise that an adjournment is necessary and preferably at least 5 days before the hearing date. Their written request must identify the file number and set out the reason for requesting the adjournment. They must attach a copy of the documents that support the adjournment request— *see paragraph 9*. If the other parties agree to the adjournment, some clear written confirmation by them must be attached.
6. A party who requests an adjournment must notify each other party of their intention to do so. Each other party should tell the party requesting the adjournment and the Tribunal whether or not they agree with the adjournment request. Even if all parties agree with the adjournment request, that does not mean the Tribunal will allow the adjournment.
7. A party can also request an adjournment at the start of or during a hearing. The party must explain why they did not make that request earlier. If they did make an earlier request for an adjournment and it was refused, they can make their further request but only if there is new information which supports the request.
8. Before a party requests an adjournment it is sensible to consider whether there is any alternative to an adjournment. For more about this – *see paragraph 13*. It is also important to understand there may be costs or other consequences.

What reasons might convince the Tribunal to allow an adjournment?

9. A party making an adjournment request must give clear reasons for that request. Depending on the facts and circumstances, reasons that are commonly given include that:
 - a) one of the parties is too ill to prepare the case for hearing or to participate in the hearing
 - b) a party or witness is unavoidably away from home and giving evidence by telephone or video link is not possible or would be unfair to one or more parties
 - c) information needed for the case is not yet available, and this is *not* the fault of the party who needs the information
 - d) another party has not followed the Tribunal's directions to prepare the case for hearing
 - e) one party has not had a reasonable chance to respond to information provided by another party.
10. Evidence should be provided to support the reasons. For example, if a party is ill, they should provide detailed medical evidence if it is available. A medical certificate that only says a person is not fit for work does not give the Tribunal enough information to decide whether to adjourn the hearing.
 - a) The medical certificate must be specific and clearly state that the person is unable to attend the hearing and indicate the nature of the illness and other medical reasons why this prevents the person from attending. If you consider the information in the medical certificate confidential, you should advise the Tribunal as supporting documents including medical certificates are provided to the other party

as a matter of procedural fairness. You should clearly identify the confidential documents and ask the Tribunal to make a confidentiality order.

- b) If a party has made travel arrangements, they should provide a copy of their itinerary, any airline or other travel bookings and information about when the bookings were made.

11. The Tribunal will take into account all relevant matters in favour of and against an adjournment. These include:
- a) the reasons for requesting an adjournment
 - b) whether the need for an adjournment is the fault of one of the parties
 - c) any disadvantage to the parties if an adjournment is allowed or refused
 - d) the impact of any delay on the principle that the Tribunal must facilitate the just, quick and cheap resolution of the issues in the proceedings.

What happens if the adjournment is refused?

12. Even if all parties agree to an adjournment, the Tribunal may still decide not to allow the adjournment. If the adjournment request is refused the hearing may go ahead and the Tribunal may make its decision even if a party is not present.

Are there any alternatives to asking for an adjournment?

13. Yes. Before requesting an adjournment a party should consider other options such as asking the Tribunal to approve:
- a) participation in the hearing by a party by telephone or video link
 - b) participation and the giving of evidence by a witness by telephone or video link
 - c) another person being given the right to speak for the party as their agent
 - d) the case being decided on the basis of written evidence and submissions rather than a hearing (known as a “decision on the papers”).

In each case the Tribunal, through the Registrar, must approve this. The request must be made to the Registrar at least 5 days before the date of the Notice of Hearing and the requesting party must supply contact telephone numbers for all people involved. There is no automatic right to a telephone or video link hearing or other procedure and the Tribunal will decide whether this will be allowed in the particular case.

Are there any costs consequences for a party who asks for, or causes, an adjournment?

14. Yes. If there are special circumstances or the law permits it, the Tribunal may order the party who requested the adjournment to pay the costs incurred by another party. The Tribunal may consider making a costs order if a party has:
- a) been responsible for unreasonable delays

- b) unnecessarily disadvantaged another party
- c) failed without reasonable excuse to obey the Tribunal's orders or directions; or
- d) asked for an adjournment without having a good reason.

15. For more detailed information about costs in the Tribunal see the Consumer and Commercial Division's Guideline about Costs.

What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Adjournment:** A postponement or delay, by order of the Tribunal, of any hearing, directions hearing or interlocutory hearing.
- **Hearing:** A hearing, final hearing, interlocutory hearing, directions hearing, conclave or mediation.
- **Party or parties:** A person or entity involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the person or entity that brings an application 'the applicant' and the person or entity they seek orders against 'the respondent'.
- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Rules:** Civil and Administrative Tribunal Rules 2014.

This Guideline applies to:

Proceedings in the Consumer and Commercial Division of the Tribunal.

Effective Date

30 January 2018

Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Sections 36, 38, 41, 51 and 55 of the *Civil and Administrative Tribunal Act 2013*.

There is a copy of this Act on the [NSW Legislation website](#).

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