

# AUSTRALIAN CAPITAL TERRITORY

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## Administrative Appeals Tribunal Ordinance 1989

No. 51 of 1989

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# AUSTRALIAN CAPITAL TERRITORY

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## Administrative Appeals Tribunal Ordinance 1989

No. 51 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

CLYDE HOLDING  
Minister of State for the Arts  
and Territories

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An Ordinance to establish an Administrative Appeals Tribunal for the  
Australian Capital Territory

**PART I—PRELIMINARY****Short title**

1. This Ordinance may be cited as the *Administrative Appeals Tribunal Ordinance 1989*.<sup>1</sup>

**Commencement**

2. This Ordinance commences on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

**Interpretation**

3. (1) In this Ordinance, unless the contrary intention appears—

“Department” means an administrative unit of the Public Service;

“Deputy President” means a member appointed as a Deputy President of the Tribunal;

“Deputy Registrar” means a Deputy Registrar of the Tribunal;

“enactment” means an Act or a subordinate law (including part of an Act or of such a law);

“full-time member” means a member who is appointed as a full-time member;

“Judge” means—

- (a) a Judge of a court created by the Commonwealth Parliament;
- (b) a Judge of a court of a State or Territory; or
- (c) a person who has the same designation and status as such a Judge;

“member” means a presidential member, a senior member, or any other member of the Tribunal;

“non-presidential member” means a member other than a presidential member;

“officer of the Tribunal” includes the Registrar and a Deputy Registrar;

“part-time member” means a member who is appointed as a part-time member;

“President” means the President of the Tribunal;

“presidential member” means the President or a Deputy President;

“Registrar” means the Registrar of the Tribunal;

“senior member” means a senior member of the Tribunal;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal established by this Ordinance, and includes a member exercising powers of the Tribunal.

**(2)** Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, this Ordinance applies as if that board, committee or other body were a person empowered to make those decisions.

**(3)** A reference in this Ordinance to a decision includes a reference to—

- (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; or
- (g) doing or refusing to do any other act or thing.

**(4)** Where a person has nominated an address in Australia at which documents may be served on the person, a document or statement that is required by this Ordinance to be given to the person may be sent to that address.

## **PART II—ESTABLISHMENT OF THE AUSTRALIAN CAPITAL TERRITORY ADMINISTRATIVE APPEALS TRIBUNAL**

### **Establishment of Tribunal**

4. The Australian Capital Territory Administrative Appeals Tribunal is established, and shall consist of a President and such other members as are appointed in accordance with this Ordinance.

### **Appointment of members of Tribunal**

5. (1) The members of the Tribunal shall be appointed by the Executive.

(2) A person who is to be appointed as a member of the Tribunal shall be appointed as the President, as a Deputy President, as a senior member or as a member.

(3) A member shall be appointed either as a full-time member or as a part-time member.

(4) If the President of the Commonwealth Administrative Appeals Tribunal agrees, the Executive may appoint a member of that tribunal to be a member of the Tribunal.

### **Qualifications for appointment**

6. (1) A person shall not be appointed under subsection 5 (1) as the President unless he or she:

- (a) is a Judge; or
- (b) is enrolled as a legal practitioner of the High Court, of another federal court, of the Supreme Court or of the Supreme Court of a State or of another Territory and has been so enrolled for not less than 5 years.

(2) A person shall not be appointed under subsection 5 (1) as a Deputy President unless he or she is enrolled as a legal practitioner of the High Court, of another federal court, of the Supreme Court or of the Supreme Court of a State or of another Territory and has been so enrolled for not less than 5 years.

(3) A person shall not be appointed under subsection 5 (1) as a senior member unless he or she—

- (a) is enrolled as a legal practitioner of the High Court, of another federal court, of the Supreme Court or of the Supreme Court of a State or of another Territory and has been so enrolled for not less than 5 years; or

- (b) has, in the opinion of the Executive, special knowledge or skill relevant to the duties of a senior member.
- (4) A person shall not be appointed under subsection 5 (1) as a non-presidential member (other than a senior member) unless he or she—
  - (a) is enrolled as a legal practitioner of the High Court, of another federal court, of the Supreme Court or of the Supreme Court of a State or of another Territory;
  - (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government;
  - (c) has obtained a degree of a university, or an educational qualification of a similar standing, after studies in the field of law, economics or public administration or some other field considered by the Executive to have substantial relevance to the duties of such a member; or
  - (d) has, in the opinion of the Executive, special knowledge or skill in relation to any class of matters in respect of which decisions may be made in the exercise of powers conferred by an enactment, being decisions in respect of which applications may be made to the Tribunal for review.

### **Term of appointment**

7. (1) Subject to this Part (other than subsection (5)), a member who is a Judge holds office until he or she attains the age of 70 years or ceases before attaining that age to be a Judge.

(2) A Judge who has attained the age of 70 years shall not be appointed as a full-time member.

(3) Subject to this Part (other than subsection (5)), where the instrument appointing a person (other than a Judge) as a full-time presidential member or a full-time senior member provides that this subsection applies to the appointment, the person holds office until he or she attains the age of 70 years or 65 years, as the case may be.

(4) A person shall not be appointed as a full-time presidential member or a full-time senior member if the person has attained the age of 70 years or 65 years, as the case may be.

(5) Subject to this Part, a member holds office for such period of at most 7 years as is specified in the instrument of appointment, but is eligible for re-appointment.

(6) Subject to this Part, a member who is also a member of the Commonwealth Administrative Appeals Tribunal holds office—

- (a) until the end of any period specified in the person's instrument of appointment under subsection 5 (1); or
- (b) until the person ceases to be a member of that tribunal;

whichever first occurs, but it eligible for re-appointment.

(7) Subject to this Part, a member holds office on such terms and conditions as are prescribed.

#### **Remuneration and allowances**

8. (1) A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply to—

- (a) the remuneration of a member if there is a subsisting determination relating to the remuneration to be paid to the member; or
- (b) an allowance of a particular kind in respect of a member if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

(3) In subsection (2), “determination” means a determination of the Commonwealth Remuneration Tribunal.

#### **Acting appointments**

9. (1) Where the President or a Deputy President is or is expected to be absent from duty or from Australia, the Executive may appoint a person qualified to be appointed as President or as a Deputy President to act in that office during the absence.

(2) Where a non-presidential member is or is expected to be absent from duty or from Australia or, in the case of a part-time member, unavailable to perform the duties of his or her office, the Executive may appoint a person qualified to be appointed to that office to act in that office during the absence or the period of unavailability.

- (3) Subsections (1) and (2) do not apply if—
- (a) the member who is or is expected to be absent or unavailable is also a member of the Commonwealth Administrative Appeals Tribunal; and
  - (b) a person is appointed under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth to act in that office during that absence or period of unavailability;

but a person so appointed may act in the office that is or will be, because of that absence or unavailability, vacant under this Ordinance.

(4) Where a person has been appointed under subsection (1) or (2), the Executive may, because of a pending proceeding or other special circumstances, direct, before the absent or unavailable member ceases to be absent or unavailable, that the person so appointed shall continue to act under the appointment after the member ceases to be absent or unavailable until he or she resigns the appointment or the Executive terminates the appointment, but a person shall not continue to act under this subsection for more than 12 months after the member ceases to be absent or unavailable.

(5) Anything done by or in relation to a person purporting to act under such an appointment is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

### **Delegation**

10. The President may, by signed instrument, delegate to a member all or any of his or her powers or functions under this Ordinance.

### **Oath or affirmation of office**

11. A person who is appointed or re-appointed as a member shall, before proceeding to discharge the duties of his or her office, take before a Judge an oath or affirmation in accordance with the form in the Schedule.

**Outside employment**

**12. (1)** Subject to subsection (2), a full-time member shall not, except with the consent of the Minister, engage in paid employment outside the duties of his or her office as such a member.

**(2)** Subsection (1) does not apply to the holding by a member of an office under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth.

**(3)** Where a member who is also a member of the Commonwealth Administrative Appeals Tribunal is given consent under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth to engage in paid employment outside the duties of his or her office, the member shall be taken to have been given a similar consent under subsection (1).

**Leave of absence**

**13. (1)** The Minister may grant leave of absence to a full-time member on such terms and conditions as to remuneration or otherwise as the Minister determines.

**(2)** Where a full-time member who is also a member of the Commonwealth Administrative Appeals Tribunal is granted leave of absence under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, the member shall be taken to have been granted leave of absence for the same period under subsection (1).

**Removal from office**

**14. (1)** The Executive may remove a member from office on an address praying for his or her removal on the ground of proved misbehaviour or incapacity being presented to the Executive by the Legislative Assembly.

**(2)** The Executive may suspend a member from office on the ground of misbehaviour or incapacity.

**(3)** Where the Executive suspends a member from office, the Minister shall cause a statement of the ground of the suspension to be laid before the Legislative Assembly within 7 sitting days of the Legislative Assembly after the suspension.

**(4)** Where such a statement has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, by

resolution, declare that the member should be removed from office and, if such a resolution is passed, the Executive shall remove the member from office.

(5) If, at the end of 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

(7) If a member 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, the Executive shall remove the member from office.

(8) The Executive may, with the consent of a member who is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth, retire the member from office on the ground of incapacity.

(9) A member shall not be removed or suspended from office except as provided by this section.

(10) This section does not apply to—

- (a) a member who is a Judge; or
- (b) a member who is also a member of the Commonwealth Administrative Appeals Tribunal.

#### **Disclosure of interests by members**

15. (1) Where a member is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that proceeding—

- (a) the member shall disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all the parties to the proceeding, the member shall not take part in the proceeding or exercise any powers in relation to the review by the Tribunal of the decision to which the proceeding relates.

(2) Where the President becomes aware that a member is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and that

the member has in relation to that proceeding an interest as mentioned in subsection (1)—

- (a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—the President shall give a direction to the member accordingly; or
- (b) in any other case—the President shall cause the interest of the member to be disclosed to the parties to the proceeding.

### **Resignation**

**16.** A member may resign from office by written notice delivered to the Minister.

## **PART III—ORGANISATION OF THE TRIBUNAL**

### **Divisions**

**17. (1)** The regulations may create Divisions of the Tribunal.

**(2)** Where the regulations create Divisions, the President may, by written instrument, assign particular non-presidential members to particular Divisions.

**(3)** Where a member is assigned to a particular Division, the member shall exercise, or participate in the exercise of, the powers of the Tribunal only in the Division to which the member is assigned.

### **Arrangement of business**

**18. (1)** Subject to section 19 and to regulations made for the purposes of section 17, the President may give directions as to the arrangement of the business of the Tribunal and as to the persons who are to constitute the Tribunal for particular proceedings.

**(2)** Where the President gives a direction as to the persons who are to constitute the Tribunal for a particular proceeding, the President may—

- (a) at any time after giving the direction and before the commencement of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by 2 or more members, 1 of those members ceases to be a member or ceases to be available before the matter to which the proceeding relates is determined—at any time after the member so ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

**(3)** In giving a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, the President—

- (a) shall have regard to the degree of public importance or complexity of the matters to which that proceeding relates; and
- (b) shall have regard to the status of the position or office held by the person who made the decision that is to be reviewed by the Tribunal.

### **Constitution of Tribunal for exercise of powers**

**19. (1)** Subject to subsection (2) and to any other provision of this Ordinance, or of any other enactment, with respect to the constitution of the Tribunal in relation to particular proceedings, the Tribunal shall, for the purpose of the exercise of its powers in relation to a matter, be constituted by—

- (a) a presidential member and 2 other members;
- (b) a presidential member alone;
- (c) 3 non-presidential members of whom at least 1 is a senior member; or
- (d) a non-presidential member alone.

**(2)** For the purpose of the exercise of the powers of the Tribunal under subsection 27 (4), (7) or (9) or 28 (2), section 30, subsection 34 (2) or 37 (2), (4) or (6) or section 38 or 43, the Tribunal shall be constituted—

- (a) where the hearing of the relevant proceeding has not commenced—
  - (i) if a direction has not been given under section 18 as to the members who are to constitute the Tribunal for the purposes of that proceeding—by a presidential member or by a senior member authorised by the President, in accordance with this section, for the purposes of this subparagraph;
  - (ii) if such a direction has been given and the direction requires the Tribunal to be constituted by 1 member only—by that member; or
  - (iii) if such a direction has been given and the direction requires the Tribunal to be constituted by more than 1 member—by the member who is to preside at the hearing of that proceeding; or

(b) where the hearing of the relevant proceeding has commenced—by the member or members by whom the Tribunal is constituted for the purposes of that proceeding.

(3) Where, before the commencement of the hearing of a proceeding before the Tribunal, there is lodged with the Tribunal, as prescribed, a notice, signed by or on behalf of all the parties, stating that they have agreed that the proceeding be dealt with by the Tribunal constituted by a presidential member alone, the Tribunal shall be constituted for the purposes of that proceeding by a presidential member alone.

(4) For the purposes of subparagraph (2) (a) (i), the President may authorise a senior member to exercise, either generally or in relation to particular proceedings, any or all of the powers of the Tribunal referred to in subsection (2).

(5) The President may at any time vary or revoke an authorisation under subsection (4).

#### **Reconstitution of Tribunal in certain cases**

**20. (1)** At any time during the hearing of a proceeding before the Tribunal constituted in accordance with subsection 19 (1), a party to the proceeding may make an application to the Tribunal as constituted for the purposes of that proceeding requesting that the Tribunal be reconstituted for the purposes of that proceeding.

(2) If an application under subsection (1) is made, the Tribunal as constituted for the purposes of the proceeding shall, after receiving the submissions made in support of or in opposition to the application, notify the President of the making of the application and give the President particulars of those submissions.

(3) The President may, after taking the submissions into account, if he or she considers that the matters to which the proceeding relates are of such public importance as to justify so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that—

(a) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 19 (1) (b) or (c)—the Tribunal is constituted in accordance with paragraph 19 (1) (a); or

(b) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 19 (1) (d)—the Tribunal is constituted in accordance with paragraph 19 (1) (a), (b) or (c).

(4) Where a direction is so given, the Tribunal as reconstituted in accordance with the direction shall continue the proceeding and may either—

- (a) complete the proceeding; or
- (b) at any time remit the proceeding to the Tribunal as previously constituted for completion.

(5) Where the Tribunal as reconstituted so remits a proceeding to the Tribunal as previously constituted, the Tribunal as reconstituted may give directions in relation to the proceeding to the Tribunal as previously constituted and the Tribunal as previously constituted shall, in making a decision on the review, comply with those directions.

(6) Where, under subsection (4), a proceeding is continued by the Tribunal as reconstituted in accordance with a direction given under subsection (3), the Tribunal may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including a record of any evidence taken in the proceeding.

(7) Where, under subsection (4), a proceeding is remitted by the Tribunal as reconstituted to the Tribunal as previously constituted, the Tribunal as previously constituted may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as reconstituted, including a record of any evidence taken in the proceeding.

### **Member presiding**

**21. (1)** At the hearing of a proceeding before the Tribunal at which the Tribunal is constituted by more than 1 member—

- (a) if the President is a member of the Tribunal as so constituted—the President shall preside;
- (b) if a presidential member (other than the President) is a member of the Tribunal as so constituted but the President is not—that member shall preside; or
- (c) if the Tribunal is constituted only by non-presidential members—
  - (i) where 1 only of those non-presidential members is a senior member—that member shall preside;

- (ii) where 2 or more of those non-presidential members are senior members—1 of those senior members who is directed by the President to do so shall preside; or
- (iii) where none of those non-presidential members is a senior member—1 of those non-presidential members who is directed by the President to do so shall preside.

(2) If a direction is given under subsection 18 (2) or section 20 varying the constitution of the Tribunal for the purposes of a proceeding or if paragraph 22 (1) (a) applies, any necessary direction may be given under this section as to the member who is to preside at the hearing of the proceeding by the Tribunal as reconstituted or as constituted by the remaining member or members, as the case may be.

#### **Member of Tribunal ceasing to be available**

**22. (1)** Where the hearing of any proceeding has been commenced or completed by the Tribunal constituted by 2 or more members but before the matter to which the proceeding relates has been determined, 1 of the members constituting the Tribunal for the purposes of the proceeding has ceased to be a member or has ceased to be available for the purposes of the proceeding—

- (a) if the parties agree and the President does not give a direction under section 18 reconstituting the Tribunal for the purposes of the proceeding—the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining member or members; or
- (b) in any other case—the proceeding shall be reheard by the Tribunal as reconstituted in accordance with the directions of the President under section 18.

(2) Where a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted, including a record of any evidence taken in the proceeding.

**Places of sitting**

23. Sittings of the Tribunal shall be held from time to time as required at such places as the President determines.

**PART IV—REVIEWS BY THE TRIBUNAL OF DECISIONS**

**Tribunal may review certain decisions**

24. (1) An enactment may provide that applications may be made to the Tribunal—

- (a) for review of decisions made in the exercise of powers conferred by that enactment; or
- (b) for the review of decisions made in the exercise of powers conferred, or that may be conferred, by another enactment having effect under that enactment.

(2) Where an enactment makes provision in accordance with subsection (1), that enactment—

- (a) shall specify the person to whose decisions the provision applies;
- (b) may be expressed to apply to all decisions of a person, or to specified decisions of that person; and
- (c) may specify conditions subject to which applications may be made.

(3) Where an enactment makes provision in accordance with this section for the making of applications to the Tribunal for the review of decisions of a person made in the exercise of a power conferred on that person, that provision also applies to decisions made in the exercise of that power—

- (a) by any person to whom that power has been delegated;
- (b) if the provision specifies the person by reference to his or her being the holder of a particular office or appointment—by any person for the time being acting in, or performing any of the duties of, that office or appointment; or
- (c) by any other person lawfully authorised to exercise that power.

(4) The Tribunal has power to review any decision in respect of which application is made to it under any enactment.

(5) For the purposes of an enactment that makes provision in accordance with this section for the making of applications to the Tribunal for review of decisions, a failure by a person to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, as the period within which that person is required or permitted to do that act or thing shall be taken to be the making of a decision by that person at the end of that period not to do that act or thing.

(6) Where an enactment provides for applications to the Tribunal, that enactment may also include provisions adding to, excluding or modifying the operation of any of the provisions of sections 19, 20, 21, 25, 27, 31, 32 and 34 or of subsection 41 (1) or 44 (1) or (2) in relation to such applications, and those provisions have effect subject to any provisions so included.

(7) The operation of a provision of section 20 shall not be taken to be excluded or modified by an enactment unless the enactment makes express provision for the exclusion or modification of the operation of that provision.

(8) Where—

- (a) a person has made a decision in respect of which an application may be made to the Tribunal;
- (b) the person made the decision because of holding, or performing the duties of, an office or appointment; and
- (c) the person no longer holds that office or performs those duties;

this Ordinance has effect as if the decision had been made by—

- (d) the person for the time being holding or performing the duties of that office or appointment; or
- (e) 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 member authorised by the President, specifies.

### **Persons who may apply to Tribunal**

**25. (1)** Where an application may be made to the Tribunal for a review of a decision, the application may be made by or on behalf of any person (including the Territory, the Commonwealth, a Territory authority or a Commonwealth authority) whose interests are affected by the decision.

(2) An organisation or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association.

(3) Subsection (2) does not apply in relation to a decision given before the organisation or association was formed or before the objects or purposes of the organisation or association included the matter concerned.

(4) In this section—

“Commonwealth authority” means a body, whether corporate or not, established by or under a law of the Commonwealth;

“Territory authority” means a body, whether corporate or not, established by or under an enactment.

**Person affected by decision may obtain reasons for decision**

26. (1) Where—

- (a) a person makes a decision in respect of which an application may be made to the Tribunal for a review; and
- (b) a person (in this section called the “applicant”) who is entitled to apply to the Tribunal for a review of the decision, by notice in writing given to the person who made the decision, requests that person to give to the applicant a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision;

the person who made the decision shall, as soon as practicable but in any case within 28 days after receiving the request, prepare, and give to the applicant, such a statement.

(2) Where a person to whom such a request is made is of the opinion that the applicant is not entitled to be given the statement, that person shall, as soon as practicable but in any case within 28 days after receiving the request, give to the applicant a notice in writing stating his or her opinion.

(3) A person who gives a notice under subsection (2) is not required to comply with the request unless the Tribunal, on application under subsection (4), decides that the applicant was entitled to be given the statement and, if the Tribunal so decides, the first-mentioned person shall prepare the statement and

give it to the applicant within 28 days after the decision of the Tribunal is given.

(4) The Tribunal shall, on an application being made, as prescribed, by an applicant who has received a notice under subsection (2) with respect to a request for a statement, decide whether the applicant was, or was not, entitled to be given the statement.

(5) A person to whom a request for a statement in relation to a decision is made under subsection (1) may refuse to prepare and give the statement if—

- (a) in a case where the terms of the decision were recorded in writing and set out in a document that was given to the applicant—the request was not made on or before the 28th day after the day on which that document was given to the applicant; or
- (b) in any other case—the request was not made within a reasonable time after the decision was made;

and in any such case the person to whom the request was made shall give to the applicant, as soon as practicable but in any case within 28 days after receiving the request, notice in writing stating that the statement will not be given and giving the reason why the statement will not be so given.

(6) For the purposes of paragraph (5) (b), a request for a statement in relation to a decision shall be taken to have been made within a reasonable time after the decision was made if the Tribunal, on application by the person who made the request, declares that the request was made within a reasonable time.

(7) If the Minister certifies in writing that the disclosure of any matter contained in a statement prepared under subsection (1) would be contrary to the public interest—

- (a) because it would involve the disclosure of deliberations or decisions of the Executive or of a Committee of the Executive; or
- (b) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Territory in a judicial proceeding that the matter should not be disclosed;

subsections (9) and (10) have effect.

(8) If the Commonwealth Attorney-General certifies in writing that the disclosure of any matter contained in a statement prepared under subsection (1) would be contrary to the public interest—

- (a) because it would prejudice the security, defence or international relations of the Commonwealth;
- (b) because it would involve the disclosure of deliberations or decisions of the Commonwealth Cabinet or of a Committee of the Cabinet; or
- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter should not be disclosed;

subsections (9) and (10) have effect.

**(9)** A person who is requested to give a statement to another person under subsection (1)—

- (a) is not required to include in the statement any matter in respect of which a certificate has been given under subsection (7) or (8); and
- (b) where the statement would be false or misleading if it did not include that matter—is not required to give the statement.

**(10)** Where a certificate is given under subsection (7) or (8) in relation to matter in a statement prepared under subsection (1) in relation to a decision—

- (a) the person who made the decision shall notify the applicant in writing—
  - (i) if the matter is not included in the statement—that the matter is not so included and giving the reason for not including the matter; or
  - (ii) if the statement is not given—that the statement will not be given and giving the reason for not giving the statement; and
- (b) subsections 35 (3) to (6) (inclusive) and 36 (1) to (6) (inclusive) apply in relation to any statement referred to in paragraph 37 (1) (a) in relation to that decision that is lodged with the Tribunal under section 37 as if the certificate were a certificate given under subsection 35 (1) or (2) in relation to any such matter that is contained in the last-mentioned statement.

**(11)** An applicant is not entitled to make a request under subsection (1) if—

- (a) the decision sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based

and gives the reasons for the decision, and a document setting out the terms of the decision has been given to the applicant; or

- (b) a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision has already been given to the applicant.

**(12)** If the Tribunal, upon application as prescribed for a declaration under this subsection made to it by a person to whom a statement has been given under subsection (1), considers that the statement does not contain—

- (a) adequate particulars of findings on material questions of fact;
- (b) an adequate reference to the evidence or other material on which those findings were based; or
- (c) adequate particulars of the reasons for the decision;

the Tribunal may make a declaration accordingly and, where the Tribunal makes such a declaration, the person responsible for giving the statement shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, give to the applicant an additional statement containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or those reasons.

### **Manner of applying for review**

**27. (1)** An application to the Tribunal for a review of a decision—

- (a) shall be in writing;
- (b) may be made in accordance with the prescribed form;
- (c) shall set out a statement of the reasons for the application; and
- (d) if the terms of the decision were recorded in writing and set out in a document that was given to the applicant or the decision is taken to be made under subsection 24 (5)—shall be lodged with the Tribunal within the prescribed time.

**(2)** Subject to subsection (3), the prescribed time for the purposes of paragraph (1) (d) is the period commencing on the day on which the decision is made and ending on the 28th day after—

- (a) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is given to the applicant; or
- (b) if the decision does not set out those findings and reasons—
  - (i) if a statement in writing setting out those findings and reasons is given to the applicant otherwise than under subsection 26 (1) not later than the 28th day after the day on which a document setting out the terms of the decision is given to the applicant—the day on which the statement is so given;
  - (ii) if the applicant, in accordance with subsection 26 (1), requests the person who made the decision to give a statement as mentioned in that subsection—the day on which the statement is given or the applicant is notified in accordance with subsection 26 (10) that the statement will not be given; or
  - (iii) in any other case—the day on which a document setting out the terms of the decision is given to the applicant.

**(3)** In the case of a decision that is taken to be made under subsection 24 (5), the prescribed time for the purposes of paragraph (1) (d) is the period commencing on the day on which the decision is taken to be made and ending—

- (a) if paragraph (b) does not apply—on the 28th day after that day; or
- (b) if the person whose failure to do an act or thing within a particular period is taken by subsection 24 (5) to constitute the making of the decision makes or purports to make, after the end of that period, a decision either to do or not to do that act or thing, being a decision the terms of which were recorded in writing and set out in a document that was given to the applicant—on the 28th day after—
  - (i) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is given to the applicant; or
  - (ii) if the decision does not set out those findings and reasons—the day that would be ascertained under paragraph (2) (b) if subsection (2) applied to the decision.

**(4)** Where—

- (a) no time is prescribed for the lodging with the Tribunal of applications for review of a particular decision; or
- (b) no time is prescribed for the lodging with the Tribunal by a particular person of an application for a review of a particular decision;

and the Tribunal is of the opinion that the application was not lodged within a reasonable time after the decision was made, the Tribunal shall, subject to subsection (6)—

- (c) if paragraph (a) applies—refuse to entertain an application for a review of the decision; or
- (d) if paragraph (b) applies—refuse to entertain an application by the person referred to in that paragraph for a review of the decision.

**(5)** In forming an opinion for the purposes of subsection (4), the Tribunal shall have regard to—

- (a) the time when the applicant became aware of the making of the decision;
- (b) if paragraph (4) (b) applies—any period prescribed for the lodging by another person of an application for a review of the decision; and
- (c) such other matters as it considers relevant.

**(6)** Notwithstanding subsection (4), the Tribunal may entertain an application referred to in that subsection if it is of the opinion that there are special circumstances that justify it doing so.

**(7)** The Tribunal may, upon application in writing by a person, extend the time for the making by that person of an application to the Tribunal for a review of a decision.

**(8)** The time for making an application to the Tribunal for a review of a decision may be extended under subsection (7) although that time has expired.

**(9)** Before determining an application for an extension of time, the Tribunal may, if it thinks fit, require the applicant to serve notice of the application on a specified person, being a person whom the Tribunal considers to be affected by the application.

**(10)** If a person on whom a notice is served under subsection (9), within the prescribed time after the notice is received by him or her, gives notice to the Tribunal, as prescribed, stating that he or she wishes to oppose the application,

the Tribunal shall not determine the application except after a hearing at which the applicant and any person who so gave notice to the Tribunal are given a reasonable opportunity of presenting their cases.

(11) The Registrar or a Deputy Registrar shall cause notice in writing of an application for a review of a decision, in accordance with the prescribed form, to be given to the person who made the decision.

### **Parties to proceeding before Tribunal**

28. (1) Subject to paragraph 43 (2) (b), the parties to a proceeding before the Tribunal for a review of a decision are—

- (a) any person who, being entitled to do so, has duly applied to the Tribunal for a review of the decision;
- (b) the person who made the decision;
- (c) if the Minister intervenes in the proceeding under section 29—the Minister; and
- (d) any other person who has been made a party to the proceeding by the Tribunal on application by the person in accordance with subsection (2).

(2) Where an application has been made by a person to the Tribunal for a review of a decision, any other person whose interests are affected by the decision may apply, as prescribed, to the Tribunal to be made a party to the proceeding, and the Tribunal may, in its discretion, by order, make that person a party to the proceeding.

(3) A person who is a party to a proceeding before the Tribunal—

- (a) because of a decision made by the person in the performance of the duties of an office or appointment; or
- (b) because of subsection 24 (8);

shall be described in the proceeding by his or her official name.

### **Intervention by Minister**

29. (1) The Minister may, on behalf of the Territory, intervene in a proceeding before the Tribunal.

(2) Where the Minister intervenes under subsection (1) in a proceeding for a review of a decision, the Minister may authorise the payment to a party to the proceeding by the Territory of such costs as the Minister considers were

reasonably incurred by that party in relation to the proceeding as a result of that intervention.

### **Tribunal to determine persons whose interests are affected by decision**

**30.** Where it is necessary for the purposes of this Ordinance to decide whether the interests of a person are affected by a decision, that matter shall be decided by the Tribunal and, if the Tribunal decides that the interests of a person are affected by a decision, the decision of the Tribunal is conclusive.

### **Representation before Tribunal**

**31.** At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or may be represented by some other person.

### **Procedure of Tribunal**

**32. (1)** In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Ordinance and the regulations and to any other enactment, within the discretion of the Tribunal;
- (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Ordinance and of every other relevant enactment and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

**(2)** For the purposes of subsection (1), directions as to the procedure to be followed in connection with the hearing of a proceeding before the Tribunal may be given—

- (a) where the hearing of the proceeding has not commenced—by the President or by a member authorised by the President to give directions for the purposes of this paragraph; or
- (b) where the hearing of the proceeding has commenced—by the member presiding at the hearing or by any other member authorised by the member presiding to give such directions.

**(3)** A direction as to the procedure to be followed in connection with the hearing of a proceeding before the Tribunal may be varied or revoked at any

time by any member empowered under this section to give such a direction in relation to the proceeding at that time.

(4) An authorisation by the President under this section to give directions as to the procedure to be followed in connection with the hearing of a proceeding may be of general application or may relate to the hearing of a particular proceeding.

(5) The President may at any time vary or revoke an authorisation under this section.

### **Conferences**

**33. (1)** Where an application is made to the Tribunal for a review of a decision, the President may, if the President thinks it desirable to do so after consideration of any material that has been lodged by the parties, direct the holding of a conference of the parties or their representatives presided over by the President, another member or by an officer of the Tribunal.

(2) Where a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties;
- (b) the terms of the agreement are put in writing, signed by or on behalf of the parties and lodged with the Tribunal; and
- (c) the Tribunal is satisfied that a decision in those terms would be within the powers of the Tribunal;

the Tribunal shall, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held under subsection (1) if the words spoken or act done related to any question to be determined by the Tribunal in the proceeding.

(4) If—

- (a) a conference held under subsection (1) in respect of a proceeding is presided over by a member; and

- (b) a party to the proceeding who, or a representative of whom, was present at the conference notifies the Tribunal before, or at the commencement of, the hearing that he or she objects to that member participating in the hearing;

that member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

### **Hearings to be in public except in special circumstances**

**34. (1)** Subject to this section, the hearing of a proceeding before the Tribunal shall be in public.

**(2)** Where the Tribunal is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;
- (b) give directions 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; and
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding 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 proceeding.

**(3)** In considering—

- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to some or all of the parties, of evidence given before the Tribunal, or of a matter contained in a document lodged with the Tribunal or received in evidence by the Tribunal, should be prohibited or restricted;

the Tribunal shall take as the basis of its consideration the principle that it is desirable that hearings of proceedings before the Tribunal should be held in public and that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to the public and to all the parties, but shall pay due regard to any reasons given to the Tribunal why the hearing should be held in

private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

**Certain documents and information not required to be disclosed and questions not required to be answered**

**35. (1)** If the Minister certifies in writing that the disclosure of information concerning a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest—

- (a) because it would involve the disclosure of deliberations or decisions of the Executive or of a Committee of the Executive; or
- (b) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Territory in a judicial proceeding that the information or the matter contained in the document should not be disclosed;

subsections (3) to (9) have effect.

**(2)** If the Commonwealth Attorney-General certifies in writing that the disclosure of information concerning a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest—

- (a) because it would prejudice the security, defence or international relations of the Commonwealth;
- (b) because it would involve the disclosure of deliberations or decisions of the Commonwealth Cabinet or of a Committee of the Cabinet; or
- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the matter contained in the document should not be disclosed;

subsections (3) to (9) have effect.

**(3)** A person who is required by or under this Ordinance to disclose the information or to produce to, or lodge with, the Tribunal the document in which the matter is contained for the purposes of a proceeding is not excused from the requirement but the Tribunal shall, subject to subsection (4) and to section 49, do all things necessary to ensure that the information or the matter contained in the document is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding, and, in the case of a

document produced to or lodged with the Tribunal, to ensure the return of the document to the person by whom it was produced or lodged.

(4) Where a certificate is given under subsection (1) or (2) that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1) (a) or (2) (a) or (b)—

- (a) the Tribunal shall consider whether the information or the matter should be disclosed to all or any of the parties to the proceeding; and
- (b) if it decides that the information or the matter should be so disclosed;

the Tribunal shall make the information available or permit the part of the document containing the matter to be inspected accordingly.

(5) Where, in relation to a proceeding to which the Minister or the Commonwealth Attorney-General would not, but for this subsection, be a party, the Minister or the Commonwealth Attorney-General certifies in accordance with subsection (1) or (2), as the case may be, that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1) (a) or (2) (a) or (b), the Minister or the Commonwealth Attorney-General, as the case may be, shall, for the purposes of this Ordinance, be taken to be a party to the proceeding.

(6) In considering whether information or matter contained in a document should be disclosed as mentioned in subsection (4), the Tribunal shall take as the basis of its consideration the principle that it is desirable in the interest of securing the effective performance of the functions of the Tribunal that the parties to a proceeding should be made aware of all relevant matters but shall pay due regard to any reason specified in the certificate why the disclosure of the information or of the matter contained in the document, as the case may be, would be contrary to the public interest.

(7) Where, at the hearing of a proceeding before the Tribunal, a person is asked a question in the course of giving evidence, the Minister or the Commonwealth Attorney-General may inform the Tribunal that, in his or her opinion, the answering of the question would be contrary to the public interest for a specified reason, being a reason mentioned in subsection (1) or (2), as the case may be.

**(8)** Where the Minister or the Commonwealth Attorney-General so informs the Tribunal that the answering by a person of a question would be contrary to the public interest, that person is excused from answering the question unless—

- (a) if the reason specified is, or the reasons specified include, a reason referred to in paragraph (1) (a) or (2) (a) or (b), as the case may be—the Supreme Court, on an appeal under section 46 or a reference under section 48, decides that the answering of the question would not be contrary to the public interest; or
- (b) in any other case—the Tribunal decides that the answering of the question would not be contrary to the public interest.

**(9)** Where the Minister or the Commonwealth Attorney-General so informs the Tribunal that the answering by a person of a question at the hearing of a proceeding would be contrary to the public interest, being a proceeding to which the Minister or the Commonwealth Attorney-General, as the case may be, would not, but for this subsection, be a party, the Minister or the Commonwealth Attorney-General, as the case may be, shall, for the purposes of this Ordinance, be taken to be a party to the proceeding.

### **Public interest questions under section 35**

**36. (1)** As soon as practicable after making a decision—

- (a) under subsection 35 (4) in relation to information, or matter contained in a document, in relation to a proceeding; or
- (b) under paragraph 35 (8) (b) in relation to the answering of a question in relation to a proceeding;

the Tribunal shall give to each party to the proceeding a document setting out the terms of the decision of the Tribunal.

**(2)** For the purposes of this Ordinance—

- (a) the question whether information, or matter contained in a document, should be disclosed to the parties to a proceeding; or
- (b) the question whether the answering by a person of a question would be contrary to the public interest;

is a question of law.

(3) The Tribunal's power to make a decision under subsection 35 (4) or paragraph 35 (8) (b) may be exercised only by the Tribunal constituted by a presidential member.

(4) A decision by the Tribunal—

- (a) under subsection 35 (4) as to whether or not information, or matter contained in a document, should be disclosed to all or any of the parties to a proceeding; or
- (b) under paragraph 35 (8) (b) that the answering of a question at the hearing of a proceeding would, or would not, be contrary to the public interest;

is a decision by the Tribunal in that proceeding for the purposes of section 46.

(5) Nothing in section 35 prevents the disclosure of information or of matter contained in a document to a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of the staff of the Tribunal.

(6) Section 35 excludes the operation of any rules of law that relate to the public interest and would otherwise apply in relation to the disclosure of information, or of matter contained in documents, in proceedings before the Tribunal.

(7) The Minister or the Commonwealth Attorney-General—

- (a) may appear before the Tribunal personally, or may be represented before the Tribunal by a barrister, solicitor or other person, in order to inform the Tribunal of his or her opinion in accordance with section 35; or
- (b) may inform the Tribunal of his or her opinion by causing a signed certificate setting out that opinion to be sent to the Tribunal.

### **Lodging of material documents with Tribunal**

37. (1) A person who has made a decision that is the subject of an application for a review by the Tribunal shall, within 28 days after receiving notice of the application, lodge with the Tribunal such number of copies as is prescribed of—

- (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
- (b) every other document or part of a document that is in his or her possession or under his or her control and is considered by him or her to be relevant to the review of the decision by the Tribunal.

(2) If it appears to the Tribunal that a party to a proceeding before the Tribunal for a review of a decision would or might suffer hardship if the period prescribed by subsection (1) for lodging with the Tribunal for the purposes of the review the copies of the documents mentioned in that subsection is not shortened, the Tribunal may, upon request being made, as prescribed, by that party, make an order directing that those copies be lodged with the Tribunal within such shorter period after the person who made the decision receives or received notice of the application as is specified in the order.

(3) Where an application that has been lodged with the Tribunal for a review of a decision was not lodged within the time required by section 27, the reference in subsection (1) to the period of 28 days after the person who made the decision receives notice of the application for a review shall be read as a reference to the period of 28 days after the day on which that person so receives notice or the day on which the Tribunal makes a determination extending the time for the making of the application for a review, whichever is the later.

(4) The Tribunal may, upon request being made, as prescribed, by a party to a proceeding before the Tribunal for a review of a decision, direct that subsection (3) has effect in relation to an application for a review of the decision as if the last reference in that subsection to a period of 28 days were a reference to such shorter period as the Tribunal determines.

(5) Subsection (3) does not apply to an application for a review of a decision if the decision is the subject of another application to which subsection (3) does not apply.

(6) Where the Tribunal is of the opinion that particular other documents may be relevant to the review of the decision by the Tribunal, the Tribunal may cause to be served on the person a notice in writing stating that the Tribunal is of that opinion and requiring the person to lodge with the Tribunal, within a time specified in the notice, the prescribed number of copies of each of those other documents that is in his or her possession or under his or her control, and a person on whom such a notice is served shall comply with the notice.

(7) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

(8) Regulations prescribing the numbers of copies of statements or other documents that are to be lodged under subsection (1) may prescribe different numbers of copies in relation to different statements or documents or in relation to different decisions.

#### **Power of Tribunal to obtain additional statements**

38. Where the Tribunal considers that a statement referred to in paragraph 37 (1) (a) that is lodged by a person with the Tribunal does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for a decision, the Tribunal may order that person to lodge with the Tribunal, within a time specified in the order, an additional statement containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.

#### **Opportunity to make submissions concerning evidence**

39. Subject to sections 34 and 35, the Tribunal shall ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

#### **Powers of Tribunal**

40. (1) For the purpose of reviewing a decision, the Tribunal may—

- (a) take evidence on oath or affirmation;
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
- (c) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding before the Tribunal, the Registrar or a Deputy Registrar shall, if directed to do so by the President, or by another member of the Tribunal who is to preside, or presides, at the hearing, summon a person to appear before the Tribunal at that hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The member who presides at the hearing of a proceeding before the Tribunal—

- (a) may require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the Tribunal.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give to questions asked will be true.

(5) A person summoned to appear before the Tribunal may request to be represented by a barrister, solicitor or other person and, upon such a request being made, the Tribunal may allow the person to be so represented.

(6) The power of the Tribunal under paragraph (1) (a) to take evidence on oath or affirmation may be exercised on behalf of the Tribunal in relation to a particular proceeding before the Tribunal by the member who is to preside at the hearing of that proceeding or by another person (whether a member or not) authorised by the first-mentioned member and that power may be so exercised within or outside Australia but the Tribunal may direct that the power is to be exercised subject to limitations specified by the Tribunal.

(7) Where a person other than the member who is to preside at the hearing of a proceeding is authorised to take evidence in relation to the proceeding in accordance with subsection (6)—

- (a) the person has, for the purpose of taking that evidence, all the powers of the Tribunal under subsection (1) and all the powers under subsection (3) of the member who is to preside at the hearing of the proceeding; and
- (b) for the purpose of the exercise of those powers by that person, this Ordinance has effect (except where the context otherwise requires) as if a reference to the Tribunal or to the member who is to preside at the hearing of a proceeding included a reference to that person.

### **Operation and implementation of a decision that is subject to review**

41. (1) Subject to this section, the making of an application to the Tribunal for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

**(2)** The Tribunal or a presidential member may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section called the “current proceeding”), if the Tribunal or presidential member is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order staying or otherwise affecting the operation or implementation of the decision to which the current proceeding relates or a part of that decision as the Tribunal or presidential member considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.

**(3)** Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Tribunal or a presidential member may, on request being made, as prescribed, by a party to the current proceeding, make an order varying or revoking the first-mentioned order.

**(4)** Subject to subsection (5), the Tribunal or a presidential member shall not—

- (a) make an order under subsection (2) unless the person who made the decision to which the current proceeding relates has been given a reasonable opportunity to make a submission to the Tribunal or presidential member, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied under subsection (3)) unless—
  - (i) the person who made the decision to which the current proceeding relates;
  - (ii) the person who requested the making of the order under subsection (2); and
  - (iii) if the order under subsection (2) has been varied by an order under subsection (3)—the person or persons who requested the making of the last-mentioned order;

have been given a reasonable opportunity to make submissions to the Tribunal or presidential member, as the case may be, in relation to the matter.

**(5)** Subsection (4) does not prohibit the Tribunal or a presidential member from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the Tribunal or presidential

member in relation to a matter if the Tribunal or presidential member is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the relevant proceeding relates, the order does not come into operation until a notice setting out the terms of the order is served on that person.

(6) An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
  - (i) where a period for the operation of the order is specified in the order—the end of that period or, if the application for review is decided by the Tribunal before the end of that period, the decision of the Tribunal on the application for review comes into operation; or
  - (ii) if no period is so specified—the decision of the Tribunal on the application for review comes into operation.

(7) For the purposes of this section, the President may authorise a senior member, either generally or in relation to a particular decision, being a decision in respect of which an application to the Tribunal for a review has been or may be made, to exercise the powers and perform the functions of a presidential member under this section and, where a senior member is so authorised, a reference in this section (other than this subsection) to a presidential member includes a reference to that senior member.

(8) The President may at any time vary or revoke an authorisation under subsection (7).

### **Manner in which questions to be decided**

42. (1) A question of law arising in a proceeding before the Tribunal at which a presidential member is presiding (including the question whether a particular question is one of law) shall be decided in accordance with the opinion of the member presiding.

(2) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the 1 opinion—the question shall be decided according to the opinion of the majority; or
- (b) in any other case—the question shall be decided according to the opinion of the member presiding.

### **Power of Tribunal to dismiss application or strike out party**

**43. (1)** Where all the parties to an application before the Tribunal for a review of a decision consent, the Tribunal may dismiss the application without proceeding to review the decision or, if the Tribunal has commenced to review the decision, without completing the review.

**(2)** If a party to a proceeding before the Tribunal in respect of an application for the review of a decision (not being the person who made the decision) fails either to appear in person or to appear by a representative at a preliminary conference held in relation to the application under section 33 or at the hearing of the proceeding, the Tribunal may—

- (a) where the only other party to the proceeding is the person who made the decision—dismiss the application without proceeding to review the decision; or
- (b) in any other case—direct that the person who failed to appear shall cease to be a party to the proceeding.

### **Review by Tribunal**

**44. (1)** For the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing—

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and—
  - (i) making a decision in substitution for the decision so set aside; or
  - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

**(2)** Subject to this section and to sections 34 and 35, the Tribunal shall give reasons either orally or in writing for its decision.

(3) Where the Tribunal does not give reasons in writing for its decision, a party to the proceeding 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 to that party a statement in writing of the reasons of the Tribunal for its decision, and the Tribunal shall, within 28 days after receiving the request, give that party such a statement.

(4) Where the Tribunal gives in writing the reasons for its decision, those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(5) The Tribunal shall cause a copy of its decision to be given to each party to the proceeding.

(6) Without prejudice to any other method available by law for the proof of decisions or orders of the Tribunal, a document purporting to be a copy of such a decision or order, and to be certified by the Registrar or a Deputy Registrar to be a true copy of the decision or order, is, in any proceeding, *prima facie* evidence of the decision or order.

(7) Subsections (5) and (6) apply to reasons given in writing by the Tribunal for its decision in the same manner as they apply to the decision.

(8) Subject to subsection (9), a decision of the Tribunal comes into operation upon the giving of the decision.

(9) The Tribunal may specify in a decision that the decision is not to come into operation until a later day specified in the decision and, where a later day is so specified, the decision comes into operation on that day.

(10) A decision of a person as varied by the Tribunal, or a decision made by the Tribunal in substitution for the decision of a person, shall, for all purposes (other than the purposes of applications to the Tribunal for a review or of appeals in accordance with section 46), be taken to be a decision of that person and, upon the commencement of the decision of the Tribunal, unless the Tribunal otherwise orders, has effect, or shall be taken to have had effect, from the day on which the decision under review has or had effect.

#### **Return of documents etc. at completion of proceeding**

45. (1) Where—

(a) a proceeding before the Tribunal has concluded; and

- (b) the time within which an appeal from the decision of the Tribunal in the proceeding may be instituted, or, if that time has been extended, the period of the extension, has expired but no such appeal has been instituted;

the President may cause a document or any other object furnished to the Tribunal for the purposes of the proceeding to be returned to the person by whom it was furnished.

(2) Where the Supreme Court causes a document or object sent to that Court in accordance with paragraph 49 (1) (a) in connection with a proceeding before that Court to be returned to the Tribunal, the President may cause the document or object to be returned to the person by whom it was furnished to the Tribunal.

#### **Appeals to Supreme Court from decisions of the Tribunal**

46. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court on a question of law from any decision of the Tribunal in that proceeding.

(2) Where a person has applied to the Tribunal for a review of a decision, or has applied to be made a party to a proceeding for a review of a decision, and the Tribunal decides that the interests of the person are not affected by the decision, the person may appeal to the Supreme Court from the decision of the Tribunal.

- (3) An appeal by a person under subsection (1) or (2) shall be instituted—
  - (a) not later than the 28th day after the day on which a document setting out the terms of the decision of the Tribunal is given to the person or within such further time as the Supreme Court (whether before or after the end of that day) allows; and
  - (b) in such manner as is prescribed by Rules of Court made under the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth.

(4) The Supreme Court has jurisdiction to hear and determine appeals instituted in that Court in accordance with subsection (1) or (2).

(5) The Supreme Court shall hear and determine the appeal and may make on the appeal—

- (a) an order affirming or setting aside the decision of the Tribunal;

- (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court; or
- (c) such other order as the Court, in its discretion, thinks appropriate having regard to its decision.

**Operation and implementation of a decision that is subject to appeal**

**47. (1)** Subject to this section, the institution of an appeal to the Supreme Court from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

**(2)** Where an appeal is instituted in the Supreme Court from a decision of the Tribunal, the Court or a Judge of the Court sitting in chambers may make such order staying or otherwise affecting the operation or implementation of either or both of the following:

- (a) the decision of the Tribunal or a part of that decision;
- (b) the decision to which the proceeding before the Tribunal related or a part of that decision;

as the Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

**(3)** Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Supreme Court or a Judge of the Court sitting in chambers may make an order varying or revoking the first-mentioned order.

**(4)** An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
  - (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
  - (ii) if no period is so specified—the giving of a decision on the appeal.

**Reference of questions of law to Supreme Court**

**48. (1)** The Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the Tribunal to the Supreme Court for decision but—

- (a) in the case of a proceeding before the Tribunal constituted by 2 or more members at which a presidential member presides—a question shall not be so referred without the concurrence of that presidential member; or
- (b) in any other case—a question shall not be so referred without the concurrence of the President.

**(2)** The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.

**(3)** Where a question of law arising in any proceeding has been referred to the Supreme Court under this section, the Tribunal shall not, in that proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

**Sending of documents to, and disclosure of documents by, the Supreme Court**

**49. (1)** When an appeal is instituted in the Supreme Court in accordance with section 46 or a question of law is referred to the Court in accordance with section 48—

- (a) the Tribunal shall, notwithstanding subsection 35 (3), cause to be sent to the Court all documents or objects that were before the Tribunal in connection with the proceeding to which the appeal or reference relates; and
- (b) at the conclusion of the proceeding before the Supreme Court in relation to the appeal or reference, the Court shall cause the documents or objects to be returned to the Tribunal.

**(2)** If there is in force in respect of any of the documents a certificate in accordance with subsection 26 (7) or (8) or 35 (1) or (2) certifying that the disclosure of matter contained in the document would be contrary to the public

interest, the Supreme Court shall, subject to subsection (3), do all things necessary to ensure that the matter is not disclosed to any person other than a member of the Court as constituted for the purposes of the proceeding.

**(3)** If—

- (a) the certificate referred to in subsection (2) relating to matter contained in the document does not specify a reason referred to in paragraph 26 (7) (a) or 26 (8) (a) or (b) or 35 (1) (a) or 35 (2) (a) or (b), as the case may be;
- (b) a question for decision by the Supreme Court is whether the matter should be disclosed to some or all of the parties to the proceeding before the Tribunal in respect of which the appeal was instituted or the reference was made; and
- (c) the Court decides that the matter should be so disclosed;

the Court shall permit the part of the document in which the matter is contained to be inspected accordingly.

**(4)** Nothing in this section prevents the disclosure of information or of matter contained in a document to an officer of the Court in the course of the performance of his or her duties as an officer of the Court.

## **PART V—MISCELLANEOUS**

### **Advisory opinions**

**50.** If an enactment so provides, the Tribunal may give an advisory opinion on a matter or question referred to it in accordance with the enactment and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it thinks appropriate.

### **Protection of members, barristers and witnesses**

**51. (1)** A member has, in the performance of duties as a member, the same protection and immunity as a Judge of the Supreme Court.

**(2)** A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

**(3)** Subject to this Ordinance, 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 Ordinance, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

#### **Failure of witness to attend**

**52.** A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 3 months.

#### **Refusal to be sworn or to answer questions**

**53.** A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

- (a) when required under section 40 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that the person is required to answer by the member presiding at the proceeding; or
- (c) refuse or fail to produce a document that the person was required to produce by a summons under this Ordinance served as prescribed.

Penalty: \$1,000 or imprisonment for 3 months.

#### **False or misleading evidence**

**54.** A person appearing as a witness before the Tribunal shall not give evidence that, to the person's knowledge, is false or misleading.

Penalty: \$1,000 or imprisonment for 3 months.

#### **Contempt of Tribunal**

**55.** A person shall not—

- (a) obstruct or hinder the Tribunal or a member in the performance of the functions of the Tribunal; or
- (b) disrupt proceedings of the Tribunal.

Penalty: \$1,000 or imprisonment for 3 months.

## **Registry**

**56.** The Minister shall cause a Registry of the Tribunal to be established.

## **Officers of Tribunal**

**57. (1)** There shall be a Registrar of the Tribunal, and such Deputy Registrars of the Tribunal and other officers of the Tribunal as the Minister determines.

**(2)** The Registrar, the Deputy Registrars and the other officers of the Tribunal shall be appointed by the Minister and shall have such duties, powers and functions as are provided by this Ordinance and the regulations and such other duties and functions as the President directs.

**(3)** The Registrar, the Deputy Registrars and the other officers of the Tribunal shall be—

- (a) public servants; or
- (b) persons referred to in paragraph (a) and persons employed under the *Public Service Act 1922* of the Commonwealth.

**(4)** Where the Registrar, a Deputy Registrar or another officer of the Tribunal is, or is expected to be, absent from duty, or the office of the Registrar, of a Deputy Registrar or of another officer of the Tribunal is vacant, the Minister may appoint a public servant to act as the Registrar, as that Deputy Registrar or as that other officer of the Tribunal during the absence or until the filling of the vacancy, as the case may be.

**(5)** Subsection (4) does not apply if:

- (a) the person who is or is expected to be absent is also a member of the staff of the Commonwealth Administrative Appeals Tribunal; and
- (b) a person is appointed under the *Administrative Appeals Tribunal Act 1975* of the Commonwealth to act in the first-mentioned person's office during that absence;

but a person so appointed may act in the office that is or will be, because of that absence, vacant under this Ordinance.

**Confidential information not to be disclosed**

**58. (1)** A person who is, or has been, a member or an officer of the Tribunal is not competent, and shall not 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 subsection 34 (2) or under a similar provision of an enactment other than this Ordinance;
- (b) an application has been made to the Tribunal for an order under that subsection, 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) a certificate by the Minister or the Commonwealth Attorney-General is in force certifying that the disclosure of information concerning the matter to which the evidence would relate would be contrary to the public interest for a reason referred to in subsection 35 (1) or (2), as the case may be, and, where the certificate does not specify a reason referred to in paragraph 35 (1) (a) or (2) (a) or (b), as the case may be, the Tribunal has not made information concerning that matter available to the parties to a proceeding before the Tribunal and, in the case of information contained in a document, has not permitted the parties to such a proceeding to inspect the document.

**(2)** A person who is, or has been, a member or an officer of the Tribunal shall not be required to produce in a court a document furnished to the Tribunal in connection with a proceeding if—

- (a) the production of the document would be contrary to an order of the Tribunal in force under subsection 34 (2) or under a similar provision of an enactment other than this Ordinance;
- (b) an application has been made to the Tribunal for an order under that subsection, or under such a similar provision, in relation to the document and the Tribunal has not determined that application; or
- (c) a certificate by the Minister or the Commonwealth Attorney-General is in force certifying that the production of the document would be contrary to the public interest for a reason referred to in subsection 35 (1) or (2), as the case may be, and, where the certificate does not specify a reason referred to in paragraph 35 (1) (a) or (2) (a)

or (b), as the case may be, the Tribunal has not permitted the parties to a proceeding before the Tribunal to inspect the document.

(3) A person who is, or has been, a member of the Tribunal shall not 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.

#### **Fees etc.**

59. (1) A person summoned to appear as a witness before the Tribunal is entitled to be paid fees, and allowances for expenses, fixed by or in accordance with a determination of the Minister published in the *Gazette* in respect of his or her attendance.

(2) Subject to subsection (3), the fees and allowance shall be paid—

(a) if the witness was summoned at the request of a party other than the person who made the decision subject to review—by that party; and

(b) in any other case—by the Territory.

(3) The Tribunal may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2) (a) be paid, in whole or in part, by the Territory.

(4) The Minister may, by notice in the *Gazette*—

(a) determine the fees to be payable in respect of applications to the Tribunal; and

(b) make provision in relation to the refund, in whole or in part, of fees so paid where the proceeding terminates in a manner favourable to the applicant.

(5) The Minister may, in such a determination—

(a) determine fees in respect of particular applications only; and

(b) determine different fees in respect of different applications.

#### **Giving of notices**

**60. (1)** A notice that is required or permitted by this Ordinance to be served on or given to the person who made a decision may be served on or given to the Head of Administration or a person nominated in writing by the Head of Administration.

**(2)** The Head of Administration shall give a copy of each nomination made under subsection (1) to the Registrar.

### **Lodging of documents**

**61.** Where a document is required by this Ordinance to be lodged with the Tribunal, the document shall be lodged at the Registry.

### **Legal assistance**

**62. (1)** A person who—

- (a) has made, or proposes to make, an application to the Tribunal for a review of a decision;
- (b) is a party to a proceeding before the Tribunal instituted by another person; or
- (c) proposes to institute a proceeding, or is a party to a proceeding instituted, before a court in respect of a matter arising under this Ordinance;

may apply to the Minister for the provision of assistance under this section in respect of the proceeding.

**(2)** Where an application is made by a person under subsection (1), the Minister may, if the Minister is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorise the provision by the Territory to that person, either unconditionally or subject to such conditions as the Minister determines, of such legal or financial assistance in relation to the proceeding as the Minister determines.

### **Delegation**

**63.** The Minister may, by signed instrument, delegate to a person all or any of his or her powers under this Ordinance, other than powers under subsection 26 (7) or 35 (1) or (7).

### **Regulations**

**64.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing—

- (a) matters required or permitted by this Ordinance to be prescribed; or
- (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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**SCHEDULE**

Section 11

OATH OR AFFIRMATION OF OFFICE

I, \_\_\_\_\_, DO SWEAR THAT I WILL BE FAITHFUL AND BEAR TRUE ALLEGIANCE TO HER MAJESTY QUEEN ELIZABETH THE SECOND, HER HEIRS AND SUCCESSORS ACCORDING TO LAW, THAT I WILL TRULY SERVE HER IN THE OFFICE OF (INSERT NAME OF OFFICE OF MEMBER OF TRIBUNAL) AND THAT I WILL FAITHFULLY AND IMPARTIALLY PERFORM THE DUTIES OF THAT OFFICE.  
SO HELP ME GOD!

OR

I, \_\_\_\_\_, do solemnly and sincerely promise and declare that (as above, omitting the words “So Help Me God!”).

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.