



New South Wales

Administrative Decisions Tribunal Act 1997 No 76

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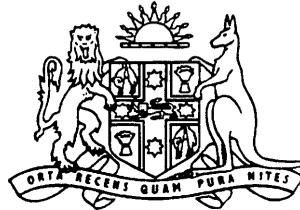
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New South Wales

Administrative Decisions Tribunal Act 1997 No 76

Act No 76, 1997

An Act to establish an Administrative Decisions Tribunal and provide for its functions; and for other purposes. [Assented to 10 July 1997]

See also *Administrative Decisions Legislation Amendment Act 1997*.

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Administrative Decisions Tribunal Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are as follows:

- (a) to establish an independent Administrative Decisions Tribunal:
 - (i) to make decisions at first instance in relation to matters over which it is given jurisdiction by an enactment, and
 - (ii) to review decisions made by administrators where it is given jurisdiction by an enactment to do so, and
 - (iii) to exercise such other functions as are conferred or imposed on it by or under this or any other Act or law,
- (b) to ensure that the Tribunal is accessible, its proceedings are efficient and effective and its decisions are fair,
- (c) to enable proceedings before the Tribunal to be determined in an informal and expeditious manner,
- (d) to provide a preliminary process for the internal review of reviewable decisions before the review of such decisions by the Tribunal,
- (e) to require administrators making reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for their decisions on request,

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- (f) to foster an atmosphere in which administrative review is viewed positively as a means of enhancing the delivery of services and programs,
 - (g) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

4 Definitions

- (1) In this Act:

administrator—see section 9.

Appeal Panel of the Tribunal means an Appeal Panel of the Tribunal constituted in accordance with section 24.

appealable decision of the Tribunal—see section 112.

application—see section 145.

assessor means an assessor of the Tribunal appointed under this Act.

decision—see section 6.

Deputy President means a Deputy President of the Tribunal.

Division of the Tribunal means a Division of the Tribunal specified in Schedule 1.

Division member, in relation to a Division of the Tribunal, means a member who is assigned to that Division.

Divisional Head of a Division means the Deputy President who is appointed under section 16 as the Divisional Head of that Division, or who is taken to be so appointed by Schedule 5.

enactment—see section 5.

exercise a function includes perform a duty.

function includes a power, authority or duty.

interested person means a person who is entitled under an enactment to make an application to the Tribunal for an original decision or a review of a reviewable decision (as the case may be).

internal review means an internal review conducted under section 53.

judicial member of the Tribunal means the President, a Deputy President or a non-presidential judicial member.

judicial officer means:

- (a) a Magistrate, or
- (b) a Judge of the District Court, or
- (c) a Judicial Member of the Industrial Relations Commission, or
- (d) a Judge of the Land and Environment Court, or
- (e) a Judge of the Supreme Court.

member of the Tribunal means the President, a Deputy President, a non-presidential judicial member or a non-judicial member.

nonjudicial member of the Tribunal means a member other than the President, a Deputy President or a non-presidential judicial member.

original decision—see section 7.

parties to proceedings—see section 67.

practising legal practitioner means a barrister, or solicitor, within the meaning of the *Legal Profession Act 1987*.

President means the President of the Tribunal.

presidential judicial member of the Tribunal means the President or a Deputy President.

Registrar means the Registrar of the Tribunal.

relevant Divisional Head, in relation to any proceedings before the Tribunal, means the Divisional Head of the Division of the Tribunal to which the function of determining the proceedings is allocated.

reviewable decision—see section 8.

Rule Committee means the Rule Committee of the Tribunal established by section 92.

rules of the Tribunal or *rules* means rules made by the Rule Committee.

Tribunal means the Administrative Decisions Tribunal of New South Wales established by this Act.

- (2) A reference in this Act to the exercise by the Tribunal of its functions in relation to an enactment includes a reference both to its functions under the enactment and its functions under this Act in relation to the enactment.
- (3) A reference (however described) in this Act to a decision made under an enactment is taken, in relation to a reviewable decision, to include a reference to any decision made in the exercise of functions identified by the enactment.

5 What is an enactment?

An *enactment* is:

- (a) in relation to a reviewable decision—an Act (other than this Act) or a statutory rule (other than a statutory rule made under this Act), or
- (b) in any other case—an Act (other than this Act).

Note. The interpretation *Act 1987* defines *statutory rule* to mean:

- (a) a regulation, by-law, rule or ordinance:
- (i) that is made by the Governor, or
- (ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or
- (b) a rule of court.

6 What is a decision?

(1) **General meaning**

A *decision* includes any of the following:

- (a) making, suspending, revoking or refusing to make an order or determination,
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission,

- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument,
- (d) imposing a condition or restriction,
- (e) making a declaration, demand or requirement,
- (f) retaining, or refusing to deliver up, an article,
- (g) doing or refusing to do any other act or thing.

(2) **Decision made under an enactment**

For the purposes of this Act, a decision is made under an enactment if it is made in the exercise (or purported exercise) of a function conferred or imposed by or under the enactment.

(3) **Decisions made without power**

For the purposes of this Act (and without limiting subsection (2)), a decision that purports to be made under an enactment is taken to be a decision made under the enactment even if the decision was beyond the power of the decision-maker to make it.

(4) **Failure to make decision on basis that beyond power**

For the purposes of this Act (and without limiting subsection (2)), a refusal of a decision-maker to make a decision under an enactment because the decision-maker considers that the decision concerned cannot lawfully be made under the enactment is taken to be a decision made under the enactment to refuse to make the decision requested.

(5) **Failure to make a timely decision taken to be failure to make a decision**

For the purposes of this Act, a failure by a decision-maker to make a decision within the period specified by the enactment concerned for making the decision is taken to be a decision by the decision-maker at the end of the period to refuse to make the decision.

7 What is an original decision?

An *original decision* is a decision of the Tribunal made in relation to a matter over which it has jurisdiction under an enactment to act as the primary decision-maker.

Note. Section 37 provides for the circumstances in which the Tribunal has jurisdiction under an enactment to make an original decision.

8 What is a reviewable decision?

A *reviewable decision* is a decision of an administrator that the Tribunal has jurisdiction under an enactment to review.

Note. Section 38 provides for the circumstances in which the Tribunal has jurisdiction to review a decision of an administrator.

9 Who is an administrator?

- (1) An *administrator*, in relation to a reviewable decision, is the person or body that makes (or is taken to have made) the decision under the enactment concerned.

Note. There are a number of circumstances in which a person or body is taken to have made a decision. See, for example, sections 6 (2)–(5) and 38 (4) and (5) and subsection (2).

- (2) The person or body specified by an enactment as a person or body whose decisions are reviewable decisions is taken to be the only administrator in relation to the making of a reviewable decision even if some other person or body also had a role in the making of the decision.

10 Notes

Charts and other notes included in this Act are explanatory notes and do not form part of this Act.

Chapter 2 Establishment of Tribunal

Part 1 Establishment

11 Establishment of Tribunal

- (1) The Administrative Decisions Tribunal of New South Wales is established by this Act.
- (2) The Tribunal has such functions as are conferred or imposed on it by or under this or any other Act or law.

Part 2 Membership

12 Membership of Tribunal

- (1) The Tribunal consists of the following members:
 - (a) a President,
 - (b) Deputy Presidents,
 - (c) non-presidential judicial members,
 - (d) non-judicial members.
- (2) The President and the Deputy Presidents of the Tribunal are referred to in this Act as *presidential judicial members*.

13 Appointment of members of Tribunal

- (1) Any presidential judicial member is to be appointed by the Governor by commission under the public seal of the State.
- (2) Any non-presidential judicial member or a non-judicial member is to be appointed by the Minister.
- (3) The instrument of appointment is to specify whether a member has been appointed as:
 - (a) the President, or
 - (b) a Deputy President, or
 - (c) a non-presidential judicial member, or
 - (d) a non-judicial member.
- (4) A member may be appointed on a full-time basis or a part-time basis. However, the President is taken to be appointed on a full-time basis.

14 Judicial officers acting as members of Tribunal

- (1) **Classes of judicial officers who may act as members may be prescribed**
Any judicial officer who belongs to a class of judicial officer prescribed by the regulations for the purposes of this section is taken to have been duly appointed to act as a member of the Tribunal in relation to such matters within the jurisdiction of the Tribunal as are prescribed by the regulations.

(2) **President may appoint judicial officer to act as member**

The President may appoint any judicial officer to act as a member of the Tribunal in relation to particular proceedings before the Tribunal if:

- (a) the President is satisfied that the co-option of the judicial officer to act as a member is necessary to enable the Tribunal to exercise its functions effectively in the proceedings, and
- (b) the relevant chief judicial officer agrees to the judicial officer's appointment.

(3) **Effect of appointment**

Any person who is appointed to act as a member by or under this section:

- (a) holds office as a Deputy President or a non-presidential judicial member as specified in the regulations (in the case of an appointment under subsection (1)) or the instrument of appointment (in the case of an appointment under subsection (2)), and
- (b) has and may exercise all the functions of a member while acting as a member, and
- (c) may continue to exercise his or her functions as a holder of a judicial office.

(4) **Former acting member may complete determination of proceeding**

A judicial officer who has acted as a member may attend the sittings of the Tribunal for the purpose of giving reasons for a decision in, or otherwise completing, any proceedings that have been heard by the Tribunal (or were otherwise the subject of deliberations by the Tribunal) while the officer acted as a member, even if the person has ceased to act as a member.

(5) **Definition**

In this section:

relevant chief judicial officer means:

- (a) in relation to the appointment of a Magistrate to act as a member—the Chief Magistrate of the Local Court, or
- (b) in relation to the appointment of a Judge of the District Court to act as a member—the Chief Judge of the Court, or

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- (c) in relation to the appointment of a Judicial Member of the Industrial Relations Commission to act as a member—the President of the Commission, or
 - (d) in relation to the appointment of a Judge of the Land and Environment Court to act as a member—the Chief Judge of the Court, or
 - (e) in relation to the appointment of a Judge of the Supreme Court to act as a member—the Chief Justice of the Court.

15 Appointment of acting members for a period

- (1) The Governor may appoint, by commission under the public seal of the State, as an Acting Deputy President a person qualified for appointment as a Deputy President if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.
- (2) The Minister may appoint as an acting non-presidential judicial member or an acting non-judicial member a person qualified for appointment as a non-presidential judicial member or non-judicial member if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.
- (3) The person's appointment is for the period (not exceeding 12 months) specified in the instrument of appointment.
- (4) An Acting Deputy President, acting non-presidential judicial member or acting non-judicial member has the functions of, and is taken to be, a Deputy President, non-presidential judicial member or non-judicial member (as the case requires) subject to any conditions or limitations specified in the instrument of appointment.

16 Divisional Heads

- (1) A Deputy President may be appointed by the Governor as the Divisional Head of one or more Divisions of the Tribunal:
 - (a) in the instrument of appointment of the Deputy President, or
 - (b) by subsequent instrument.

- (2) A Divisional Head ceases to hold office as a Divisional Head if he or she:
 - (a) is removed from office as a Divisional Head by the Governor, or
 - (b) resigns the office by instrument in writing addressed to the Minister, or
 - (c) ceases to hold office as a Deputy President.
- (3) However, a person does not cease to hold office as a Deputy President simply because the person has been removed, or has resigned, from office as a Divisional Head under subsection (2).
- (4) The appointment of a Deputy President as a Divisional Head is to be made in accordance with any applicable provisions of Schedule 2.

17 Qualifications for membership

- (1) **The President**

A person is eligible to be appointed as the President only if the person is:

 - (a) a Judge of the District Court, or
 - (b) a Judicial Member of the Industrial Relations Commission, or
 - (c) a Judge of the Land and Environment Court, or
 - (d) a Judge of the Supreme Court.
- (2) **Deputy Presidents and non-presidential judicial members**

A person is eligible to be appointed as a Deputy President or as a non-presidential judicial member only if the person is:

 - (a) a judicial officer, or
 - (b) a legal practitioner of at least 7 years standing.
- (3) **Non-judicial members**

A person is eligible to be appointed as a non-judicial member only if the person has, in the opinion of the Minister, special knowledge or skill in relation to any class of matters in respect of which the Tribunal has jurisdiction.

18 Other provisions relating to members of Tribunal

Schedule 3 has effect with respect to the members of the Tribunal.

Part 3 Organisation

19 Tribunal to exercise functions in Divisions

- (1) The Tribunal is to exercise its functions in the Divisions of the Tribunal specified in Schedule 1, except when the Tribunal is constituted by an Appeal Panel.

Note. The Divisions of the Tribunal are presently as follows:

Community Services Division
Equal Opportunity Division
General Division
Legal Services Division

- (2) The regulations may amend Schedule 1:
 - (a) by inserting the name of a Division of the Tribunal, or
 - (b) by omitting, substituting or altering the name of any Division previously inserted by regulation.

20 Composition of Division and allocation of functions to Division

- (1) Each Division of the Tribunal is to be composed of the members assigned to the Division by Schedule 2.
- (2) Each Division of the Tribunal is to exercise the functions of the Tribunal allocated to that Division by Schedule 2. Those functions do not include the functions of an Appeal Panel of the Tribunal.

21 Assignment of members to Divisions

- (1) The President is assigned to each Division.
- (2) A Divisional Head is assigned to the Division in respect of which he or she is appointed as the Divisional Head.
- (3) Subject to this Act, the President is to assign each member (other than the President or a Divisional Head) to one or more Divisions, and may vary any such assignment at any time.

- (4) An assignment of a member to a Division:
- (a) is to be made in accordance with any applicable provisions of Schedule 2 or of this or any other Act, and
 - (b) is subject to any limitations specified in the member's instrument of appointment.

Note. Schedule 2, in some cases, provides for the assignment of members to particular Divisions by their instruments of appointment or a subsequent instrument. Schedule 5 appoints certain members of abolished bodies to the Tribunal and assigns them to Divisions of the Tribunal.

22 Constitution of the Tribunal for particular proceedings

- (1) In exercising any of its functions, the Tribunal is to be constituted by one or more Division members of the Division to which the function concerned is allocated.
- (2) The President, or relevant Divisional Head (subject to any direction of the President), may give directions as to the members who are to constitute the Tribunal for the purposes of any particular proceedings.
- (3) In giving a direction as to the members who are to constitute the Tribunal for the purposes of any particular proceedings, the President or relevant Divisional Head is to have regard to the following matters:
 - (a) the degree of public importance or complexity of the subject-matter of the proceedings,
 - (b) if the proceedings concern the review of a reviewable decision—the nature and status of the office of the administrator who made the reviewable decision,
 - (c) the need for any of the members to have special knowledge or experience in the subject-matter of the proceedings,
 - (d) such other matters as the President or the Divisional Head considers relevant.
- (4) The provisions of this section are subject to any contrary provision in this or any other Act. In particular, the Tribunal is to

be constituted subject to the provisions for the constitution of the Tribunal specified in Schedule 2 in relation to the classes of matters specified in that Schedule.

- (5) This section does not apply to the exercise of the functions of an Appeal Panel of the Tribunal.

23 Amendment of Schedule 2 (Composition and functions of Divisions)

- (1) The regulations may amend Schedule 2 to make provision for:
- (a) the composition of a Division with respect to the members to be assigned to it, or
 - (b) the allocation of any function of the Tribunal to a Division, or
 - (c) the constitution of the Tribunal to exercise any of its functions.
- (2) However, any such regulation cannot be made in relation to any matter specified in Schedule 2 that was inserted by an Act (or was included in this Act when it was enacted) unless the matter relates to a function (or the exercise of a function) to which clause 2 (2) of Part 4 of Schedule 2 relates.

Note. Clause 2 (2) of Part 4 of Schedule 2 provides that any function of the Tribunal that is not specifically allocated to a Division by that Schedule is allocated to the General Division of the Tribunal.

24 Appeal Panel of the Tribunal

- (1) An Appeal Panel of the Tribunal for any proceedings consists of at least 3 members who are constituted by the President for the purpose of the proceedings.
- (2) An Appeal Panel must include:
- (a) 1 presidential judicial member who is a Division member of the Division in which the decision under appeal was made, and
 - (b) 1 other judicial member (whether or not the member is such a Division member), and
 - (c) 1 non-judicial member who is such a Division member.

- (3) There may be more than one sitting of an Appeal Panel at the same time.
- (4) This section is subject to any contrary provision in this or any other Act.

25 Functions of the President

- (1) The President is (subject to this Act and the rules of the Tribunal) to direct the business of the Tribunal.
- (2) The President is responsible for the management of the administrative affairs of the Tribunal.
- (3) The President may determine the places and times for sittings of the Tribunal.

26 Annual report

- (1) As soon as practicable after 30 June (but on or before 31 December) of each year, the President must provide the Minister with a report on the operations of the Tribunal for the period ending on 30 June in that year.
- (2) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

Part 4 Registrar and staff

27 Appointment of Registrar and staff

A Registrar, Deputy Registrars and such other staff as may be necessary for the purposes of this Act are to be employed under Part 2 of the *Public Sector Management Act 1988*.

28 Functions of Registrars and Deputy Registrars

- (1) The Registrar has the following functions:
 - (a) to assist the President in managing the affairs of the Tribunal, and
 - (b) such other functions as may be conferred or imposed on the Registrar by or under this or any other Act or law.
- (2) A Deputy Registrar may exercise the functions of the Registrar:
 - (a) as directed by the Registrar, and
 - (b) during the absence of, or a vacancy in the office of, the Registrar.
- (3) Anything done or omitted to be done by a Deputy Registrar in exercising a function of the Registrar has effect as if it had been done or omitted to be done by the Registrar.
- (4) The regulations may make provision for or with respect to the functions of the Registrar.

Part 5 Assessors

Division 1 Appointment

29 Appointment of assessors

- (1) The Minister may appoint persons to be assessors of the Tribunal who, in the opinion of the Minister, have special knowledge of, or experience in, any area within the jurisdiction of the Tribunal.
- (2) An assessor may be appointed on a full-time or part-time basis.
- (3) Schedule 4 has effect with respect to assessors.

30 Acting assessors

- (1) The President may appoint any person whose name is on the list compiled under section 31 to act as an assessor:
 - (a) for a period not exceeding 12 months, or
 - (b) for the purpose of particular proceedings before the Tribunal.
- (2) Any person who is appointed to act as an assessor under this section has and may exercise all of the functions of an assessor while acting as an assessor.

31 Lists of persons eligible to be appointed to act as assessors

- (1) The Minister may compile a list or lists of persons considered by the Minister to be suitable to be appointed to act as assessors under section 30.
- (2) Different lists may be compiled for different types of matters or to take account of any other factors.
- (3) A person may be included in a list under this section only if the person consents to being included in the list.
- (4) In compiling any list, the Minister may consult with the President.

- (5) The Minister may amend or revoke any list compiled under this section for any reason that the Minister considers appropriate.
- (6) The Minister is to review at least annually any list compiled under this section.
- (7) The Minister may delegate any of the Minister's functions under this section (other than this power of delegation) to the head of the Department administering this Act.

32 Functions of assessors generally

An assessor has:

- (a) the functions conferred or imposed by or under Division 2, and
- (b) such other functions as are conferred or imposed on the assessor by or under this or any other Act or law.

Note. Functions conferred or imposed on assessors (other than by or under Division 2) include the function of conducting a preliminary conference under section 74.

Division 2 Primary functions

33 Inquiries by assessors

- (1) If proceedings are pending in the Tribunal, the Tribunal or the President may, with the consent of the parties, direct that an inquiry into any issue raised in, or other matter connected with, the proceedings be made by a single assessor.
- (2) The assessor making such an inquiry is to make a report to the Tribunal.
- (3) If a report is made to the Tribunal under this section, the Registrar is to furnish a copy of the report to each of the parties as soon as is practicable.
- (4) The Tribunal may, with the consent of the parties, adopt any findings or observations set out in a report under this section.
- (5) An assessor, in making an inquiry under this section, has and may exercise the functions of the Tribunal under section 83 (Powers in relation to witnesses).

- (6) An assessor who has made an inquiry under this section in relation to any proceedings is disqualified from further participation in those proceedings unless the parties otherwise agree.

34 Delegation to assessors

- (1) If proceedings are pending in a Division of the Tribunal, the relevant Divisional Head may direct that the proceedings (or part of the proceedings) be determined by one or more assessors if
- (a) the parties consent to the making of the direction, or
 - (b) the proceedings belong to a class of proceedings prescribed by the regulations for the purposes of this section.
- (2) Subject to this Act and the rules of the Tribunal, the assessor or assessors determining the proceedings under this section have and may exercise the functions of the Tribunal (other than its functions under this section).
- (3) The decision of the assessor or assessors is taken to be the decision of the Tribunal.
- (4) If proceedings are directed to be determined by two or more assessors:
- (a) one of those assessors directed to do so by the relevant Divisional Head is to preside at the proceedings, and
 - (b) if the assessors are divided in opinion as to the decision to be made on any question:
 - (i) if there is a majority of the one opinion—the question is to be decided according to the opinion of the majority, or
 - (ii) in any other case—the question is to be decided according to the opinion of the assessor presiding.
- (5) The assessor or assessors may, of the assessor's or the assessors' own motion or on the request of a party, refer a question of law (including the question whether a particular question is one of law) arising in the proceedings to the relevant Divisional Head for determination by a judicial member.

- (6) If a question is referred to the relevant Divisional Head under subsection (5):
 - (a) a judicial member is to determine the question and then remit the determination to the assessor or assessors, and
 - (b) the assessor or assessors may continue to determine the proceedings unless the Divisional Head otherwise directs, but only if:
 - (i) no order or decision to which the question is relevant is made until a judicial member has determined the question, and
 - (ii) no order or determination is made that is inconsistent with the determination of the question by a judicial member.
- (7) A decision of a judicial member that a question referred under subsection (5) need not be determined because it is not relevant to the particular proceedings is taken to be the member's determination of the question for the purposes of subsection (6).

35 Assessors sitting with the Tribunal

- (1) If proceedings are pending in the Tribunal, the Tribunal may, in determining the proceedings or any part of the proceedings, be assisted by one or more assessors.
- (2) An assessor assisting the Tribunal may under this section assist and advise the Tribunal, but is not to adjudicate on any matter before the Tribunal.
- (3) The Tribunal may commence or continue to determine the proceedings or any part of the proceedings:
 - (a) without the assistance of an assessor who is not available or has ceased to be available to assist in the determination of the proceedings or part of the proceedings, and
 - (b) without the assistance of assessors generally if, in the opinion of the Tribunal, the proceedings or part of the proceedings concern or concerns a question of law only.

Chapter 3 Jurisdiction of Tribunal

36 What are the principal kinds of decisions that the Tribunal may make?

- (1) The Tribunal may:
 - (a) make original decisions, and
 - (b) review reviewable decisions.
- (2) This section does not limit any other function of the Tribunal.

Note. An original decision is a decision of the Tribunal made in relation to a matter over which it has jurisdiction under an enactment to act as the primary decision-maker. An example of the original jurisdiction of the Tribunal is that which it exercises under Part 7A of the Anti-Discrimination Act 1977. Other examples are mentioned in Schedule 2.

A reviewable decision is a decision of an administrator that the Tribunal has jurisdiction under an enactment to review. Examples of the review jurisdiction of the Tribunal are mentioned in Schedule 2.

37 Conferral of jurisdiction to make original decisions

The Tribunal has jurisdiction under an enactment to act as the primary decision-maker if the enactment provides that applications may be made to it for decisions made in the exercise of functions conferred or imposed on the Tribunal by or under that enactment.

38 Conferral of jurisdiction to review reviewable decisions

- (1) **Conferral of review jurisdiction**

The Tribunal has jurisdiction under an enactment to review a decision (or a class of decisions) if the enactment provides that applications may be made to it for a review of any such decision (or class of decisions) made by an administrator:

 - (a) in the exercise of functions conferred or imposed by or under the enactment, or
 - (b) in the exercise of any other functions of the administrator identified by the enactment.

Note. Section 5 defines **enactment** to mean:

- (a) in relation to a reviewable decision—an Act (other than this Act) or a statutory rule (other than a statutory rule made under this Act), or
- (b) in any other case—an Act (other than this Act).

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- (2) **When statutory rules may confer jurisdiction to review decision**
Nothing in subsection (1) enables jurisdiction to review a decision to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by an Act (other than this Act).
- (3) **Preconditions for applications laid down by enactment**
If an enactment makes provision for applications to be made to the Tribunal in respect of a reviewable decision subject to certain conditions, the Tribunal has jurisdiction under the enactment only if those conditions are satisfied.
- (4) **Applications can be made in relation to delegates and others**
A provision of an enactment that provides that an administrator's decision is a reviewable decision extends to:
- (a) a decision made by a person to whom the function of making the reviewable decision has been delegated, or
 - (b) if the provision specifies the administrator by reference to the holding of a particular office or appointment—a decision by any person for the time being acting in, or performing any of the duties of, the office or appointment, or
 - (c) a decision made by any other person authorised to exercise the function of making the reviewable decision.
- (5) **Applications in relation to decisions of former office holders**
If an administrator makes a reviewable decision by reason of holding or performing the duties of an office or appointment and then ceases to hold or perform the duties of the office or appointment, this Act has effect as if the decision had been made by:
- (a) the person for the time being holding or performing the duties of that office or appointment, or
 - (b) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the President (or another person authorised by the President) specifies.

39 Inter-relationship between Tribunal and Ombudsman

- (1) The President and the Ombudsman may enter into arrangements regarding any of the following:
 - (a) matters that the Tribunal will refer to the Ombudsman where it considers that the matter can be the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974* and that it would be more appropriate for the Ombudsman to deal with the matter,
 - (b) matters that the Ombudsman will refer to the Tribunal where the Ombudsman considers that the matter can be the subject of an application for a review to the Tribunal and that it would be more appropriate for the Tribunal to deal with it,
 - (c) matters that are the subject of an application to the Tribunal and that are also the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974*,
 - (d) the co-operative exercise of the respective functions of the Tribunal and Ombudsman.
- (2) The President and the Ombudsman are jointly to cause notice of any arrangements entered into under this section to be published in the Gazette as soon as is practicable after they are entered into. However, a failure to publish any such arrangements does not affect their validity.
- (3) The Tribunal and the Ombudsman are empowered to exercise their functions in conformity with any relevant arrangements entered into under this section.
- (4) An application may be made to the Tribunal for a review of a reviewable decision whether or not a complaint has been made to the Ombudsman in relation to the decision.
- (5) Without limiting subsection (3):
 - (a) the Ombudsman may (despite anything in the *Ombudsman Act 1974*) decline, discontinue or defer a complaint made under that Act to give effect to an arrangement entered into under this section, and

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- (b) the Ombudsman may (despite any provision of the *Ombudsman Act 1974* but in conformity with this Act) disclose any information to the Tribunal duly obtained by the Ombudsman in relation to any matter referred to the Tribunal to give effect to an arrangement entered into under this section, and
 - (c) the Tribunal may dismiss, adjourn or stay proceedings for an application for the review of a reviewable decision to give effect to an arrangement entered into under this section, and
 - (d) the Ombudsman may entertain any complaint under the *Ombudsman Act 1974*, or the Tribunal may entertain any application for a review of a reviewable decision, duly made by a person on the basis of a referral under arrangements entered into under this section.

40 When enactment taken to make contrary provision to this Act

- (1) The provisions of this Act have effect subject to any contrary provision being made in a relevant enactment (whether expressly or impliedly).
- (2) However, a provision of a relevant enactment is not to be interpreted as amending or repealing, or otherwise altering or affecting the effect or operation of, any of the provisions of this Chapter unless the provision of the relevant enactment provides expressly for it to have effect despite a specified provision, or despite any provision, of this Chapter.
- (3) This section applies to a provision of a relevant enactment whether enacted before or after the commencement of this section.
- (4) In this section:
relevant enactment means an enactment under which the Tribunal has jurisdiction:
 - (a) to make an original decision, or
 - (b) to review a reviewable decision,or that otherwise deals with the jurisdiction of the Tribunal.

Chapter 4 Process for original decision-making

Part 1 Overview of the original decision-making process

41 Summary of the original decision-making process

- (1) The following is a summary of the process involved in the making and review of original decisions:

Making of application

An interested person makes an application to the Tribunal for an original decision.

Making of decision

The Tribunal makes an original decision.

Seeking written reasons

A party to the proceedings may seek a statement of reasons for the decision under section 89 where the Tribunal does not give written reasons for its decision.

Appeal to Appeal Panel of Tribunal

A party to the proceedings may appeal under Part 1 of Chapter 7 to an Appeal Panel of the Tribunal from the original decision if a relevant enactment provides for an appeal.

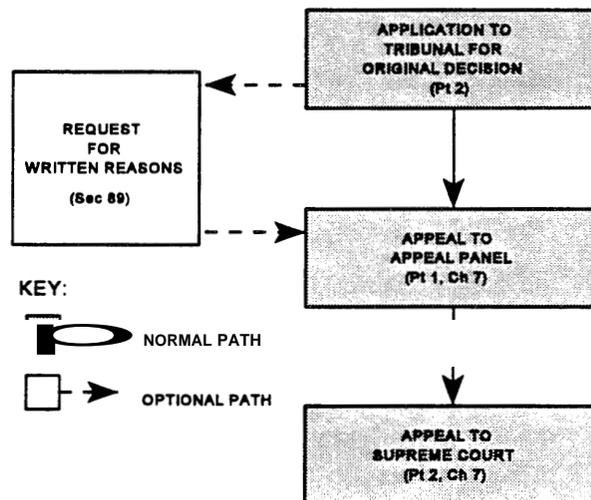
Appeal to Supreme Court

A party to proceedings before the Appeal Panel may appeal against the Panel's decision to the Supreme Court under Part 2 of Chapter 7 on a question of law.

Part 3 of Chapter 7 preserves the inherent jurisdiction of the Supreme Court to conduct a judicial review of any decision of the Tribunal.

- (2) This section does not affect the provisions of this or any other Chapter that it summarises.

OVERVIEW OF ORIGINAL DECISION-MAKING PROCESS



Part 2 Applications for original decisions

42 When can an application for an original decision be made?

A person may apply to the Tribunal for an original decision if

- (a) the application is made by or on behalf of an interested person, and
- (b) the application is made in the manner and within the time prescribed by the rules of the Tribunal (or prescribed by or under the enactment under which the application is made).

Note. Section 4 defines *interested person* to mean a person who is entitled under an enactment to make an application to the Tribunal for an original decision or a review of a reviewable decision (as the case may be).

43 Fees for applications

- (1) An application to the Tribunal cannot be made unless the fee prescribed by the regulations (if any) in respect of the application is paid.
- (2) An application in respect of which a fee is waived under the regulations (whether at the time of lodgment or otherwise) is taken to be made at the time the application is lodged with the Tribunal.
- (3) This section does not apply to an application made under the *Anti-Discrimination Act 1977* for an original decision.

44 Late applications to Tribunal

- (1) Despite section 42 (b), the Tribunal may, on application in writing by an interested person seeking to make a late application, extend the time for the making by that person of an application if the Tribunal is of the opinion that the person has provided a reasonable explanation for the delay in making the application.
- (2) The time for making an application for an original decision may be extended under subsection (1) although that time has expired.

- (3) In this section, *late application* means an application not made within the time prescribed by the rules of the Tribunal (or prescribed by or under the enactment under which the application is made).

45 Tribunal has the functions conferred or imposed by or under enactment

In determining an application for an original decision, the Tribunal has such functions as are conferred or imposed on the Tribunal by or under the enactment under which the application is brought.

46 Effect of an original decision

An original decision takes effect on the date on which it is given or such later date as may be specified in the decision.

Chapter 5 Process for review of reviewable decisions

Part 1 Overview of the review process

47 Summary of the review process for reviewable decision

- (1) The following is a summary of the process involved in the review of a reviewable decision:

Making of decision

An administrator makes a reviewable decision and (where appropriate) gives notice to an interested person of the decision and of review rights in accordance with Division 1 of Part 2.

Seeking reasons and/or internal review

An interested person may seek either or both of the following:

- (a) reasons for the decision under Division 2 of Part 2,
- (b) an internal review of the decision under Division 3 of Part 2.

External review by Tribunal

An interested person may (generally after an internal review) make an application to the Tribunal under Part 3 for a review of the decision.

Arrangements with Ombudsman

A reviewable decision may also be the subject of an inquiry by the Ombudsman under the *Ombudsman Act 1974*. Section 39 provides that the Ombudsman and the Tribunal may make arrangements for the transfer of matters between them.

Appeal to Appeal Panel of Tribunal

If the Tribunal has reviewed a reviewable decision, a party to the proceedings may appeal to an Appeal Panel of the Tribunal under Part 1 of Chapter 7.

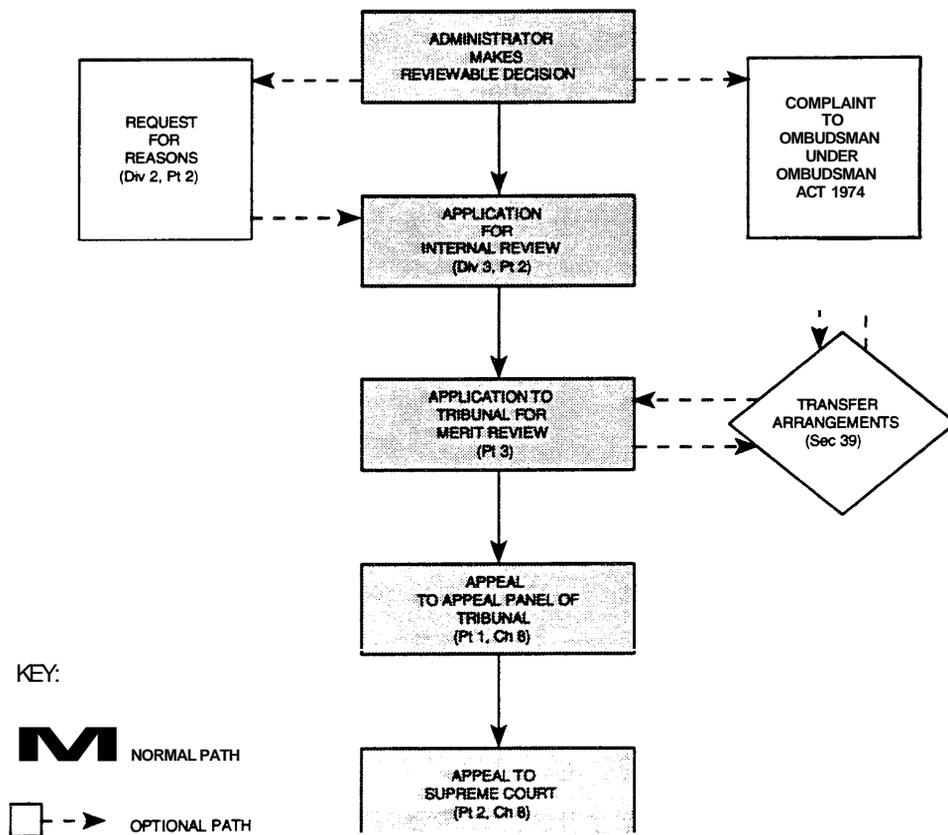
Appeal to Supreme Court

A party to proceedings before an Appeal Panel may appeal against the Panel's decision to the Supreme Court under Part 2 of Chapter 7 on a question of law.

Part 3 of Chapter 7 preserves the inherent jurisdiction of the Supreme Court to conduct a judicial review of any decision of the Tribunal.

- (2) This section does not affect the provisions of this or any other Chapter that it summarises.

OVERVIEW OF REVIEW PROCESS



Part 2 Role of administrators

Division 1 Information concerning decision and review rights

48 Notice of decision and review rights to be given by administrators

- (1) An administrator who makes a reviewable decision must take such steps as are reasonable in the circumstances to give any interested person notice, in writing, of the following:
 - (a) the decision, and
 - (b) the right of the person to have the decision reviewed.
- (2) However, an administrator does not have to give a notice under subsection (1) in relation to:
 - (a) a decision that is taken by this or any other Act to be made because the administrator has failed to make a decision within the time limit for making the decision, or
 - (b) any of the following decisions, but only if the decision concerned does not adversely affect the interests of any interested person:
 - (i) a decision not to impose a liability, penalty or any kind of limitation on a person,
 - (ii) a decision making an adjustment to the level of periodic payments to be made to a person as a member of a class of persons where a similar adjustment is being made to the level of such payments to the other members of the class,
 - (iii) if an enactment establishes several categories of entitlement to a monetary or other benefit—a decision that determines a person to be in the most favourable of those categories, or
 - (c) a decision made by an administrator following an internal review, or

- (d) any other decision or class of decisions prescribed by the regulations for the purposes of this paragraph.
- (3) A contravention of this section does not affect the validity of any decision.

Division 2 Duty to give reasons on request

49 Duty of administrator to give reasons on request

- (1) If an administrator makes a reviewable decision, an interested person may make a written request to the administrator for the reasons for the decision.
- (2) As soon as practicable (and in any event within 28 days) after receiving such a request, the administrator is to prepare a written statement of reasons for the decision and provide it to the person who requested the reasons.
- (3) The statement of reasons is to set out the following:
 - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
 - (b) the administrator's understanding of the applicable law,
 - (c) the reasoning processes that led the administrator to the conclusions the administrator made.
- (4) The regulations may:
 - (a) exclude any class of reviewable decisions from the application of this section, or
 - (b) alter the period within which a statement of reasons under this section must be given.

50 Administrator may refuse reasons in certain cases

- (1) An administrator may refuse to prepare and provide a statement of reasons requested by a person under this Division if:
 - (a) the administrator is of the opinion that the person is not entitled to be given the statement, or

- (b) in the case of a decision the terms of which were recorded in writing and set out in a document that was provided to the person—the request was not made within 28 days after the person was provided with the document, or
 - (c) in any other case—the request was not made within a reasonable time after the decision was made.
- (2) An administrator who refuses under subsection (1) to prepare and provide a statement of reasons must notify the person requesting the statement, in writing, of the administrator’s refusal and the reasons for the refusal as soon as practicable (and in any event within 28 days) after the request.
- (3) The administrator is not to refuse to prepare and provide a statement of reasons if:
 - (a) in the case of a refusal based on subsection (1) (a)—the Tribunal declares, on an application made under section 51 (1), that the person who made the request was entitled to make the request, or
 - (b) in the case of a refusal based on subsection (1) (c)—the Tribunal declares, on an application made under section 51 (2), that the person who made the request did so within a reasonable time.
- (4) If an administrator cannot refuse to comply with a request for a statement of reasons because of a decision of the Tribunal referred to in subsection (3), the administrator must prepare the written statement of reasons that was originally requested and provide it to the person who requested it as soon as practicable (and in any event within 28 days) after the Tribunal’s decision.

51 Tribunal may determine whether person entitled to reasons or made request within reasonable time

- (1) The Tribunal may, on the application of a person who has been refused a statement of reasons under section 50 (1) (a), make an order declaring that the person was, or was not, entitled to make the request to which the notice relates.

- (2) The Tribunal may, on the application of a person who has been refused a statement of reasons under section 50 (1) (c) on the basis that the person did not make the request within a reasonable time, make an order declaring that the person did make the request within a reasonable time.

52 Tribunal may order administrator to provide a statement of reasons or an adequate statement of reasons

- (1) If an interested person has requested a statement of reasons under section 49 but has not received it within the period specified by or under that section, the Tribunal may (on the application of the person) order the administrator concerned to provide the statement of reasons within such time as may be specified in the order.
- (2) If an interested person who requested a statement of reasons under section 49 is given an inadequate statement of reasons, the Tribunal may (on the application of the person) order the administrator concerned to provide an adequate statement of reasons within such time as may be specified in the order.
- (3) For the purposes of this section, a statement of reasons is an adequate statement of reasons only if it sets out the matters referred to in section 49 (3).

Division 3 Internal reviews

53 Internal reviews

- (1) **Who may apply for an internal review**
If an administrator makes a reviewable decision, an interested person may apply for an internal review of that decision under this section.
- (2) **Requirements for an application**
An application for an internal review is:
 - (a) to be in writing, and
 - (b) to be addressed to the administrator concerned, and
 - (c) to specify an address in Australia to which a notice under subsection (6) may be sent, and

- (d) to be lodged at the office (or an office) of the administrator within 28 days (or such later date as the administrator may allow) after the person:
 - (i) if the person has requested reasons under section 49—was provided with a statement of reasons under section 49 or notified under section 50 of a refusal to provide reasons, or
 - (ii) if the person has not requested reasons under section 49—was notified of the making of the reviewable decision, and
 - (e) to comply with such other requirements as may be prescribed by the regulations in respect of the making of applications for internal reviews.
- (3) **Who is to deal with an application?**
An application for an internal review of a decision is to be dealt with by an individual (other than the administrator) who is directed to do so by the administrator. The individual directed to deal with an application must be, as far as is practicable, an individual:
- (a) who was not substantially involved in the process of making the decision under review, and
 - (b) who is an employee of the administrator or is an employee of the same agency or organisation within which the administrator is employed, and
 - (c) who is otherwise suitably qualified to deal with the issues raised by the application.
- (4) **Material to be considered**
In reviewing a decision, the individual dealing with the application is to consider any relevant material submitted by the applicant.
- (5) **Review of the application**
Following the internal review of the decision by the individual directed to do so by the administrator, the administrator may:
- (a) affirm the decision, or
 - (b) vary the decision, or
 - (c) set aside the decision and make a decision in substitution for the decision it set aside.

(6) Notice of result of review and appeal rights

As soon as practicable (or in any event within 14 days) after the completion of an internal review of a decision, the administrator must notify the applicant in writing of:

- (a) the outcome of the internal review, and
- (b) the reasons for the decision in the internal review, and
- (c) the right of the person to have the decision reviewed by the Tribunal.

(7) Statement of reasons

For the purposes of subsection (6), an applicant is notified of the reasons for a decision in an internal review only if the applicant is given a statement of reasons setting out the following:

- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
- (b) the understanding of the administrator of the applicable law,
- (c) the reasoning processes that led the administrator to the conclusions the administrator made.

(8) Affirmed, varied or new decision taken to be made by administrator on date of notice

For the purposes of any application to the Tribunal, a reviewable decision that is affirmed, varied or set aside and substituted under subsection (5) is taken to have been made by the administrator (as affirmed, varied or substituted) on the date on which the applicant is given a notice under subsection (6).

(9) Failure to review within 14 days

An internal review is taken to be completed if the applicant is not notified of the outcome of the review within 14 days (or such other period as the administrator and person agree) after the application was lodged.

(10) No internal reviews of decisions previously reviewed under this section

A person is not entitled to a review under this section of any decision previously reviewed under this section or a decision made under subsection (5).

(11) **Regulation-making powers**

The regulations may:

- (a) prescribe requirements to be observed in relation to the conduct of an internal review under this section, or
- (b) exclude any class of reviewable decisions from the application of this section, or
- (c) alter the period within which an internal review must be conducted or a notice given under this section.

Division 4 Guidelines

54 Guidelines for notices, reasons and internal reviews

- (1) The regulations may prescribe guidelines with respect to any of the following:
 - (a) the giving of notices for the purposes of Division 1,
 - (b) the giving of reasons under Division 2,
 - (c) the conduct of internal reviews under Division 3.
- (2) A person, in taking action under this Part, must have regard to any such guidelines as are then in force.

Part 3 Role of the Tribunal

Division 1 Applications for review

55 When can an application for a review be made?

- (1) A person may apply to the Tribunal for a review of a reviewable decision only if
 - (a) the application is made by or on behalf of an interested person, and
 - (b) an internal review of the decision has been, or is taken to have been, completed, and
 - (c) the application is made in the manner prescribed by the rules of the Tribunal, and
 - (d) the application is made within such period as may be prescribed by the rules of the Tribunal following the date on which the applicant was notified of the outcome of an internal review or the date on which an internal review is taken to have been concluded.

Note. Section 4 defines *interested person* to mean a person who is entitled under an enactment to make an application to the Tribunal for an original decision or a review of a reviewable decision (as the case may be).

- (2) However, subsection (1) (b) or (d) does not prevent a person from making an application in respect of a reviewable decision that has not been the subject of an internal review under section 53 if the Tribunal is satisfied that:
 - (a) the person was not at any time entitled to apply for an internal review of the decision, or
 - (b) the person made a late application for an internal review in circumstances where the person dealing with the application unreasonably refused to consider the application and the application to the Tribunal was made within a reasonable time following the decision of the administrator concerned, or
 - (c) it is necessary for the Tribunal to deal with the application in order to protect the person's interests and the application to the Tribunal was made within a reasonable time following the decision of the administrator concerned.

- (3) In determining whether a late application for internal review was unreasonably refused or whether an application to the Tribunal was made within a reasonable time for the purposes of subsection (2), the Tribunal is to have regard to:
- (a) the time when the applicant became aware of the making of the decision, and
 - (b) in a case to which subsection (2) (b) applies—the period prescribed by or under section 53 for the lodging of an application for an internal review, and
 - (c) such other matters as it considers relevant.

56 Fees for applications

- (1) An application to the Tribunal cannot be made unless the fee prescribed by the regulations (if any) in respect of the application is paid.
- (2) An application in respect of which a fee is waived under the regulations (whether at the time of lodgment or otherwise) is taken to be made at the time the application is lodged with the Tribunal.
- (3) This section does not apply to an application made under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* for a review of a reviewable decision made under community welfare legislation within the meaning of that Act.

57 Late applications to Tribunal

- (1) Despite section 55 (1) (d), the Tribunal may, on application in writing by an interested person seeking to make a late application to the Tribunal, extend the time for the making by that person of an application if the Tribunal is of the opinion that the person has provided a reasonable explanation for the delay in making the application.
- (2) The time for making an application for a review of a reviewable decision may be extended under subsection (1) although that time has expired.

- (3) In this section, *late application* means an application not made within the time prescribed by the rules of the Tribunal (or prescribed by or under the enactment under which the application is made).

58 Duty of administrator to lodge material documents with Tribunal where decision reviewed

- (1) An administrator whose reviewable decision is the subject of an application for review to the Tribunal must, within 28 days after receiving notice of the application, lodge with the Tribunal:
- (a) a copy of any statement of reasons given to the applicant under section 49 (or, if no such statement was given to the applicant, a statement of reasons setting out the matters referred to in section 49 (3)), and
 - (b) a copy of every document or part of a document that is in the possession, or under the control, of the administrator that the administrator considers to be relevant to the determination of the application by the Tribunal.
- (2) If the applicant has not been given a statement of reasons under section 49, the Tribunal may direct that a copy of the statement of reasons lodged with the Tribunal under subsection (1) (a) be given to the applicant within such period or periods as the Tribunal directs.
- (3) If the Tribunal or President considers that a party to the proceedings would or might suffer hardship if the period of 28 days provided by subsection (1) is not shortened or extended, the Tribunal or President may, at the request of the party, make an order directing that the copies referred to in that subsection be lodged with the Tribunal within such shorter or extended period as is specified in the order.
- (4) If the Tribunal or President considers that other particular documents (or that other documents included in a particular class of documents) may be relevant to the determination of the application, it may cause a notice in writing to be served on the administrator:
- (a) stating that the Tribunal or President is of that opinion, and

- (b) directing the administrator concerned to lodge with the Tribunal, before a date specified in the notice, a copy of each of those other documents that is in the possession, or under the control, of the administrator.
- (5) The Registrar of the Tribunal is to grant reasonable access to the applicant in the proceedings to any copy of a document lodged under this section by an administrator. Reasonable access includes, but is not limited to, enabling the applicant to make a photocopy of a document during ordinary business hours.
- (6) If a party to proceedings before the Tribunal seeks a summons under section 84 against an administrator for the production of any document and a copy of that document has been lodged with the Tribunal under subsection (1), the Tribunal may (on such conditions as it considers appropriate) direct the Registrar to grant the party access to its copy of the document instead of issuing a summons if access to the document could lawfully be required by the issue of a summons.
- (7) Nothing in this section requires the disclosure of, or the granting of access to, any document (or a copy of a document) in contravention of any of the following:
- (a) an order made under section 59 (Objections to lodgment),
 - (b) an order made under section 75 (Proceedings on hearing to be conducted in public),
 - (c) section 124 (Application of Act to exempt documents under *Freedom of Information Act 1989*),
 - (d) section 125 (Privileged documents).
- (8) For the purposes of this section, a reference to a document in the possession of an administrator includes a reference to a document to which the administrator has an immediate right of access.

59 Objections to lodgment

- (1) An administrator may apply to the Tribunal before the expiry of the period referred to in section 58 (1) for an order that the administrator not be required to lodge a copy of a document under section 58.

- (2) On any such application, the Tribunal may make an order that a copy of a document not be lodged with the Tribunal if
 - (a) it is satisfied that section 125 operates so as not to require the disclosure of the document, or
 - (b) it considers that, if an application were made under section 75 (2), it would be appropriate to make an order under that subsection prohibiting or restricting the publication or disclosure of evidence of the document.

Division 2 Effect of pending applications on reviewable decisions

60 Operation and implementation of decisions pending applications for review

- (1) Subject to this section, an application to the Tribunal for a review of a reviewable decision does not affect the operation of the decision under review or prevent the taking of action to implement that decision.
- (2) On the application of any party to proceedings for an application for a review of a reviewable decision, the Tribunal may make such orders staying or otherwise affecting the operation of the decision under review as it considers appropriate to secure the effectiveness of the determination of the application.
- (3) The Tribunal may make an order under this section only if it considers that it is desirable to do so after taking into account:
 - (a) the interests of any persons who may be affected by the determination of the application, and
 - (b) any submission made by or on behalf of the administrator who made the decision to which the application relates, and
 - (c) the public interest.
- (4) While an order is in force under this section (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on application by a party to the proceedings, vary or revoke the order by another order.

61 Restrictions on ordering stay of proceedings

- (1) The Tribunal may not:
 - (a) make an order under section 60 unless the administrator who made the decision to which such an order would relate has been given a reasonable opportunity to make submissions in relation to the matter, or
 - (b) make an order varying or revoking an order in force under section 60 (including an order as varied) unless the following persons have been given a reasonable opportunity to make submissions in relation to the matter:
 - (i) the administrator who made the decision to which such an order would relate,
 - (ii) the person who requested the making of the order,
 - (iii) if the order has previously been varied by an order or orders under section 60—the person or persons who requested the making of the only, or the later or latest, such order.
- (2) This section does not prevent the Tribunal from making an order under section 60 without giving to any person referred to in that section a reasonable opportunity to make submissions in relation to a matter if the Tribunal is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give the person such an opportunity.
- (3) If an order under this section is made without giving such an opportunity to the administrator who made the decision to which the application relates, the order does not take effect until a notice setting out the terms of the order is served on the administrator.

62 Conditions of stay order

- (1) An order in force under section 60 (including an order that has previously been varied on one or more occasions) is subject to such conditions as are specified in the order.
- (2) Any such order has effect:
 - (a) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the

application is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the application takes effect, or

- (b) if no period is so specified—until the decision of the Tribunal on the application takes effect.

Division 3 Powers on review

63 Determination of review by Tribunal

- (1) In determining an application for a review of a reviewable decision, the Tribunal is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
- (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) For this purpose, the Tribunal may exercise all of the functions that are conferred or imposed by any relevant enactment on the administrator who made the decision.
- (3) In determining an application for the review of a reviewable decision, the Tribunal may decide:
- (a) to affirm the reviewable decision, or
 - (b) to vary the reviewable decision, or
 - (c) to set aside the reviewable decision and make a decision in substitution for the reviewable decision it set aside, or
 - (d) to set aside the reviewable decision and remit the matter for reconsideration by the administrator in accordance with any directions or recommendations of the Tribunal.

64 Application of Government policy

- (1) In determining an application for a review of a reviewable decision, the Tribunal must give effect to any relevant Government policy in force at the time the reviewable decision was made except to the extent that the policy is contrary to law or the policy produces an unjust decision in the circumstances of the case.

- (2) The Premier or any other Minister may certify, in writing, that a particular policy was Government policy in relation to a particular matter.
- (3) The certificate is evidence of the Government policy concerned and the Tribunal is to take judicial notice of the contents of that certificate.
- (4) In determining an application for a review of a reviewable decision, the Tribunal may have regard to any other policy applied by the administrator in relation to the matter concerned except to the extent that the policy is contrary to Government policy or to law or the policy produces an unjust decision in the circumstances of the case.
- (5) In this section:
Government policy means a policy adopted by:
 - (a) the Cabinet, or
 - (b) the Premier or any other Minister,that is to be applied in the exercise of discretionary powers by administrators.

65 Power to remit matters to administrator for further consideration

- (1) At any stage of proceedings to determine an application for a review of a reviewable decision, the Tribunal may remit the decision to the administrator who made it for reconsideration of the decision by the administrator.
- (2) If a decision is so remitted to an administrator, the administrator may reconsider the decision and may:
 - (a) affirm the decision, or
 - (b) vary the decision, or
 - (c) set aside the decision and make a new decision in substitution for the decision set aside.
- (3) If the administrator varies the decision:
 - (a) the application is taken to be an application for review of the decision as varied, and

- (b) the person who made the application may either:
 - (i) proceed with the application for review of the decision as varied, or
 - (ii) withdraw the application.
- (4) If the administrator sets the decision aside and makes a new decision in substitution for the decision set aside:
 - (a) the application is taken to be an application for review of the new decision, and
 - (b) the person who made the application may either:
 - (i) proceed with the application for review of the new decision, or
 - (ii) withdraw the application.

66 Effect of a review decision

- (1) A decision determining an application for a review of a reviewable decision takes effect on the date on which it is given or such later date as may be specified in the decision.
- (2) If any such decision varies, or is made in substitution for, an administrator's decision, the decision of the Tribunal is taken:
 - (a) to be the decision of the administrator (other than for the purposes of a review under this Chapter), and
 - (b) to have had effect as the decision of the administrator on and from the date of the administrator's actual decision, unless the Tribunal orders otherwise.

Chapter 6 Procedure of Tribunal generally

Part 1 Parties to proceedings

67 Parties to proceedings before Tribunal

- (1) The parties to proceedings before the Tribunal for an original decision are:
 - (a) any person who, being entitled to do so, has duly applied to the Tribunal for an original decision, and
 - (b) if the Attorney General intervenes in the proceedings under section 69—the Attorney General, and
 - (c) any other person who has been made a party to the proceedings by the Tribunal on application by the person in accordance with subsection (4), and
 - (d) any person specified by or under any enactment as a party to the proceedings.

- (2) The parties to proceedings before the Tribunal for a review of a reviewable decision are:
 - (a) any person who, being entitled to do so, has duly applied to the Tribunal for a review of the decision, and
 - (b) the administrator who made the decision, and
 - (c) if the Attorney General intervenes in the proceedings under section 69—the Attorney General, and
 - (d) any other person who has been made a party to the proceedings by the Tribunal on application by the person in accordance with subsection (4), and
 - (e) any person specified by or under any enactment as a party to the proceedings.

- (3) In an appeal before an Appeal Panel, the member or members (or assessor or assessors) who constituted the Tribunal that made the decision appealed against cannot be made parties to the appeal. The rules of the Tribunal may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings below was the appellants).

- (4) If an application has been made by a person to the Tribunal for an original decision or review of a reviewable decision:
 - (a) any other person whose interests are affected by the reviewable decision (or are likely to be affected by the original decision) may apply, in writing, to the Tribunal to be made a party to the proceedings, and
 - (b) the Tribunal may, in its discretion, by order, make that person a party to the proceedings.
- (5) A person who is a party to proceedings before the Tribunal:
 - (a) by reason of a decision made by the person in the performance of the duties of an office or appointment, or
 - (b) by reason of the operation of section 38 (5),must be described in the proceedings by the person's official title.

68 Tribunal may decide persons whose interests affected by a decision

- (1) If it is necessary for the purposes of this Act to decide whether the interests of a person are affected (or likely to be affected) by a decision, that matter is to be decided by the Tribunal.
- (2) If the Tribunal decides that the interests of a person are affected (or likely to be affected) by a decision, the decision of the Tribunal is conclusive and cannot be the subject of an appeal to an Appeal Panel of the Tribunal under Part 1 of Chapter 7.
- (3) However, if the Tribunal decides that the interests of a person are not affected (or are not likely to be affected) by a decision, the decision of the Tribunal can be the subject of an appeal to an Appeal Panel of the Tribunal under Part 1 of Chapter 7.

69 Intervention by Attorney General

- (1) The Attorney General may, on behalf of the State, intervene in proceedings before the Tribunal.
- (2) If the Attorney General intervenes in proceedings for a review of a reviewable decision, the Attorney General may (from money otherwise lawfully available for the purpose) authorise the payment to a party to the proceedings by the State of such costs

as the Attorney General considers were reasonably incurred by that party in relation to the proceedings as a result of that intervention.

70 Opportunity of parties to make submissions

The Tribunal must ensure that every party to proceedings before the Tribunal is given a reasonable opportunity:

- (a) to present the party's case (whether at a hearing or otherwise), and
- (b) to make submissions in relation to the issues in the proceedings.

71 Representation of parties

- (1) A party to proceedings before the Tribunal may:
 - (a) appear without representation, or
 - (b) be represented by an agent, or
 - (c) if the party is an incapacitated person—be represented by such other person as may be appointed by the Tribunal under subsection (4).
- (2) Despite subsection (1), the Tribunal may order that the parties to the proceedings before it may not be represented by an agent of a particular class for the purpose of the presentation of oral submissions to it (whether in relation to the whole proceedings or any part of the proceedings) if the Tribunal considers it appropriate to do so.
- (3) In making an order under subsection (2), the Tribunal is to have regard to the following matters:
 - (a) the complexity of the matter and whether it involves a question of law,
 - (b) whether each party has the capacity to present the party's case by oral submissions without representation,
 - (c) the stage that the proceedings have reached,
 - (d) the type of proceedings,
 - (e) such other matters as the Tribunal considers relevant.

- (4) If it appears to the Tribunal that a party is an incapacitated person, the Tribunal may appoint any other person the Tribunal thinks fit to represent the party.
- (5) Subsection (2) does not apply to proceedings before an Appeal Panel of the Tribunal.
- (6) Any person appearing before the Tribunal may use the services of an interpreter unless the person can understand and speak the English language sufficiently to enable the person to understand, and to make an adequate reply to, questions that may be put to the person.
- (7) In this section:

incapacitated person means:

- (a) a minor, or
- (b) a person who is totally or partially incapable of representing himself or herself in proceedings before the Tribunal because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled, or
- (c) any other person of a class prescribed by the regulations for the purposes of this paragraph.

interpreter includes a person who interprets signs or other things made or done by a person who cannot speak adequately for the purposes of giving evidence in proceedings.

72 Notice of application to be served on other parties

The Registrar must cause notice of an application to the Tribunal to be served on any party (other than the applicant) to the proceedings within such time and in such manner as may be prescribed by the rules of the Tribunal.

Part 2 Other procedural matters

73 Procedure of the Tribunal generally

- (1) The Tribunal may, subject to this Act and the rules of the Tribunal, determine its own procedure.
- (2) The Tribunal is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice.
- (3) The Tribunal is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (4) The Tribunal is to take such measures as are reasonably practicable:
 - (a) to ensure that the parties to the proceedings before it understand the nature of the assertions made in the proceedings and the legal implications of those assertions, and
 - (b) if requested to do so—to explain to the parties any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceedings, and
 - (c) to ensure that the parties have the fullest opportunity practicable to be heard or otherwise have their submissions considered in the proceedings.
- (5) The Tribunal:
 - (a) is to act as quickly as is practicable, and
 - (b) is to ensure that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings, and
 - (c) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument, and

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- (d) in the case of a hearing—may require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases, and
 - (e) may require a document to be served outside the State, and
 - (f) may adjourn proceedings to any time and place (including for the purpose of enabling the parties to negotiate a settlement), and
 - (g) may dismiss at any stage any proceedings before it if the applicant withdraws the application to which the proceedings relate, and
 - (h) may dismiss at any stage any proceedings before it if it considers the proceedings to be frivolous or vexatious.
- (6) A judicial member may authorise a member to hold a directions hearing in relation to any proceedings before the Tribunal.

74 Preliminary conferences

- (1) The Tribunal may, before formally commencing to determine an application, confer informally with, or arrange for a member or assessor to confer informally with, the parties to the proceedings in a preliminary conference and make any determination with respect to the proceedings that is agreed to by the parties.
- (2) If proceedings are referred under this section to a member or an assessor and the parties agree to the determination of the member or assessor, the determination has effect as a decision of the Tribunal.
- (3) A determination is not to be made under this section unless the Tribunal, or the member or assessor making the determination, is satisfied that the determination is in the best interests of the person whose interests are considered by the Tribunal, member or assessor to be paramount.
- (4) If the proceedings are not determined under this section and proceed for a formal determination by the Tribunal:

- (a) evidence is not to be given, and statements are not to be made, concerning any words spoken or acts done at a conference held in accordance with this section unless the parties otherwise agree, and
 - (b) any member or assessor who presided over a preliminary conference in respect of the proceedings is not entitled to be a member of the Tribunal determining the proceedings, or an assessor in those proceedings, if any party to the preliminary conference objects to the member or assessor further participating in the proceedings.
- (5) For the purposes of subsection (4) (b), a party objects to a member or assessor further participating in proceedings only if
- (a) the objection is lodged with the Registrar within 14 days after the conclusion of the preliminary conference (or within such other period as may be prescribed by the rules of the Tribunal), and
 - (b) the objection is in the form prescribed by the rules of the Tribunal.
- (6) The President may direct that a preliminary conference is to be held under this section in the case of any applications made to the Tribunal of a kind specified in the direction.

75 Proceedings on hearing to be conducted in public

- (1) If proceedings before the Tribunal are to be determined by holding a hearing, the hearing is to be open to the public.
- (2) However, if the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, it may (of its own motion or on the application of a party) make any one or more of the following orders:
 - (a) an order that the hearing be conducted wholly or partly in private,
 - (b) an order prohibiting or restricting the publication of the names and addresses of witnesses appearing before the Tribunal,
 - (c) an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal,

- (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.
- (3) Mediation sessions and neutral evaluation sessions under Part 4 are to be conducted in private.

76 Circumstances in which hearing may be dispensed with

The Tribunal may determine proceedings by considering the documents or other material lodged with or provided to the Tribunal and without holding a hearing if it appears to the Tribunal that the issues for determination can be adequately determined in the absence of the parties.

77 Presiding member

If the Tribunal is constituted by more than 1 member, the most senior member is to preside at the proceedings before the Tribunal.

Note. Clause 9 of Schedule 3 makes provision for the seniority of members.

78 Tribunal divided in opinion

- (1) If the Tribunal is constituted by more than 1 member for the purposes of the determination of any proceedings and the members are divided in opinion, the opinion of the majority is taken to be the decision of the Tribunal.
- (2) However, a question of law (including the question whether a particular question is a question of law) arising in proceedings constituted by 1 or more judicial members is to be decided in accordance with the opinion of the judicial member or the majority of the judicial members.
- (3) If the members are equally divided in their opinion, the opinion that prevails is:
 - (a) the opinion of the President if the President is sitting, or

- (b) if the President is not sitting, but 1 or more other judicial members are sitting—the opinion of the judicial member or most senior judicial member (as the case may be) sitting, or
- (c) if only non-judicial members are sitting—the opinion of the most senior member sitting.

79 Reconstitution of Tribunal during hearing

- (1) The President may replace the member, or one of the members, constituting the Tribunal after the consideration of a matter by the Tribunal has commenced if:
 - (a) the member becomes unavailable for any reason, or ceases to be a member, before the matter is determined, and
 - (b) the parties consent.
- (2) The Tribunal as so reconstituted is to have regard to the evidence and decisions in relation to the matter that were given or made before the Tribunal was reconstituted.
- (3) If one or more of the parties do not consent to the reconstitution of the Tribunal under this section, the proceedings are to be reconsidered by the Tribunal constituted in accordance with this Act.
- (4) If proceedings are reconsidered by the Tribunal, the Tribunal may, for the purposes of the proceedings, have regard to any record of the proceedings before the Tribunal as previously constituted including a record of any evidence taken in the proceedings.

80 Tribunal may reserve decision

- (1) The Tribunal may reserve its decision in any proceedings before it.
- (2) A reserved decision of a member or members of the Tribunal may be given:
 - (a) by the member or members at a subsequent sitting of the Tribunal, or

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- (b) if the decision of a member is set out in writing and signed by the member—by being delivered by a member of the Tribunal, or
 - (c) by the Registrar, at a time and place of which the parties have been given reasonable notice.
- (3) If the Tribunal reserves its decision, it must give the reasons for its decision either orally or in writing within 6 months (or such other lesser period as may be specified by the rules of the Tribunal generally or for that class of matter) of the date on which it reserved its decision.
 - (4) A failure to comply with subsection (3) does not affect the validity of a reserved decision.

81 Amendments and irregularities

- (1) The Tribunal may, in any proceedings before it, make any amendments to the proceedings that the Tribunal considers to be necessary in the interests of justice.
- (2) Any such amendment may be made:
 - (a) at any stage of the proceedings (including the commencement or purported commencement of proceedings), and
 - (b) on such terms as the Tribunal thinks fit (including, if it can award costs in the proceedings, terms as to costs).
- (3) If this Act, the regulations or a rule of the Tribunal is not complied with in relation to the commencement (or purported commencement) of proceedings or conduct of proceedings before the Tribunal, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings or any decision in the proceedings.
- (4) For the purposes of subsection (3), the Tribunal may wholly or partly set aside the proceedings, a step taken in the proceedings, or a decision in the proceedings.

82 Recovery of amounts ordered to be paid (other than penalties)

- (1) For the purposes of the recovery of any amount ordered to be paid by the Tribunal (including costs, but not including a civil or other penalty), the amount is to be certified by the Registrar.

- (2) A certificate given under this section must identify the person liable to pay the certified amount.
- (3) A certificate of the Registrar that:
 - (a) is given under this section, and
 - (b) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate,operates as such a judgment.
- (4) A party to proceedings in respect of which an amount has been certified by the Registrar under this section may apply to the Tribunal for a review of the decision to certify that amount.

83 Powers in relation to witnesses

- (1) The Tribunal may:
 - (a) call any witness of its own motion in any proceedings, and
 - (b) examine any witness on oath or affirmation, or by use of a statutory declaration, in any proceedings, and
 - (c) examine or cross-examine any witness to such extent as the Tribunal thinks proper in order to elicit information relevant to the exercise of the functions of the Tribunal in any proceedings, and
 - (d) compel any witness to answer questions which the Tribunal considers to be relevant in any proceedings before it.
- (2) If the Tribunal decides to call a person as a witness under subsection (1) (a), the Tribunal may:
 - (a) seek to procure the voluntary attendance of the person before it by notifying the person in such manner as it thinks appropriate in the circumstances, or
 - (b) direct the Registrar to issue a summons to compel the attendance of the person before it.
- (3) Nothing in subsection (1) enables the Tribunal to compel a witness to answer a question if the witness has a reasonable excuse for refusing to answer the question.

84 Issue of summons

- (1) A summons for the purposes of this Act may be issued by the Registrar:
 - (a) on the application of a party to proceedings before the Tribunal, or
 - (b) at the direction of the Tribunal.
- (2) Any such summons must be signed by the Registrar or as otherwise provided by the rules of the Tribunal.
- (3) Any such summons may require a person to do any one or more of the following:
 - (a) attend and give evidence,
 - (b) attend and produce documents or other things.
- (4) A person who, without reasonable excuse, fails to comply with the requirements of a summons is guilty of an offence.
Maximum penalty: 100 penalty units.
- (5) A summons may be served within or outside the State.

85 Power to impose conditions

A power of the Tribunal to make an order or other decision includes a power to make the order or other decision subject to such conditions (including exemptions) as the Tribunal specifies when making the order or other decision.

86 Powers when proceedings settled

- (1) The Tribunal may, at any stage of proceedings before it, make such orders (including an order dismissing the application that is the subject of the proceedings) as it thinks fit to give effect to any agreed settlement reached by the parties to the proceedings if:
 - (a) the terms of the agreed settlement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal, and
 - (b) the Tribunal is satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement, and

- (c) the Tribunal is satisfied that the agreed settlement is in the best interests of the person whose interests are considered by the Tribunal to be paramount.
- (2) The Tribunal may dismiss the application that is the subject of the proceedings if it is not satisfied that:
 - (a) it would have the power to make a decision in the terms of the agreed settlement or in terms consistent with the terms of the agreed settlement, or
 - (b) the agreed settlement is in the best interests of the person whose interests it considers paramount.
- (3) Nothing in this section affects:
 - (a) the power of the Tribunal, a member or an assessor to make a determination under section 74 to which the parties to the proceedings concerned agree, or
 - (b) the power of the Tribunal to make any order under section 105 giving effect to any agreement or arrangement arising out of a mediation session under Part 4.

87 Power to correct decisions of the Tribunal

- (1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Tribunal may direct the Registrar to alter the text of the decision or statement in accordance with the directions of the Tribunal.
- (2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Tribunal or the reasons for the decision, as the case may be.
- (3) Examples of obvious errors in the text of a decision or statement of reasons are where:
 - (a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons, or
 - (b) there is an error arising from an accidental slip or omission, or
 - (c) there is a defect of form, or
 - (d) there is an inconsistency between the decision and the statement of reasons.

- (4) The powers of the Tribunal under this section may be exercised by the President or by the member who presided at the proceedings to which the decision relates.

88 Costs

- (1) Subject to the rules of the Tribunal and any other Act or law, the Tribunal may award costs in relation to proceedings before it, but only if it is satisfied that there are special circumstances warranting an award of costs.
- (2) The Tribunal may:
- (a) determine by whom and to what extent costs are to be paid, and
 - (b) order costs to be assessed on the basis set out in Division 6 of Part 11 of the *Legal Profession Act 1987* or on any other basis.
- (3) However, the Tribunal may not award costs in relation to proceedings for an original decision unless the enactment under which the Tribunal has jurisdiction to make the decision provides for the awarding of costs.
- (4) In this section, *costs* includes:
- (a) costs of or incidental to proceedings in the Tribunal, and
 - (b) the costs of or incidental to the proceedings giving rise to the application, as well as the costs of or incidental to the application.

89 Tribunal to give decision determining application

- (1) If the Tribunal makes an original decision or determines an application for the review of a reviewable decision, the Tribunal is to cause a copy of its decision to be served on each party to the proceedings for the decision.
- (2) The Tribunal may give reasons either orally or in writing for its decision.

- (3) If the Tribunal does not give reasons in writing for its decision:
 - (a) a party to the proceedings may, within 28 days after the day on which a copy of the decision of the Tribunal is served on that party, request the Tribunal to give the party a statement in writing of the reasons of the Tribunal for its decision, and
 - (b) the Tribunal must, within 28 days after receiving the request, give the party such a statement.
- (4) For the purposes of compliance with subsection (3), it is sufficient if the Tribunal gives the party a copy of a transcript of oral reasons previously delivered that complies with subsection (5).
- (5) If the Tribunal gives the reasons for its decision in writing under subsection (3), the written reasons are to set out the following:
 - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
 - (b) the Tribunal's understanding of the applicable law,
 - (c) the reasoning processes that lead the Tribunal to the conclusions it made.

Part 3 Rules of the Tribunal

Division 1 The making of rules

90 Rules may provide for practice and procedure

- (1) Rules of the Tribunal may be made, not inconsistent with this Act, for or with respect to any matter that by this or any other Act is required or permitted to be prescribed by rules of the Tribunal or that is necessary or convenient to be prescribed in relation to the practice and procedure of the Tribunal under this or any other Act.
- (2) Without affecting the generality of subsection (1), rules of the Tribunal may be made for or with respect to:
 - (a) the commencement of proceedings in the Tribunal, or
 - (b) the practice and procedure to be followed in, or for the purposes of, proceedings before the Tribunal (including proceedings on appeal), or
 - (c) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions of the Tribunal, or
 - (d) the practice and procedure to be followed in the mediation or neutral evaluation of any matter under Part 4, or
 - (e) the functions of the Registrar or other officers under this Act, including functions in relation to proceedings instituted before the Tribunal.
- (3) Without limiting the generality of section 42 of the *Interpretation Act 1987*, the rules of the Tribunal may also prescribe different rules for:
 - (a) each of the Divisions, and
 - (b) different classes of matters.

Note. Section 42 of the *Interpretation Act 1987* provides for the matters for which statutory rules may generally make provision.

91 Who is to make the rules of the Tribunal?

The Rule Committee is to make the rules of the Tribunal.

Division 2 The Rule Committee

92 Establishment of Rule Committee

There is to be a Rule Committee of the Tribunal.

93 Functions of Rule Committee

- (1) The functions of the Rule Committee are:
 - (a) to make the rules of the Tribunal, and
 - (b) to ensure that the rules it makes are as flexible and informal as possible.
- (2) The Rule Committee may make rules of the Tribunal relating specially to the conduct of proceedings in a Division of the Tribunal only if the making of the rules has been recommended to it by the Subcommittee established under section 97 for that Division.

94 Composition of Rule Committee

- (1) The Rule Committee is to be composed as follows:
 - (a) the President,
 - (b) each Divisional Head,
 - (c) such other members of the Tribunal as may be appointed by the Minister on the nomination of the President,
 - (d) such other persons as may be appointed by the Minister.
- (2) An appointed member of the Rule Committee is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (3) An appointed member of the Rule Committee ceases to hold office if:
 - (a) the member is removed from office by the Minister, or

- (b) the member resigns the office by instrument in writing addressed to the Minister, or
 - (c) the member completes a term of office and is not re-appointed.
- (4) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

95 Chairperson of Rule Committee

- (1) The President is to be the chairperson of the Rule Committee.
- (2) The President is to appoint in writing one of the other members of the Rule Committee who is a Deputy President as deputy chairperson.

96 Meetings of Rule Committee

- (1) **Generally Rule Committee to regulate own procedure**
Subject to this Part, the Rule Committee is to regulate its own procedure.
- (2) **Chairperson or deputy chairperson to preside where available**
The chairperson of the Rule Committee or, in the absence of the chairperson, the deputy chairperson of the Committee is to preside at a meeting of the Committee.
- (3) **Other member may be chosen to preside in some cases**
In the absence from a meeting of the Rule Committee of both the chairperson and deputy chairperson, another member of the Committee who is a Deputy President is to be chosen by the members present to preside at the meeting.
- (4) **Quorum for meeting**
The quorum for a meeting of the Rule Committee is a majority of the number of the members for the time being. Any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee.

(5) **Majority decisions**

A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of the Committee.

(6) **Presiding member has deliberative and casting votes**

The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) **President to call meetings**

The President is to call the first meeting of the Rule Committee in such manner as the President thinks fit and (subject to any decision of the Committee under subsection (1)) may call such other meetings of the Committee as the President thinks necessary.

(8) **Transaction of business by circulation of papers permissible**

The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

97 Subcommittees of Rule Committee

- (1) The Rule Committee is to establish a Subcommittee for each Division of the Tribunal to make recommendations to it in connection with the exercise of any of its functions in relation to that Division.
- (2) The Subcommittee for a Division is to be constituted by the following persons:
 - (a) the Divisional Head of the Division, and
 - (b) 1 other judicial member who is a Division member of that Division, and
 - (c) 1 non-judicial member who is a Division member of that Division, and
 - (d) 3 persons (not being members of the Tribunal) who represent community and other relevant special interests in the area of the Division's jurisdiction.

- (3) The chairperson of the Subcommittee is to be the Divisional Head for the Division concerned.
- (4) The procedure for the calling of meetings of a Subcommittee and for the conduct of business at those meetings is to be determined by the Rule Committee or (subject to any determination of the Rule Committee) by the Subcommittee.

98 Public consultation and rule review

- (1) Before making any rule of the Tribunal, the Rule Committee is:
 - (a) to cause a draft of the rule to be publicly exhibited for a period of at least 2 months in such manner as may be prescribed by the regulations, and
 - (b) to consider any written submissions made within the specified public exhibition period in relation to the draft rule.
- (2) The Rule Committee need not comply with the requirements of subsection (1) if:
 - (a) the President certifies that, in his or her opinion, it is necessary for the rule to be made expeditiously, and
 - (b) a copy of the President's certificate is published in the Gazette along with the rule.
- (3) However, if a rule is made in reliance on subsection (2), the Rule Committee is nevertheless to consider any written submissions concerning the rule that are made to it within 2 months after the date of the publication of the rule in the Gazette.

Part 4 Alternative dispute resolution

99 Purpose of Part

- (1) The purpose of this Part is to enable the Tribunal to refer matters for mediation or neutral evaluation if the parties to the proceedings concerned have agreed to that course of action.
- (2) This Part does not prevent:
 - (a) the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than as referred to in this Part, or
 - (b) a matter arising in proceedings from being dealt with under the provisions of the *Community Justice Centres Act 1983*.

100 Definitions

In this Part:

mediation session means a meeting arranged for the mediation of a matter under this Part.

mediator means a person to whom the Tribunal refers a matter for mediation under this Part.

neutral evaluation session means a meeting arranged for the neutral evaluation of a matter under this Part.

neutral evaluator means a person to whom the Tribunal refers a matter for neutral evaluation under this Part.

101 Meaning of “mediation” and “neutral evaluation”

- (1) In this Act, ***mediation*** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.
- (2) In this Act, ***neutral evaluation*** means a process of evaluation of a dispute in which the neutral evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The neutral

evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings.

102 Referral by Tribunal

- (1) The Tribunal may, by order, refer a matter arising in proceedings before it for mediation or neutral evaluation if:
 - (a) the Tribunal considers the circumstances appropriate, and
 - (b) the parties to the proceedings consent to the referral, and
 - (c) the parties to the proceedings agree as to who is to be the mediator or neutral evaluator for the matter.
- (2) The mediator or neutral evaluator may, but need not be, a person whose name is on a list compiled under this Part.

103 Mediation and neutral evaluation to be voluntary

- (1) Attendance at and participation in mediation sessions or neutral evaluation sessions are voluntary.
- (2) A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

104 Costs of mediation and neutral evaluation

The costs of mediation or neutral evaluation, including the costs payable to the mediator or neutral evaluator, are to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal.

105 Agreements and arrangements arising from mediation sessions

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) However, the Tribunal cannot make an order under subsection (1) unless it is satisfied that the agreement or arrangement is in the best interests of the person whose interests are considered by the Tribunal to be paramount.

- (3) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

106 Mediators and neutral evaluators

- (1) The President may compile a list or lists of persons considered by the President to be suitable to be mediators for the purposes of this Part.
- (2) The President may compile a list or lists of persons considered by the President to be suitable to be neutral evaluators for the purposes of this Part.
- (3) Different lists may be compiled for different types of matters or to take account of any other factors.
- (4) A person may be included in a list under this section only if:
 - (a) the person consents to being included in the list, and
 - (b) the person agrees to comply with the provisions of this Part and of any regulations or rules of the Tribunal made for the purposes of this Part.
- (5) The President may amend or revoke any list compiled under this section for any reason that the President considers appropriate.
- (6) The President is to review at least annually any list compiled under this section.
- (7) Nothing in this Act or any other law prevents an assessor from being included in a list compiled under this section or being appointed as a mediator or neutral evaluator.

107 Privilege

- (1) In this section, *mediation session* or *neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:

-
- (a) a mediation session or neutral evaluation session, or
 - (b) a document or other material sent to or produced to a mediator or neutral evaluator, or sent to or produced at the Tribunal or the office of the Registrar, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
- (a) at a mediation session or neutral evaluation session, or
 - (b) as provided by subsection (2) (b), or
 - (c) as provided by section 108.
- (4) Evidence of any thing said or of any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 108 (c).

108 Secrecy

A mediator or neutral evaluator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:

- (a) with the consent of the person to whom the information relates,
- (b) in connection with the administration or execution of this Part,

- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session or neutral evaluation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

109 Exoneration from liability for listed mediators and neutral evaluators

No matter or thing done or omitted to be done by a mediator or neutral evaluator subjects the mediator or neutral evaluator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Part, and
- (b) when the subject-matter of the mediation or neutral evaluation was referred for mediation or neutral evaluation, the mediator's or neutral evaluator's name was included in a list compiled under this Part.

110 Application of Part

This Part does not apply to the following:

- (a) proceedings in the Legal Services Division, or
- (b) such other classes of proceedings as may be prescribed by the regulations.

111 Regulations for the purposes of this Part

Regulations may be made for or with respect to mediation and neutral evaluation.

Chapter 7 Appeals from decisions of Tribunal

Part 1 Internal appeal rights

112 What is an appealable decision?

- (1) For the purposes of this Part, an *appealable decision* of the Tribunal is a decision of the Tribunal (or a decision that is taken to be a decision of the Tribunal) made in proceedings for:
 - (a) an original decision where the enactment under which the Tribunal has jurisdiction to make the decision expressly provides that the decision may be appealed to an Appeal Panel under this Part, or
 - (b) a review of a reviewable decision.
- (2) Without limiting subsection (1), the following decisions are also appealable decisions:
 - (a) a decision of the Tribunal that a person is not entitled to apply for an original decision or for the review of a reviewable decision, or
 - (b) an order of the Tribunal under section 71 (2) that the parties to proceedings before it may not be represented by an agent of a particular class, or
 - (c) a decision of the Tribunal refusing an application by a person to be made a party to proceedings before the Tribunal.
- (3) A decision of an Appeal Panel is not an appealable decision for the purposes of this Part.

113 Right to appeal appealable decisions

- (1) A party to proceedings in which an appealable decision of the Tribunal is made may appeal to the Tribunal constituted by an Appeal Panel.
- (2) An appeal:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Appeal Panel, may extend to a review of the merits of the appealable decision.

- (3) An appeal must be made:
 - (a) within 28 days after the Tribunal furnishes the party with written reasons for the appealable decision under section 89, or
 - (b) within such further time as the Appeal Panel may allow.
- (4) An appeal is to be made in the manner prescribed by the rules of the Tribunal.

114 Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Appeal Panel is to determine the appeal and may make such orders as it thinks appropriate in light of its decision.
- (2) The orders that may be made by the Appeal Panel on any such appeal include, but are not limited to, any of the following:
 - (a) an order affirming or setting aside the decision of the Tribunal (as originally constituted),
 - (b) an order remitting the case to be heard and decided again by the Tribunal (as originally or similarly constituted), either with or without the hearing of further evidence, in accordance with the directions of the Appeal Panel,
 - (c) an order made in substitution for an order made by the Tribunal.

115 Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of an appealable decision, the Appeal Panel is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
 - (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) The Appeal Panel may exercise all the functions that are conferred or imposed by or under any relevant enactment or this Act on the Tribunal at first instance to make the appealable decision concerned.

- (3) In determining any such appeal, the Appeal Panel may decide:
 - (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

116 Appeal does not stay decision

Subject to any interlocutory order made by the Appeal Panel, an appeal under this Part does not affect the operation of the decision concerned or prevent the taking of action to implement the decision.

117 Reasons for a decision

- (1) If an Appeal Panel determines an appeal under section 114, it is to cause a copy of its decision and the reasons in writing for that decision (setting out the matters referred to in section 89 (5)) to be served on each party to the appeal.
- (2) For the purposes of compliance with subsection (1), it is sufficient if the Tribunal gives the party a copy of a transcript of oral reasons previously delivered that complies with section 89 (5).
- (3) Section 89 applies to a decision of an Appeal Panel under section 115 in the same way as it applies to original decisions and decisions determining applications for a review of a reviewable decision.

118 References of questions of law to Supreme Court

- (1) An Appeal Panel determining an appeal under this Part may, of its own motion or at the request of a party, refer a question of law arising in the appeal to the Supreme Court for the opinion of the court.
- (2) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section.

- (3) If a question of law arising in any appeal to an Appeal Panel has been referred to the Supreme Court under this section, the Appeal Panel is not:
- (a) to give a decision in the appeal to which the question is relevant while the reference is pending, or
 - (b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

Part 2 Appeals to Supreme Court

119 Right of appeal to Supreme Court

- (1) A party to proceedings before an Appeal Panel of the Tribunal (whether in proceedings under Part 1 or otherwise) may appeal to the Supreme Court, on a question of law, against any decision of the Appeal Panel in those proceedings.
- (2) The Appeal Panel (or any of the members constituting the Appeal Panel) cannot be made a party to an appeal under this section. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).
- (3) An appeal by a person under this section must be made:
 - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

120 Orders on appeal to the Supreme Court

- (1) The Supreme Court is to hear and determine the appeal and may make such orders as it thinks appropriate in light of its decision.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Appeal Panel, and
 - (b) an order remitting the case to be heard and decided again by the Appeal Panel (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

121 Appeal does not stay decision

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

Part 3 Inter-relationship between Supreme Court and Tribunal

122 Effect of Act

Nothing in this Act (except section 123) affects the power of the Supreme Court, in the exercise of its original jurisdiction, to review the decisions of the Tribunal.

128 Supreme Court may decline to deal with application for review

- (1) The Supreme Court may:
 - (a) refuse to grant an application for the review of an original decision of the Tribunal if it is satisfied that, in all the circumstances, adequate provision is made under this Act for the applicant to seek an alternative review of the decision, or
 - (b) refuse to grant an application for the review of a reviewable decision if it is satisfied that, in all the circumstances, adequate provision is made under this Act for the applicant to seek an alternative review of the decision, or
 - (c) refuse to grant an application for the review of an original decision or of a reviewable decision if an application has been lodged with an alternative reviewer for a review of the decision.
- (2) In deciding whether to refuse an application for review (and without limiting the generality of subsection (1)), the Supreme Court may take into account any one or more of the following matters:
 - (a) if the applicant has not yet applied for an alternative review of the decision concerned—whether the applicant would be eligible to apply for an alternative review,
 - (b) whether an alternative reviewer is likely to deal with the matter more expeditiously and cheaply than the Court,
 - (c) whether a favourable determination of the application by the Court would be likely to resolve the issues in dispute,

- (d) whether the alternative reviewer would be able to give the applicant an appropriate remedy,
 - (e) whether the applicant would suffer any substantial hardship if the application were refused,
 - (f) any other matter it considers relevant.
- (3) In this section:

alternative review means an internal review, or a review by the Tribunal, under this Act of the decision concerned.

alternative reviewer means a person or body that can conduct an alternative review.

review includes a review by way of reconsideration, re-hearing, appeal, the grant of an injunction or of a prerogative or statutory writ (or the making of an order in the nature of such a writ) or the making of a declaratory or other order, but does not include an appeal under Part 2.

Chapter 8 Miscellaneous

Part 1 Disclosure of information

124 Application of Act to exempt documents under Freedom of Information Act 1989

(1) **General rule**

Except as provided by this section, nothing in this Act requires or authorises any person or body to disclose any exempt document to another person or body.

(2) **Disclosure to person or body other than Tribunal**

The provisions of the *Freedom of Information Act 1989* continue to apply to the disclosure of exempt documents to any person or body other than to the Tribunal as if this Act had not been enacted.

(3) **Disclosure to Tribunal**

If a provision of this Act requires or authorises any person or body to disclose any document to the Tribunal in relation to any proceedings before it and that document is an exempt document:

- (a) the *Freedom of Information Act 1989* does not prevent the disclosure of the document to the Tribunal, and
- (b) the Tribunal is to do all things necessary to ensure that the document is not disclosed to any person other than a member of the Tribunal as constituted for the purpose of the proceedings unless the person or body disclosing the document to the Tribunal consents to the further disclosure.

(4) **Certificates by Director-General of The Cabinet Office concerning cabinet documents**

The Director-General of The Cabinet Office may certify that a document is an exempt document because it is a cabinet document. Any such certificate:

- (a) is conclusive of that fact, and
- (b) authorises any person who would otherwise be required under this Act to lodge the document concerned with (or disclose it to) the Tribunal to refuse to lodge the document with (or disclose it to) the Tribunal.

(5) **Definitions**

In this section:

disclosure of a document includes the following:

- (a) the provision of copies of the document,
- (b) the granting of access to the document,
- (c) the disclosure of the contents of the document.

document includes a part of a document.

exempt document means an exempt document within the meaning of the *Freedom of Information Act 1989*.

125 Privileged documents

- (1) Nothing in this Act requires the disclosure of a document if the Tribunal or President is satisfied that evidence of the document could not be adduced in proceedings before a NSW court by reason of the operation of any of the following provisions of the *Evidence Act 1995*:

- (a) section 9 (Application of common law and equity), but only to the extent that it preserves any privilege against the adducing of evidence,
- (b) section 10 (Parliamentary privilege preserved),
- (c) Part 3.10 (Privileges) of Chapter 3.

- (2) In this section:

disclosure of a document includes the following:

- (a) the provision of copies of the document,
- (b) the granting of access to the document,
- (c) the disclosure of the contents of the document.

document includes a part of a document.

NSW court has the same meaning as it has in the *Evidence Act 1995*.

126 Publication of names or identification of persons involved in proceedings

- (1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:
- (a) who appears as a witness before the Tribunal in any proceedings, or
 - (b) to whom any proceedings before the Tribunal relate, or
 - (c) who is mentioned or otherwise involved in any proceedings before the Tribunal,

whether before or after the proceedings are disposed of.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (2) This section does not prohibit the publication or broadcasting of an official report of the proceedings that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.
- (3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

127 Court cannot compel disclosure by members and officers of certain confidential information

- (1) A person who is, or has been, a member or officer of the Tribunal is not competent, and cannot be required, to give evidence to a court relating to a matter if:
- (a) the giving of the evidence would be contrary to an order of the Tribunal in force under section 75 (2) of this Act or under a similar provision of another Act, or
 - (b) an application has been made to the Tribunal for an order under section 75 (2), or under such a similar provision, concerning the matter to which the evidence would relate and the Tribunal has not determined that application, or
 - (c) the evidence concerns an exempt document that the Tribunal is prevented from disclosing by operation of section 124.

- (2) A person who is, or has been, a member or an officer of the Tribunal cannot be required to produce in a court a document furnished to the Tribunal in connection with any proceedings if:
- (a) the production of the document would be contrary to an order of the Tribunal in force under section 75 (2) of this Act or under a similar provision of another Act, or
 - (b) an application has been made to the Tribunal for an order under section 75 (2), or under such a similar provision, in relation to the document and the Tribunal has not determined that application, or
 - (c) the document is an exempt document that the Tribunal is prevented from disclosing by operation of section 124.
- (3) A person who is, or has been, a member of the Tribunal cannot be required to give evidence to a court in relation to any proceedings before the Tribunal.
- (4) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

128 Application of confidentiality provisions in other Acts

If:

- (a) a provision of an Act (other than this Act) prohibits the disclosure, whether absolutely, in certain circumstances only or subject to conditions, of information by persons who:
 - (i) are included in a particular class of persons, and
 - (ii) acquired the information in the course of their duties under the Act, and
- (b) a person who is or has been a member, an assessor, an officer of the Tribunal or a member of the staff of the Tribunal has acquired or acquires any such information in the course of his or her duties as such a member, assessor, officer or member of the staff,

that provision applies to the person as if he or she were included in the particular class of persons and acquired the information in the course of duties under that Act.

129 Offence: improper disclosure of information

A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act, or
- (c) for the purpose of any legal proceedings arising out of this Act or any report of such proceedings, or
- (d) with other legal excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Part 2 Other provisions

130 Act to bind Crown

This Act binds the Crown.

131 Contempt of Tribunal

- (1) The Tribunal may report the following matters to the Supreme court:
 - (a) if a person fails to attend in obedience to a summons after having been served with a summons to attend before the Tribunal as a witness, or
 - (b) if a person fails to produce any document or other thing in the person's custody or control that the person is required by a summons to produce after having been served with a summons to attend before the Tribunal, or
 - (c) if a person refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question that is put to the person by the Tribunal after being called or examined as a witness before the Tribunal, or
 - (d) if a person wilfully threatens or insults:
 - (i) a member, assessor or officer of the Tribunal, or
 - (ii) any witness or person summoned to attend before the Tribunal, or
 - (iii) a practising legal practitioner or other person authorised to appear before the Tribunal, or
 - (e) if a person misbehaves himself or herself before the Tribunal, or
 - (f) if a person interrupts the proceedings of the Tribunal, or
 - (g) if a person obstructs or attempts to obstruct the Tribunal, a member of the Tribunal or a person acting with the authority of the Tribunal in the exercise of any lawful function, or
 - (h) if a person publishes, or permits or allows to be published, any evidence given before the Tribunal or any of the contents of a document produced at a hearing that the Tribunal has ordered not to be published, or

- (i) if a person publishes, or permits or allows to be published, any evidence given before the Tribunal at a hearing held in private or any of the contents of a document produced at a hearing held in private, except to an officer of the Tribunal or as permitted by the Tribunal or by the regulations, or
 - (j) if a person does any other thing that, if the Tribunal were a court of law having power to commit for contempt, would be contempt of that court.
- (2) If the Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court. However, a person is not liable to be punished for contempt under this subsection if the person establishes that there was a reasonable excuse for the act or omission concerned.
- (3) Subsection (1) (i) does not apply to an officer of the Tribunal in relation to evidence or contents of documents published to other officers or to members of the Tribunal.

132 Act or omission that is both an offence and contempt

- (1) An act or omission may be punished as a contempt of the Tribunal even though it could be punished as an offence.
- (2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Tribunal.
- (3) If an act or omission constitutes both an offence and a contempt of the Tribunal, the offender is not liable to be punished twice.

133 Seal of Tribunal

The Tribunal is to have a seal and that seal is to be judicially noticed.

134 Authentication of documents

Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is signed by:

- (a) the President, or
- (b) a Deputy President, or
- (c) the Registrar.

135 Judicial notice to be taken of certain signatures

Judicial notice is to be taken of the signature of the President, a Deputy President or the Registrar when appearing on a document issued by the Tribunal.

136 Proof of certain matters not required

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of:

- (a) the constitution of the Tribunal, or
- (b) any decision of the Tribunal, or
- (c) the appointment, or the holding of office by, a member of the Tribunal or an assessor, mediator or neutral evaluator.

137 Protection of practising legal practitioners, witnesses and others

- (1) A practising legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a practising legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (2) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme court.

Note. Section 109 and clause 5 of Schedule 3 make similar provision in relation to mediators and neutral evaluators and members of the Tribunal.

138 Notices, service and lodgment of documents

- (1) **Service of documents and giving of notices**
For the purposes of this Act, a notice or document may be given to a person (or a notice or document may be served on a person):
 - (a) in the case of a natural person—by:
 - (i) delivering it to the person personally, or
 - (ii) leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document, or

- (b) in the case of a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate, or
 - (c) in the case of an administrator—by leaving it at, or by sending it by pre-paid post to:
 - (i) the head of the government agency that administers the enactment under which the decision concerned was made, or
 - (ii) if a provision of the regulations or any enactment prescribes the holder of a particular office as a person on or to whom notices may be served under this Act in relation to a class of decisions in which that decision is included—the holder of that office.
- (2) **Notices and other documents served on or lodged with Tribunal**
A notice or other document may be served on the Tribunal by leaving it at, or by sending it by post to (or a document that is required or permitted to be lodged with the Tribunal may be lodged at):
- (a) the office of the Registrar, or
 - (b) if the Registrar has more than one office, any one of those offices.
- (3) **Other means of service**
Nothing in this section affects the operation of any provision of any law or the rules of a court authorising a document to be served in a manner not provided for by this section.

139 Notices and other documents to be written in other languages

- (1) If:
- (a) the Tribunal is required, by or under this Act, to cause a document or other instrument to be served on, or given to, any person, and
 - (b) it appears to the Tribunal that the person is blind or illiterate or is not literate in the English language,
- the Tribunal is, in so far as it is reasonably practicable, to cause the information contained in the document or other instrument to be communicated to the person in a manner that the person

understands, which may include (in the case of a person who is literate in another language) by means of a document or other instrument written in that other language.

- (2) Failure to comply with this section does not affect any thing done under any other provision of this Act.

140 Return of documents after proceedings concluded

The Resident may cause a document or any other object provided to the Tribunal for the purposes of any proceedings before it to be returned to the person by whom it was provided if:

- (a) the proceedings before the Tribunal have concluded, and
- (b) the time within which an appeal from the decision of the Tribunal in the proceedings may be lodged (or the period of an extension of time for lodging the appeal) has expired with no appeal being lodged.

141 Allowances and expenses of witnesses

- (1) A person (other than a public servant) who is required to appear or give evidence before the Tribunal is entitled to be paid such allowances and expenses as are ascertained in accordance with a scale of allowances and expenses prescribed by the regulations.
- (2) Subject to subsection (3), the allowances and expenses are to be paid by the party at whose request a witness is summoned.
- (3) The Tribunal may order that the allowances and expenses of a witness referred to in subsection (2) be paid wholly or partly by the State out of money otherwise lawfully available.

142 References to applications in enactments

- (1) An *application* to the Tribunal includes a complaint, referral or other mechanism by means of which an enactment provides for a matter to be brought to the attention of the Tribunal for an original decision or a review of a reviewable decision.
- (2) If an enactment provides that an application may be made to the Tribunal, but does so by reference to some word or expression other than “application” or some other part of speech or grammatical forms of that word or expression:

- (a) the rules of the Tribunal may refer to such applications by reference to the word or expression used in the enactment (or some other part of speech or grammatical forms of that word or expression), and
- (b) the regulations may refer to such applications by reference to the word or expression used in the enactment (or some other part of speech or grammatical forms of that word or expression), and
- (c) any notice or other document issued, lodged, served or given under this Act in relation to such applications may refer to the applications by reference to the word or expression used in the enactment (or some other part of speech or grammatical forms of that word or expression).

143 Proceedings for offences

Proceedings for an offence against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

144 Savings and transitional provisions

Schedule 5 has effect.

145 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
 - (a) the fees payable in respect of an application to the Tribunal,
 - (b) the waiver of any fees payable in respect of an application to the Tribunal (whether at the time of lodgment of an application or otherwise),

- (c) the refund, in whole or in part, of fees if proceedings before the Tribunal terminate in a manner favourable to the applicant.
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

146 Parliamentary inquiry to report on Tribunal

- (1) A Parliamentary inquiry is to be held into the jurisdiction and operation of the Tribunal:
 - (a) by a joint committee of the Legislative Council and Legislative Assembly to be established for the purpose, or
 - (b) by an existing such joint committee to which the matter is referred by resolution of the Legislative Council and Legislative Assembly.
- (2) A report by the joint committee of the results of the inquiry is to be tabled in the Legislative Council and Legislative Assembly as soon as is practicable after the end of the period of 18 months from the establishment of the Tribunal.

147 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Divisions of Tribunal

(Section 19)

Community Services Division

Equal Opportunity Division

General Division

Legal Services Division

Schedule 2 Composition and functions of Divisions

(Sections 20–23)

Part 1 Community Services Division

Division 1 Composition of Division

1 Division members

- (1) The Community Services Division of the Tribunal is to be composed of the following members:
 - (a) a Divisional Head,
 - (b) at least 4 other members assigned to the Division by or under this Act.
- (2) A member is not to be assigned to the Division (or appointed as Divisional Head) unless his or her assignment to the Division (or appointment as Divisional Head) has been recommended to the Minister by the relevant Minister and the Minister has advised the President (or Governor) of that recommendation.
- (3) The relevant Minister is not to make a recommendation under subclause (2) unless the relevant Minister is of the opinion that the person in respect of whom the recommendation is made:
 - (a) has knowledge of and experience in administration, child care, community services, education, law, medicine, psychology or social work, or
 - (b) has other suitable qualifications or experience warranting the person's assignment to the Division or appointment as Divisional Head.
- (4) In this clause:

relevant Minister means the Minister administering the Act.

the Act means the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments are allocated to the Community Services Division of the Tribunal:

Community Services (Complaints, Reviews and Monitoring) Act 1993

Youth and Community Services Act 1973

Division 3 Special requirements for constitution of Tribunal for certain allocated functions

3 Community Services (Complaints, Reviews and Monitoring) Act 1993 (Reviewable decisions)

- (1) Applications made under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* are to be determined by 3 Division members of the Community Services Division of the Tribunal, at least one of whom must be a practising legal practitioner.
- (2) In such applications, the Tribunal is, as far as is practicable, to be constituted so as to include at least one member who has knowledge or experience directly relevant to the subject matter of the proceedings before the Tribunal.

Part 2 Equal Opportunity Division

Division 1 Composition of Division

1 Division members

The Equal Opportunity Division of the Tribunal is to be composed of the following members:

- (a) a Divisional Head,
- (b) such other members as may be assigned to the Division by or under this Act.

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments are allocated to the Equal Opportunity Division of the Tribunal:

Anti-Discrimination Act 1977

Division 3 Special requirements for constitution of Tribunal for certain allocated functions

3 Anti-Discrimination Act 1977 (Original decisions)

- (1) For the purposes of exercising its functions under the Act, the Tribunal is to be constituted by:
 - (a) 1 Division member of the Equal Opportunity Division of the Tribunal who is a judicial member, and
 - (b) at least 2 Division members of the Division who are non-judicial members.
- (2) In this clause:

the Act means the *Anti-Discrimination Act 1977*.

Part 3 Legal Services Division

Division 1 Composition of Division

1 Division members

- (1) The Legal Services Division is to be composed of the following members:
 - (a) a Divisional Head appointed in accordance with subclause (3) or by Schedule 5,
 - (b) such members as may be assigned to the Division in accordance with subclause (2) or by Schedule 5.

- (2) The following members are to be assigned to the Legal Services Division of the Tribunal in their instruments of appointment or by subsequent instrument of the Minister:
- (a) at least 2 members who are barristers, but only after the Minister has consulted with the Bar Council concerning the assignments, and
 - (b) at least 2 members who are solicitors, but only after the Minister has consulted with the Law Society Council concerning the assignments, and
 - (c) at least 2 members who are not legal practitioners, but only after the Minister has consulted with lay members of the Legal Aid Commission, the Law Foundation and such other bodies as the Minister considers appropriate concerning the assignments, and
 - (d) at least 1 non-judicial member:
 - (i) who is a licensee under the *Conveyancers Licensing Act 1995* and who is appointed by the Minister after consultation with the Council, and
 - (ii) whose licence is free of any conditions (other than conditions of the kind referred to in section 11 (2) (e)) of the *Conveyancers Licensing Act 1995*.
- (3) A Deputy President is to be appointed as the Divisional Head by the Governor from the barrister members or solicitor members, but only after the Minister advises the Governor that he or she has consulted with the Bar Council and the Law Society Council concerning the appointment.
- (4) In this clause:
Council means the Property Services Council constituted by the *Property Services Council Act 1990* (or its successor).

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments are allocated to the Legal Services Division of the Tribunal:

Conveyancers Licensing Act 1995

Legal Profession Act 1987

**Division 3 Special requirements for constitution of
Tribunal for certain allocated functions**

3 Conveyancers Licensing Act 1995 (Original decisions)

- (1) For the purposes of the application of Part 10 of the *Legal Profession Act 1987* under Part 6 of the Act, the Tribunal is to be constituted so as to include one or more licensee members.
- (2) For the purposes of conducting a hearing into a complaint against a licensee under the Act, the Tribunal is to be constituted by 1 judicial member, 1 licensee member and 1 lay member.
- (3) The judicial member is to preside at the hearing.
- (4) In this clause:

the Act means the *Conveyancers Licensing Act 1995*.

4 Legal Profession Act 1987 (Original decisions)

- (1) Subject to subclause (2), for the purposes of conducting a hearing into a complaint made under the Act, the Tribunal is to be constituted as follows:
 - (a) in the case of a complaint against a barrister—by 1 judicial member, 1 barrister member and 1 lay member,
 - (b) in the case of a complaint against a solicitor—by 1 judicial member, 1 solicitor member and 1 lay member,
 - (e) in the case of a complaint against a legal practitioner who is neither a barrister nor a solicitor—by 1 judicial member and 1 lay member.
- (2) For the purposes of sections 481–48K of the Act, the Tribunal in each case is to be constituted as determined by the Divisional Head from Division members.
- (3) In this clause:

the Act means the *Legal Profession Act 1987*.

Division 4 General

5 Definitions

In this Part:

barrister has the meaning it has in the *Legal Profession Act 1987*.

barrister member of the Legal Services Division means a member assigned to the Division in accordance with clause 1 (2) (a) of this Part.

lay member of the Legal Services Division means a member assigned to the Division in accordance with clause 1 (2) (c) of this Part.

legal practitioner has the meaning it has in the *Legal Profession Act 1987*.

licensee member of the Legal Services Division means a member assigned to the Division in accordance with clause 1 (2) (d) of this Part.

solicitor has the meaning it has in the *Legal Profession Act 1987*.

solicitor member of the Legal Services Division means a member assigned to the Division in accordance with clause 1 (2) (b) of this Part.

Part 4 General Division

Division 1 Composition of Division

1 Division members

- (1) Subject to subclause (2), the General Division of the Tribunal is to be composed of the following members:
 - (a) a Divisional Head,
 - (b) such other members as may be assigned to the Division by or under this Act.

- (2) The regulations may make provision for or with respect to the assignment of members to the General Division and the qualifications for appointment of a Divisional Head for the Division.

Division 2 Functions of Division

2 Functions allocated to Division

- (1) The functions of the Tribunal in relation to the following enactments are allocated to the General Division of the Tribunal:

Boxing and Wrestling Control Act 1986

Education Reform Act 1990

Freedom of Information Act 1989

Ombudsman Act 1974

Public Health Act 1991

Veterinary Surgeons Act 1986

- (2) Any other function of the Tribunal in relation to an enactment that is not specifically allocated to another Division of the Tribunal by this Schedule is allocated to the General Division.

Division 3 Special requirements for constitution of Tribunal for certain allocated functions

3 Boxing and Wrestling Control Act 1986 (Reviewable decisions)

Applications made under section 28 of the *Boxing and Wrestling Control Act 1986* are to be determined by the Tribunal constituted by 1 Division member of the General Division of the Tribunal who is a judicial member.

4 Education Reform Act 1990 (Reviewable decisions)

Applications made under section 107 of the *Education Reform Act 1990* are to be determined by 3 Division members of the General Division of the Tribunal.

5 Freedom of Information Act 1989 (Reviewable decisions and other functions)

Applications made under section 53 of the *Freedom of Information Act 1989* are to be determined by 1 Division member of the General Division of the Tribunal who is a judicial member.

6 Public Health Act 1991 (Review decisions and other matters)

- (1) Applications made under section 25 of the *Public Health Act 1991* are to be determined by 1 Division member of the General Division of the Tribunal who is a judicial member.
- (2) Applications made under section 26, 40 or 41 of that Act are to be determined by the Tribunal constituted by the following members:
 - (a) 1 presidential judicial member who is a Division member,
 - (b) 1 other judicial member (whether or not the member is a Division member),
 - (c) 1 non-judicial member who is a Division member and who is a medical practitioner with experience in public health matters.

7 Veterinary Surgeons Act 1986 (Original decisions and reviewable decisions)

- (1) For the purposes of exercising a function conferred or imposed on the Tribunal by or under the Act, the Tribunal is to be constituted by a Veterinary Disciplinary Panel.
- (2) A Veterinary Disciplinary Panel is to consist of the following Division members of the General Division of the Tribunal:
 - (a) 1 Division member who is judicial member, and
 - (b) 1 Division member who is non-judicial member and who is also a member of the Board, and
 - (c) 1 Division member who:
 - (i) is non-judicial member, and

(ii) is not a veterinary surgeon, and

(iii) was assigned to the Division on the recommendation of the relevant Minister to represent the interests of users of veterinary services.

(3) In this clause:

Board means the Board of Veterinary Surgeons of New South Wales constituted under section 4 of the Act.

relevant Minister means the Minister administering the Act.

the Act means the *Veterinary Surgeons Act 1986*.

Schedule 3 Provisions relating to members of Tribunal

(Section 18)

1 Acting President

- (1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy President to be Acting President during the absence of the President from duty.
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (5) In this clause, *absence from duty* includes a vacancy in the relevant office.

2 Terms of appointment

Subject to this Schedule and Part 2 of Chapter 2, a member holds office for a period not exceeding 3 years, but is eligible for re-appointment.

3 Age of members

- (1) A person of or above the age of 65 years is not eligible to be appointed as a member of the Tribunal.
- (2) However, a person who is or was a member of the Tribunal may be appointed as such a member after the person reaches the age of 65 years.
- (3) Any appointment under subclause (2):
 - (a) may not be made in respect of a person so as to extend beyond the date on which the person reaches the age of 72 years, and
 - (b) may be made before the person reaches the age of 65 years (in which case the appointment has effect on and from the date the person reaches that age).

4 Oaths

The regulations may make provision for the oaths to be taken by members of the Tribunal.

5 Protection and immunities of member

A member of the Tribunal has, in the performance of functions performed as a member, the same protection and immunities as a Judge of the Supreme Court.

6 Remuneration of members

- (1) A member of the Tribunal appointed on a full-time basis is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) A member appointed on a part-time basis is entitled to be paid:
 - (a) such remuneration as is determined by the Minister, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (3) A member is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.
- (4) In this clause, *Judge of a New South Wales Court* includes a judicial officer.

7 Vacancy in office of President

- (1) The President cannot be removed from office except by the Governor on an address from both Houses of Parliament in the same session seeking removal on the ground of proved misbehaviour or incapacity and in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers*

Act 1986. However, simply because the President is removed from office under this subclause does not affect the person's tenure as a judicial officer.

- (2) The President may be suspended or retired from office in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers Act 1986*.
- (3) If the President is suspended from office and is remunerated as such at the time of the suspension, he or she is entitled to be paid remuneration as President during the period of suspension at the current rate applicable to the office.
- (4) The office of President becomes vacant if the President:
 - (a) dies, or
 - (b) is removed from office or retires in accordance with this section, or
 - (c) completes a term of office and is not re-appointed, or
 - (d) resigns the office by instrument in writing addressed to the Governor, or
 - (e) ceases to hold a judicial office referred to in section 17 (1) unless the President ceases to hold that office by reason of being appointed to another of the judicial offices referred to in that subsection.

8 Vacancy in office of member (other than President)

- (1) The office of a member (other than the President) becomes vacant if the holder:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or

- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is removed from office under subclause (2).
- (2) The Governor may remove a member (other than the President) from office for incapacity, incompetence or misbehaviour.

9 Seniority of members

- (1) The members of the Tribunal have seniority according to the following order of precedence:
- (a) the President,
 - (b) the Divisional Heads, according to the days on which their instruments of appointment as such took effect or, if the instruments of appointment of 2 or more of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,
 - (c) the Deputy Presidents (other than Deputy Presidents who are Divisional Heads), according to the days on which their commissions took effect or, if the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions,
 - (d) the non-presidential judicial members, according to the days on which their instruments of appointment took effect or, if the instruments of appointment of 2 or more of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment,

- (e) non-judicial members, according to the days on which their instruments of appointment took effect or, if the instruments of appointment of 2 or more of them took effect on the same day, according to the precedence assigned to them by their instruments of appointment.
- (2) If a member is re-appointed under this Act, the member's seniority is to be determined as if there had been no break in the member's service.

10 Leave for members

- (1) The entitlement of a member of the Tribunal to annual and other leave is to be as stated in the instrument of appointment as a member.
- (2) A member of the Tribunal may be granted leave:
 - (a) in the case of the President by the Minister, and
 - (b) in any other case by the President.
- (3) This clause is subject to clause 6.

11 Superannuation and leave—preservation of rights

- (1) In this clause:
 - eligible member* means a member of the Tribunal who, immediately before becoming such a member, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.
 - superannuation scheme* means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.
- (2) An eligible member:
 - (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
 - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,as if he or she had continued to be such a contributor during service as a member of the Tribunal.

- (3) Service by the eligible member as a member of the Tribunal is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This section ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.
- (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
- (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

12 Provisions where Judge is holding office as member

- (1) The appointment of a person who is the holder of a judicial office as a member or service by a person who is the holder of a judicial office as a member does not affect:
 - (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:

judicial office means an office of a Judge of a court of New South Wales (including a judicial officer).

13 Delegations by the President

The President may:

- (a) delegate to another judicial member any of the functions of the President, or
- (b) delegate to the Registrar, a Deputy Registrar or any other member of staff of the Tribunal any of the functions of the President prescribed by the regulations or the rules of the Tribunal,

other than this power of delegation.

Note. Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegations of functions.

14 Disclosure of pecuniary and other interests

- (1) If a member is, or is to be, a member of the Tribunal as constituted for the purposes of proceedings and the member has or acquires an interest (pecuniary or otherwise) that could conflict with the proper performance of the functions of the member in relation to the proceedings:
 - (a) the member must not take part in the proceedings or exercise any powers in relation to the making by the Tribunal of the decision to which the proceedings relate, and
 - (b) in the case of a member other than the President—must disclose the nature of the interest to the President, and
 - (c) in the case of the President—must disclose the nature of the interest to the Minister.
- (2) For the purposes of this clause, the expertise or experience of a member in relation to a class of matters in relation to which the Tribunal has jurisdiction does not constitute an interest that could conflict with the proper performance of the functions of the member.

15 Effect of other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a member, and the holder of the office is not, as holder, subject to that Act.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

16 Application of Schedule to acting members

- (1) Subject to subclause (2), all of the provisions of this Schedule apply to acting members.
- (2) Clause 2 does not apply to an appointment by or under section 14.
- (3) In this clause, *acting member* means a person appointed by or under this Act to act as a member.

Schedule 4 Provisions relating to assessors of Tribunal

(Section 29 (3))

1 Terms of office

Subject to this Act, an assessor holds office, for such period (not exceeding 7 years) as may be specified in the assessor's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

2 Remuneration of assessors

- (1) An assessor appointed on a full-time basis is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) An assessor appointed on a part-time basis is entitled to be paid:
 - (a) such remuneration as is determined by the Minister, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

3 Protection and immunities of assessor

An assessor of the Tribunal has, in the performance of functions performed as an assessor, the same protection and immunities as a Judge of the Supreme Court.

4 Effect of certain other Acts

- (1) The provisions of the *Public Sector Management Act 1988* do not apply to or in respect of the appointment of an assessor and an assessor is not, as an assessor, subject to that Act.

-
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting a person from engaging in employment outside the duties of that office,
- that provision does not operate to disqualify the person from holding that office and also the office of an assessor appointed on a part-time basis or, subject to subclause (3), from accepting and retaining any remuneration payable to the person under this Act as an assessor appointed on a part-time basis.
- (3) Subclause (2) does not operate to authorise an officer of a court to accept or retain any remuneration payable to the officer as an assessor.

5 Leave of assessors

- (1) An assessor, if appointed on a full-time basis, is entitled to such leave:
- (a) as is determined by the Minister, or
 - (b) as may be specified in respect of the assessor in the assessor's instrument of appointment.
- (2) Leave may be determined or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

6 Removal from office

The Minister may remove an assessor from office at any time.

7 Vacation of office

An assessor vacates office if the assessor:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) becomes a mentally incapacitated person, or
- (e) is removed from office by the Minister under clause 6.

8 Disclosure of pecuniary and other interests

- (1) If an assessor is, or is to be, an assessor of the Tribunal for the purposes of proceedings before the Tribunal and the assessor has or acquires an interest (pecuniary or otherwise) that could conflict with the proper performance of the functions of the assessor in relation to the proceedings:
 - (a) the assessor must not take part in the proceedings or exercise any powers in relation to the proceedings, and
 - (b) must disclose the nature of the interest to the President.
- (2) For the purposes of this clause, the expertise or experience of an assessor in relation to a class of matters in relation to which the Tribunal has jurisdiction does not constitute an interest that could conflict with the proper performance of the functions of the assessor.

9 Application of Schedule to acting assessors

- (1) Subject to subclause (2), all of the provisions of this Schedule apply to acting assessors.
- (2) Clause 1 does not apply to an appointment of an acting assessor for the purpose of particular proceedings.
- (3) In this clause, ***acting assessor*** means a person appointed under this Act to act as an assessor.

Schedule 5 Savings and transitional provisions

(Section 144)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
Administrative Decisions Legislation Amendment Act 1997
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Administrative Decisions Legislation Amendment Act 1997

Division 1 Interpretation

2 Definitions

In this Part:

abolished body means each of the following:

- (a) the Boxing Appeals Tribunal,

- (b) the Community Services Appeals Tribunal,
- (c) the Equal Opportunity Tribunal,
- (d) the Legal Services Tribunal,
- (e) the Schools Appeals Tribunal,
- (f) the Veterinary Surgeons Disciplinary Tribunal.

ADT means the Administrative Decisions Tribunal established by this Act.

amending Act means the *Administrative Decisions Legislation Amendment Act 1997*.

Boxing Appeals Tribunal means the Boxing Appeals Tribunal as continued by section 28 of the *Boxing and Wrestling Control Act 1986* immediately before the commencement of Schedule 4.1 to the amending Act.

Community Services Appeals Tribunal means the Community Services Appeals Tribunal as constituted by section 92 of the *Community Services (Complaints, Appeals and Monitoring) Act 1993* immediately before the commencement of Schedule 1.6 to the amending Act.

Equal Opportunity Tribunal means the Equal Opportunity Tribunal as constituted by section 69B of the *Anti-Discrimination Act 1977* immediately before the commencement of Schedule 2.1 to the amending Act.

Legal Services Tribunal means the Legal Services Tribunal constituted by section 162 of the *Legal Profession Act 1987* as constituted immediately before the commencement of Schedule 3.3 to the amending Act.

relevant amending Schedule, in relation to an abolished body, means the Schedule (or part of the Schedule) to the amending Act on the commencement of which the abolished body is abolished under Division 2.

Schools Appeals Tribunal means the Schools Appeals Tribunal as constituted by section 107 of the *Education Reform Act 1990* immediately before the commencement of Schedule 4.2 to the amending Act.

Veterinary Surgeons Disciplinary Tribunal means the Veterinary Surgeons Disciplinary Tribunal as constituted by section 25 of the *Veterinary Surgeons Act 1986* immediately before the commencement of Schedule 4.3 to the amending Act.

Division 2 Provisions relating to particular abolished bodies and positions

3 Boxing Appeals Tribunal

- (1) The Boxing Appeals Tribunal is abolished on the commencement of Schedule 4.1 to the amending Act.
- (2) On the abolition of the Boxing Appeals Tribunal, any person holding office as a member of the Tribunal immediately before its abolition by this Act:
 - (a) ceases to hold office as a member of that Tribunal, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the ADT, and
 - (c) is not entitled to any compensation by reason of ceasing to hold office as a member of the Tribunal.
- (3) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Boxing Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Boxing and Wrestling Control Act 1986*.

4 Community Services Appeals Tribunal

- (1) The Community Services Appeals Tribunal is abolished on the commencement of Schedule 1.6 to the amending Act.
- (2) On the abolition of the Community Services Appeals Tribunal:
 - (a) the person holding office as President of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time Deputy President of the ADT, and
 - (ii) appointed as the Divisional Head of the Community Services Division of the ADT, and

- (b) the person holding office as Deputy President of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time non-presidential judicial member of the ADT, and
 - (ii) assigned to the Community Services Division of the ADT, and
- (c) any other person who was holding office as a member of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time non-judicial member of the ADT, and
 - (ii) assigned to the Community Services Division of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Community Services Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Community Services (Complaints, Appeals and Monitoring) Act 1993*.

5 Equal Opportunity Tribunal

- (1) The Equal Opportunity Tribunal is abolished on the commencement of Schedule 2.1 to the amending Act.
- (2) On the abolition of the Equal Opportunity Tribunal:
 - (a) the person holding office as the senior judicial member of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time Deputy President of the ADT, and
 - (ii) appointed as the Divisional Head of the Equal Opportunity Division of the ADT, and

- (b) any other person holding office as a judicial member of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time non-presidential judicial member of the ADT, and
 - (ii) assigned to the Equal Opportunity Division of the ADT, and
- (c) any person who was holding office as a non-judicial member of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time non-judicial member of the ADT, and
 - (ii) assigned to the Equal Opportunity Division of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Equal Opportunity Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Anti-Discrimination Act 1977*.

6 Legal Services Tribunal

- (1) The Legal Services Tribunal is abolished on the commencement of Schedule 3.3 to the amending Act.
- (2) On the abolition of the Legal Services Tribunal:
 - (a) the person holding office as President of the Tribunal immediately before its abolition is by this Act:
 - (i) appointed as a part-time Deputy President of the ADT, and
 - (ii) appointed as the Divisional Head of the Legal Services Division of the ADT, and

- (b) any existing barrister member of the Tribunal is by this Act:
 - (i) appointed as a part-time non-presidential judicial member of the ADT, and
 - (ii) assigned to the Legal Services Division of the ADT, and
 - (iii) taken to be a barrister member of the Legal Services Division, and
- (c) any existing solicitor member of the Tribunal is by this Act:
 - (i) appointed as a part-time non-presidential judicial member of the ADT, and
 - (ii) assigned to the Legal Services Division of the ADT, and
 - (iii) taken to be a solicitor member of the Legal Services Division, and
- (d) any existing licensee member of the Tribunal is by this Act:
 - (i) appointed as a part-time non-judicial member of the ADT, and
 - (ii) assigned to the Legal Services Division of the ADT, and
 - (iii) taken to be a licensee member of the Legal Services Division, and
- (e) any existing lay member of the Tribunal is by this Act:
 - (i) appointed as a part-time non-judicial member of the ADT, and
 - (ii) assigned to the Legal Services Division of the ADT, and
 - (iii) taken to be a lay member of the Legal Services Division.

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- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Legal Services Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Conveyancers Licensing Act 1995* or the *Legal Profession Act 1987*.
- (5) In this clause:

barrister member of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

existing barrister member means a person holding office as a barrister member of the Legal Services Tribunal immediately before its abolition by this Act.

existing lay member means any person holding office as lay member of the Legal Services Tribunal immediately before its abolition by this Act.

existing licensee member means any person holding office as licensee member (within the meaning of the *Conveyancers Licensing Act 1995* immediately before it was amended by the amending Act) of the Legal Services Tribunal immediately before its abolition by this Act.

existing solicitor member means any person holding office as a solicitor member of the Legal Services Tribunal immediately before its abolition by this Act.

lay member of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

licensee member of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

solicitor member of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

7 Schools Appeals Tribunal

- (1) The Schools Appeals Tribunal is abolished on the commencement of Schedule 4.2 to the amending Act.
- (2) On the abolition of the Schools Appeals Tribunal, any person holding office as a member of the Tribunal immediately before its abolition is by this Act appointed as a part-time non-judicial member of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Schools Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 relating to the *Education Reform Act 1990*.

8 Veterinary Surgeons Disciplinary Tribunal

- (1) The Veterinary Surgeons Disciplinary Tribunal is abolished on the commencement of Schedule 4.3 to the amending Act.
- (2) On the abolition of the Veterinary Surgeons Disciplinary Tribunal:
 - (a) any person holding office as a chairperson:
 - (i) ceases to hold office as a member of that Tribunal, and
 - (ii) is eligible (if otherwise qualified) to be appointed as a member of the ADT, and
 - (iii) is not entitled to any compensation by reason of ceasing to hold office as a member of the Tribunal, and

- (b) any other person holding office as a member of the Tribunal is appointed as a part-time non-judicial member of the ADT and is assigned to the General Division of the ADT.
- (3) Any person referred to in subclause (2) (b) who was holding office for a specified term is taken to have been appointed to the new office ~~or~~ the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Veterinary Surgeons Disciplinary Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Veterinary Surgeons Act 1986*.

Division 3 Provisions relating to the jurisdiction transferred from courts to the ADT

9 Pending court proceedings

- (1) This clause applies to proceedings before a court that:
 - (a) were instituted before the commencement of any relevant amendment, and
 - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had this Act and the amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.
- (4) In this clause:

relevant amendment means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction

on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

Division 4 General provisions

10 Issue of replacement commission or other instrument of appointment

- (1) The Governor may issue an appropriate commission under the public seal of the State to a person who is appointed to a new office under this Part as a Deputy President or Divisional Head of the ADT. The appointment is effective whether or not such a commission is issued.
- (2) The Minister may issue an appropriate instrument of appointment to a person who is appointed to a new office under this Part as a non-presidential judicial member or non-judicial member of the ADT. The appointment is effective whether or not such an instrument is issued.

11 Transitional arrangements pending making of rules of Commission

Until rules of the ADT are in force with respect to any matter for which rules may be made, the regulations may make provision with respect to that matter.

12 Legal Services Tribunal Rules 1995

- (1) Until the Rules of the ADT provide otherwise and subject to this Act, the *Legal Services Tribunal Rules 1995* as in force immediately before the abolition of the Legal Services Tribunal continue in force as the rules of the ADT in respect of matters before the Legal Services Division of the Tribunal.
- (2) References in the *Legal Services Tribunal Rules 1995* to the Legal Services Tribunal are to be read as references to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of the rules.

13 Regulations made under substantially re-enacted provisions continue in force

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
 - (a) to a court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and
 - (b) to an appeal, complaint or other application to the court or tribunal is to be read as a reference to an application to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of any such regulation.
- (4) In this clause, *relevant amendment* means an amendment made to any provision of another Act by the amending Act the effect of which is:
 - (a) to substantially re-enact the provision of the other Act, or
 - (b) to otherwise amend the provision by removing references to any court or tribunal and replacing them with references to the ADT.

14 Pending proceedings before an abolished body

- (1) If proceedings were commenced but not heard by an abolished body before its abolition, the proceedings are taken to have been duly commenced in the ADT.
- (2) If an abolished body had commenced to hear (but had not determined) a matter before its abolition, the person or persons hearing the matter:
 - (a) are to continue to hear the matter, and to determine the matter, sitting as the ADT, and

(b) have and may exercise, while sitting as the ADT under this clause, all the functions that the abolished body had immediately before its abolition.

(3) This clause applies despite any contrary provision of this Act.

15 Orders

(1) An order made under another Act by an abolished body, being an order having effect immediately before the abolition of the abolished body, is taken to be an order made by the ADT under the corresponding provision of that Act (as amended by the relevant amending Schedule) or this Act (as the case may be).

(2) Any application for an order made to an abolished body under another Act and not determined immediately before the commencement of the relevant amending schedule is to continue to be dealt with as if made under this Act (but only if there is a corresponding provision of this Act under which the order could be made).

(3) This clause is subject to the other provisions of this Schedule.

16 Expiration of current period

If, for any purpose, time had commenced to run under a provision of another Act in relation to an abolished body before, but had not expired before, the commencement of the relevant amending Schedule, it expires for the corresponding purpose under that Act (as amended by the relevant amending Schedule) or this Act, as the case may be, at the time at which it would have expired if the provision had not been amended by the relevant amending Schedule.

17 General savings

(1) If anything done or commenced under another Act in relation to an abolished body before the abolition of that body and still having effect or not completed immediately before that abolition

could have been done or commenced under that Act (as amended by the relevant amending Schedule) or this Act if the relevant amending Schedule or this Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect, or
 - (b) the thing commenced may be completed, as if it had been done or commenced under the other Act (as amended) or this Act.
- (2) This clause is subject to any express provision of this Act on the matter.

[Minister's second reading speech made in—
Legislative Assembly on 29 May 1997
Legislative Council on 27 June 1997]