



Australian Capital Territory

# **Administrative Appeals Tribunal Act 1989 No 51**

**Republication No 6 (RI)**

**Effective: 13 September 2002**

Republication date: 24 October 2002

Reissued: 6 February 2003 for retrospective amendment made by  
Act 2002 No 49

Last amendment made by Act 2001 No 54  
(republication for commenced expiry)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Administrative Appeals Tribunal Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 24 October 2002. It also includes any amendment, repeal or expiry affecting the republished law to 13 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Administrative Appeals Tribunal Act 1989

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Australian Capital Territory

# **Administrative Appeals Tribunal Act 1989**

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An Act to establish an administrative appeals tribunal for the Australian  
Capital Territory

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Administrative Appeals Tribunal Act 1989*.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***approved form*** means the form approved by the president under section 62A.

***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; or
- (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.

***proceeding***, in relation to the tribunal, includes a proceeding—

- (a) on an application to the tribunal for review of a decision; and
- (b) on an application to the tribunal under section 26 (4); and
- (c) on an application to the tribunal for review of a decision by the registrar; and
- (d) on any other application to the tribunal under this or any other Act; and
- (e) on a request under section 20A (1); and
- (f) by way of a directions hearing under section 32 (2); and
- (g) by way of a hearing to determine a question relating to the tribunal's jurisdiction; and
- (h) in respect of any matter referred to the tribunal for inquiry or review under this Act or another Act; and
- (j) on an incidental application to the tribunal made in the course of, or in connection with, an application or proposed application, or a matter, referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h).

***registrar*** means the Registrar of the tribunal.

***senior member*** means a senior member of the tribunal.

*tribunal* means the Administrative Appeals Tribunal established by this Act, 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 Act applies as if that board, committee or other body were a person empowered to make those decisions.
- (3) A reference in this Act to a decision includes a reference to—
  - (a) making, suspending, revoking or refusing to make an order or determination; or
  - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or
  - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or
  - (d) imposing a condition or restriction; or
  - (e) making a declaration, demand or requirement; or
  - (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 Act to be given to the person may be sent to that address.
- (5) For this Act, a document or statement is to be taken to be furnished to, or a notice or other notification is to be taken to be served on or given to, a natural person whose present or any previous place of residence or business is unknown if it is furnished, served or given in accordance with a direction of the tribunal.

## **Part 2**

# **Establishment of administrative appeals tribunal**

### **4 Establishment of tribunal**

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

### **5 Appointment of members of tribunal**

- (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.

### **6 Qualifications for appointment**

- (1) A person shall not be appointed under section 5 (1) as the president unless he or she:
  - (a) is a judge; or
  - (b) is a legal practitioner and has been for not less than 5 years.
- (2) A person shall not be appointed under section 5 (1) as a deputy president unless he or she is a legal practitioner and has been for not less than 5 years.

- (3) A person shall not be appointed under section 5 (1) as a senior member unless he or she—
- (a) is a legal practitioner and has been 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 section 5 (1) as a non-presidential member (other than a senior member) unless he or she—
- (a) is a legal practitioner; or
  - (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; or
  - (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.

## **7 Term of appointment**

- (1) Subject to this part (other than section (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 section (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 reappointment.
- (6) Subject to this part, a member holds office on such terms and conditions as are prescribed.

#### **7A Extension of term of office**

- (1) Before the expiry of the term of office of a member, the Executive may, by instrument, extend the term for a specified period.
- (2) Before the expiry of a term of office of a member which has been extended under subsection (1) or this subsection, the Executive may, by instrument, further extend the term for a specified period.
- (3) This section does not authorise the Executive to extend or to extend further the term of office of a member who could not be appointed for that term under section 7.

#### **9 Acting appointments**

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

**10 Delegation**

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

**11 Oath or affirmation of office**

A person who is appointed or reappointed as a member shall, before proceeding to discharge the duties of his or her office, take or make before a judge—

- (a) an oath or affirmation in accordance with schedule 1, part 1.1;  
or
- (b) an oath or affirmation in accordance with schedule 1, part 1.2.

**12 Outside employment**

- (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* (Cwlth).
- (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* (Cwlth) 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).

**13 Leave of absence**

- (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*

(Cwlth), the member shall be taken to have been granted leave of absence for the same period under subsection (1).

#### **14 Retirement**

The Executive may, with the consent of a member who is—

- (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);  
or
- (b) a member of the superannuation scheme for the *Superannuation Act 1990* (Cwlth);

retire the member from office on the ground of invalidity.

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

- (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.

## **16 Resignation**

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

## Part 3 Organisation of tribunal

### 17 Divisions

- (1) The tribunal shall have—
  - (a) a General Division; and
  - (b) a Land and Planning Division; and
  - (c) such other divisions as are created by the regulations.
- (2) 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.
- (4) Unless the contrary intention appears, the provisions of this Act apply to each division of the tribunal.

### 18 Arrangement of business

- (1) Subject to this Act, the president is responsible for ensuring the orderly and expeditious discharge of the business of the tribunal.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) Without limiting the operation of subsection (1), the president may give directions as to any of the following:
  - (a) the arrangement of the business of the tribunal;
  - (b) the persons who are to constitute the tribunal for the purposes of a particular proceeding;
  - (c) the procedure of the tribunal generally.

- (3) 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.
- (4) 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.

## **19 Conduct of proceedings**

- (1) A proceeding arising from the *Land (Planning and Environment) Act 1991* shall be conducted in the Land and Planning Division of the tribunal.
- (2) Any other proceeding shall be conducted in the General Division of the tribunal or such other division (if any) as is prescribed.

**19A Exercise of powers of tribunal**

- (1) The tribunal's powers may be exercised in relation to a proceeding—
  - (a) if no direction has been given under section 18 as to the members who are to constitute the tribunal for the proceeding—by the president or a member authorised by the president for this paragraph; or
  - (b) if a direction has been given under section 18 as to the members who are to constitute the tribunal for the proceeding but the hearing has not commenced—
    - (i) if the direction requires the tribunal to be constituted by 1 member only—by the president or that member; or
    - (ii) in any other case—by the president or the member who is to preside at the hearing; or
  - (c) in relation to the giving of directions as to the procedure to be followed at a hearing (whether during a directions hearing under section 32 (2) or otherwise) or to the exercise of power under section 28 (2), 30, 32 (2), 34 (3), 37 (2), (8) or (9), 38, 40 (6), 41, 44A or 59—by the member presiding at the hearing of the proceeding, the tribunal or the president; or
  - (d) in any other case—by the member or members who constitute the tribunal for the purposes of the proceeding.
- (2) Nothing in subsection (1) affects the operation of section 36 (3).

**20 Reconstitution of tribunal in certain cases**

- (1) The president may, of his or her own motion or on application in accordance with subsection (2), give a direction varying the constitution of the tribunal for the purposes of a proceeding in such manner as the president sees fit if the president considers it appropriate to do so having regard to the public importance of the

matters to which the proceeding relates or their complex factual or legal nature.

- (2) At any time during the hearing of a proceeding before the tribunal, 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.
- (3) If an application under subsection (2) 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.
- (4) Where the president is given particulars of submissions under subsection (3), the president shall consider those submissions before giving, or refusing to give, a direction under subsection (1).
- (5) Where a direction is given under subsection (1), 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.
- (6) 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.
- (7) Where, under subsection (5), a proceeding is continued by the tribunal as reconstituted in accordance with a direction given under subsection (1), 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.

- (8) Where, under subsection (5), 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.

## **20A Questions of law**

- (1) The tribunal may, of its own motion or on application by a party, request the president to reconstitute the tribunal to give a ruling on a question of law or on a question that, in the opinion of the requesting tribunal, is a question of law.
- (2) Where the tribunal reconstituted in accordance with a request under subsection (1) gives a ruling on a question of law (including the question whether a particular question is a question of law), the requesting tribunal is bound by the ruling.
- (3) The question of whether a particular question is one of law shall be decided in accordance with the opinion of the tribunal reconstituted in accordance with a request under subsection (1).
- (4) A tribunal reconstituted in accordance with a request under subsection (1) shall be constituted by 1 or more of the following:
- (a) the president;
  - (b) the deputy president;
  - (c) a senior member who is a legal practitioner and has been for not less than 5 years.
- (5) Nothing in this section limits the president's power to reconstitute the tribunal under section 20.

**21 Member presiding**

- (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; or
  - (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; or
    - (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 section 18 (3) or 20 varying the constitution of the tribunal for the purposes of a proceeding or if section 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.

**22 Member of tribunal ceasing to be available**

- (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.

### **23 Places of sitting**

Sittings of the tribunal shall be held from time to time as required at such places as the president determines.



## Part 4                      **Reviews by tribunal of decisions**

### **24    Tribunal may review certain decisions**

- (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; and
  - (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; or
  - (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) In a proceeding in relation to a decision of the Minister or Executive under the *Land (Planning and Environment) Act 1991*, the tribunal may review any decision of a concurring authority within the meaning of that Act.
- (6) 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.
- (7) 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, 19A, 20, 21, 25, 27, 28, 31, 32, 34, 41 (1) and 44 (1) and (3) in relation to such applications, and those provisions have effect subject to any provisions so included.
- (8) 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.
- (9) Where—
- (a) a person has made a decision in respect of which an application may be made to the tribunal; and

- (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 Act 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.

## 25 Persons who may apply to tribunal

- (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.

***person*** includes an unincorporated association.

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

## **25A Notice of decision and review rights**

- (1) A person who makes a reviewable decision shall take such steps as are reasonable in the circumstances to give to any person whose interests are affected by the decision notice in writing—
  - (a) of the making of the decision; and
  - (b) of the right of the lastmentioned person to have the decision reviewed.
- (2) Subsection (1) does not apply—
  - (a) to a decision that is deemed to be made because of the operation of section 24 (6); or
  - (b) where the decision does not adversely affect the interests of any other person—to a decision not to impose a liability, penalty or any kind of limitation on a person.
- (3) In taking action under subsection (1) a person shall comply with the requirements of the code of practice in force under section 25B (1).
- (4) A failure to comply with this section does not affect the validity of a reviewable decision.
- (5) In this section:

***reviewable decision*** means—

  - (a) a decision that is reviewable by the tribunal; or
  - (b) a decision that is reviewable by—
    - (i) a person whose decision on review is reviewable by the tribunal; or
    - (ii) a person whose decision on review, because of subparagraph (i), is a reviewable decision.

**25B Code of practice**

- (1) The Minister may, in writing, determine a code of practice to facilitate the operation of section 25A (1).
- (2) The code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

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

- (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 (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 firstmentioned 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 in the approved form, 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 subsection (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; or
- (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) sections 35 (4) to (7) and 36 (1) to (6) apply in relation to any statement referred to in section 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 section 35 (1) or (2) in relation to any such matter that is contained in the lastmentioned 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 in the approved form 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;  
or



(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.

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

- (1) An application to the tribunal for a review of a decision—
  - (a) shall be in writing; and
  - (b) may be made in accordance with the approved form; and
  - (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 section 24 (6)—shall be lodged with the tribunal within the prescribed time.
- (2) If, in an application, a person does not furnish an address at which documents in relation to the proceedings may be served, any address of the person shown in the application, or later notified to the tribunal as an address for service, shall be taken to be an address furnished by the person at which such documents may be served.
- (3) Subject to subsection (4), the prescribed time for the purposes of subsection (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 section 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; or
  - (ii) if the applicant, in accordance with section 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 section 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.
- (4) In the case of a decision that is taken to be made under section 24 (6), the prescribed time for subsection (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 section 24 (6) 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 subsection (3) (b) if subsection (3) applied to the decision.
- (5) 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 (7)—
  - (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.
- (6) In forming an opinion for subsection (5), the tribunal shall have regard to—
  - (a) the time when the applicant became aware of the making of the decision; and
  - (b) if subsection (5) (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.

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- (7) Notwithstanding subsection (5), 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.
- (8) 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.
- (9) An application under subsection (8) may be in accordance with the approved form.
- (10) The time for making an application to the tribunal for a review of a decision may be extended under subsection (8) although that time has expired.
- (11) 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.
- (12) If a person on whom a notice is served under subsection (11) gives notice to the tribunal within 14 days after service, or such further time as the tribunal allows, stating that he or she wishes to oppose the application, the tribunal shall not determine the application unless the applicant and any person who gave that notice are given a reasonable opportunity of presenting their cases.
- (13) A notice under subsection (12)—
  - (a) shall be in writing; and
  - (b) may be in accordance with the approved form.
- (14) The registrar shall cause notice in writing of an application for a review of a decision, in accordance with the approved form, to be given to the person who made the decision.

**28 Parties to proceeding before tribunal**

- (1) Subject to section 43 (3) (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; and
  - (b) the person who made the decision; and
  - (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), (3) or (4).
- (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 in writing 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) Where—
  - (a) a person applies for the review of a decision referred to in the *Land (Planning and Environment) Act 1991*, section 275 (1) or (2); or
  - (b) a person applies for the review of a decision referred to in section 276 of that Act;a person to whom notice of the application has been given under section 278 or 279 of that Act may apply in writing to the tribunal to be made a party to the proceedings and, on such an application being made, the tribunal shall, by order, make the person a party to the proceedings.
- (4) Where, in a proceeding in relation to a decision under the *Land (Planning and Environment) Act 1991*, a decision of a concurring authority within the meaning of that Act is substantially at issue in

the proceeding, the authority may apply in writing to the tribunal to be made a party to the proceedings and, on such an application being made, the tribunal shall, by order, make the authority a party to the proceedings.

- (5) An application under subsection (2), (3) or (4) may be in accordance with the relevant approved form.
- (6) 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 section 24 (9);shall be described in the proceeding by his or her official name.
- (7) In this section:  
*person* includes an unincorporated association.

## **29 Intervention by Minister**

- (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.

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

Where it is necessary for this Act 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.

**31 Representation before tribunal**

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.

**32 Procedure of tribunal**

- (1) In a proceeding before the tribunal—
  - (a) the procedure of the tribunal is, subject to this Act and to any other enactment, within the discretion of the tribunal; and
  - (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act 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) The tribunal may hold a directions hearing in relation to a proceeding.
- (3) Without limiting the operation of this section, a direction as to the procedure to be followed at or in connection with the hearing of a proceeding before the tribunal may—
  - (a) require any person who is a party to the proceeding to provide further information in relation to the proceeding; or
  - (b) require the person who made the decision to provide a statement of the grounds on which the application will be resisted at the hearing; or
  - (c) require any person who is a party to the proceeding to provide a statement of the matters or contentions on which reliance is intended to be placed at the hearing; or
  - (d) require the person who made the decision to lodge—

- (i) specified documents; or
- (ii) any document within a specified period; or
- (iii) a specified number of copies of any document;

and provide that, until any further direction to the contrary is given, compliance with section 37 is not required.

- (4) 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 a direction given in accordance with subsection (2).
- (5) 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 or class of proceeding.
- (6) The president may at any time vary or revoke an authorisation under this section.

### **33 Conferences**

- (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, 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) The president may also direct that such a conference is to be held in the case of applications made to the tribunal for a review of a decision of a kind specified in the direction.
- (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 this section.



- (4) If—
- (a) a conference held under this section 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.

### **33A Mediation**

- (1) Where an application is made to the tribunal for a review of a decision, the president may, if he or she thinks it is desirable to do so and the parties consent, direct that the proceeding or any part of it, or any matter arising out of the proceeding, be referred to a mediator for mediation.
- (2) A direction may be given under subsection (1) whether or not a conference under section 33 has been held in relation to the proceeding.
- (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 mediation held under subsection (1).
- (4) A person who mediates in respect of a proceeding may not be a member of the tribunal as constituted for the purposes of the proceeding other than for the purpose of the tribunal making a decision in accordance with section 43B (2) or (3) or dismissing the application under section 43 (1) or (3).

**33B Decisions on material lodged**

Where—

- (a) the tribunal is satisfied that a proceeding may be determined on the material that has been lodged with the tribunal without hearing the parties; and
- (b) the parties consent to the proceeding being so determined;

the tribunal may determine the proceeding without holding a hearing.

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

- (1) Subject to this section, the hearing of a proceeding before the tribunal shall be in public.

- (2) Where—

- (a) a hearing is required by this section to be in public; and
- (b) a person participates in the hearing by a means allowed under section 34A;

the tribunal shall take such steps as are necessary and reasonable to ensure the public nature of the hearing is preserved.

- (3) 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; and
- (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.
- (4) 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.

#### **34A Participation by telephone etc**

A person presiding over a conference or conducting a mediation, or the tribunal hearing a proceeding, may allow a person to participate or give evidence by telephone, closed-circuit television or other means of communication.

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

- (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 (4) to (10) 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; or
- (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 (4) to (10) have effect.

- (3) If the Attorney-General of a State or another Territory 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 Cabinet or Executive, or of a committee of the Cabinet or Executive, of the State or Territory; 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 State or Territory in a judicial proceeding that the information or the matter contained in the document should not be disclosed;

subsections (4) to (10) have effect.

- (4) A person who is required by or under this Act 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 (5) 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.
- (5) Where a certificate is given under subsection (1), (2) or (3) 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 subsection (1) (a), (2) (a) or (b) or (3) (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.

- (6) Where, in relation to a proceeding to which the relevant official would not, but for this subsection, be a party, the relevant official certifies in accordance with subsection (1), (2) or (3), 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 subsection (1) (a), (2) (a) or (b) or (3) (a) or (b), the relevant official, as the case may be, shall, for this Act, be taken to be a party to the proceeding.

- (7) In considering whether information or matter contained in a document should be disclosed as mentioned in subsection (5), 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.
- (8) Where, at the hearing of a proceeding before the tribunal, a person is asked a question in the course of giving evidence, the relevant official 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), (2) or (3), as the case may be.
- (9) Where the relevant official 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 subsection (1) (a), (2) (a) or (b) or (3) (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.

(10) Where the relevant official 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 relevant official, as the case may be, would not, but for this subsection, be a party, the relevant official, as the case may be, shall, for this Act, be taken to be a party to the proceeding.

(11) In this section:

*relevant official* means the Minister, the Commonwealth Attorney-General or the Attorney-General of a State or another Territory.

### **36 Public interest questions under s 35**

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

- (a) under section 35 (5) in relation to information, or matter contained in a document, in relation to a proceeding; or
- (b) under section 35 (9) (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 this Act—

- (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 section 35 (5) or (9) (b) shall be exercised by the tribunal constituted by a presidential member and such other members (if any) as the president directs.

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- (4) A decision by the tribunal—
- (a) under section 35 (5) 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 section 35 (9) (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 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 legal practitioner 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.

**37 Lodging material documents**

- (1) A person who has made a decision that is the subject of an application for a review by the tribunal shall, within the defined period after receiving notice of the application, lodge with the tribunal 2 copies 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) The tribunal may, on application by a party to a proceeding or of its own motion, make an order directing that copies of the relevant documents referred to in subsection (1) be lodged with the tribunal within a specified shorter period after the person who made the decision receives or received notice of the application if, in the opinion of the tribunal—
- (a) a party to the proceeding would suffer hardship or be otherwise prejudiced if the defined period were not shortened; or
  - (b) it is in the public interest that the proceeding be expedited.
- (3) A request under subsection (2) shall be in writing in accordance with the approved form unless the tribunal or a presidential member directs or allows otherwise.
- (4) Nothing in subsection (2) affects the operation of section 32 (3) (d).
- (5) 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 defined period after the person who made the decision receives notice of the application for a review is a reference to the defined period 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.
- (6) The tribunal may, on application in accordance with the approved form by a party to a proceeding before the tribunal for a review of a

decision, direct that subsection (5) has effect in relation to an application for a review of the decision as if the last reference in that subsection to the defined period were a reference to such shorter period as the tribunal determines.

- (7) Subsection (5) does not apply to an application for a review of a decision if the decision is the subject of another application to which subsection (5) does not apply.
- (8) 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, 2 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.
- (9) The tribunal may direct a person to lodge, within a specified time, a specified number of copies of a document in addition to those required under subsection (1) or (8).
- (10) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.
- (11) In this section:
- defined period*, in relation to a proceeding, means—
- (a) where the proceeding arises under the *Land (Planning and Environment) Act 1991*—14 days; or
- (b) in any other case—28 days.

### **38 Power of tribunal to obtain additional statements**

Where the tribunal considers that a statement referred to in section 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.

### **39 Opportunity to make submissions**

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 a 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.

### **40 Powers of tribunal**

- (1) For the purpose of reviewing a decision, the tribunal may—
  - (a) take evidence on oath or affirmation; and
  - (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 shall, if directed to do so by the president or by the member of the tribunal who is to preside or presides at the hearing, summon a person to appear before the tribunal at that hearing or on another date specified in the summons—
  - (a) to give evidence; or
  - (b) to give evidence and produce any document or thing in the possession, custody or control of the person that is mentioned in the summons; or

- (c) to produce any document or thing in the possession, custody or control of the person that is mentioned in the summons.
- (3) A summons under subsection (2) shall be in accordance with the approved form.
- (4) The tribunal may give a party to a proceeding leave, subject to any specified condition, to—
  - (a) inspect a document or thing produced under a summons; and
  - (b) make copies of such a document for the purpose of the proceeding.
- (5) A person shall be taken to have complied with a summons under subsection (2) (c) if the person delivers the document or thing to the registrar before the date specified in the summons.
- (6) The tribunal may set aside a summons issued under subsection (2).
- (7) 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; and
  - (c) may, if a person participates by a means allowed under section 34A, make such arrangements as appear to the member to be appropriate in the circumstances in relation to administering an oath or affirmation to the person.
- (8) The oath or affirmation to be taken or made by a person for this section is an oath or affirmation that the answers the person will give to questions asked will be true.
- (9) A person summoned to appear before the tribunal may request to be represented by a legal practitioner or other person and, upon such a

request being made, the tribunal may allow the person to be so represented.

- (10) The power of the tribunal under subsection (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 firstmentioned 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.
- (11) 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 (10)—
- (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 (7) 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 Act 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.

#### **41 Operation and implementation of decision subject to review**

- (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 may, on application by a party to a proceeding before the tribunal (the *current proceeding*), if the tribunal 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 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 may, on application by a party to the current proceeding, make an order varying or revoking the firstmentioned order.
- (4) A request under subsection (2) or (3) shall be in writing in accordance with the approved form unless the tribunal or a presidential member directs otherwise.
- (5) The registrar shall, on receiving a request under subsection (2) or (3), cause notice of the request to be given to the other parties to the proceeding.
- (6) Notice under subsection (5) shall be given—
  - (a) if the request under subsection (2) or (3) is lodged in writing with the registrar—by causing a copy of the request to be given to the other parties to the proceeding; or
  - (b) in any other case—in such other manner as the tribunal or a presidential member directs.
- (7) Subject to subsection (8), the tribunal 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, 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; and
  - (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 lastmentioned order;
- have been given a reasonable opportunity to make submissions to the tribunal, as the case may be, in relation to the matter.
- (8) Subsection (7) does not prohibit the tribunal from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the tribunal 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 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.
- (9) 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, subject to subsection (10), 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.

- (10) An order in force under subsection (2) (including an order that has been varied under subsection (3)) ceases to have effect if the application for review is dismissed under section 43 (3).

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

- (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.

#### **43 Power to dismiss application or strike out party**

- (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 person who made an application for the review of a decision notifies the tribunal in writing that the person wishes to discontinue the application or to have the application dismissed, the tribunal may dismiss the application for review without proceeding to review the decision.
- (3) 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 conference under section 33, or a mediation



under section 33A, held in relation to the application, 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.
- (4) For subsection (3), a person shall be taken to appear in person or by a representative if the person or the person's representative (as the case may be) participates in the conference, mediation or hearing by a means allowed under section 34A.
- (5) If—
- (a) a person makes an application to the tribunal for a review of a decision; and
  - (b) it appears to the tribunal that the decision is not reviewable by the tribunal;
- the tribunal may dismiss the application without proceeding to review the decision.
- (6) If an applicant for a review of a decision fails within a reasonable time—
- (a) to proceed with the application; or
  - (b) to comply with a direction by the tribunal in relation to the application;
- the tribunal may dismiss the application without proceeding to review the decision.
- (7) The tribunal may direct that a person shall cease to be a party to a proceeding if the person fails to comply with a direction of the tribunal within the time specified by the tribunal or, if no time is specified, within a reasonable time, unless—

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- (a) the person is the person who made the decision being reviewed; or
  - (b) the only other party to the proceeding is the person who made the decision.
- (8) If, under this Act, the tribunal dismisses an application, the proceeding to which the application relates shall be taken to be concluded unless it is reinstated under subsection (11) or (12).
- (9) The tribunal shall not exercise a power under subsection (3) unless satisfied that appropriate notice was given to the person who failed to appear of the time and place of the conference, mediation or hearing, as the case may be.
- (10) If the tribunal dismisses an application, the person who made the application may, within 28 days after receiving notification that the application has been dismissed, apply to the tribunal for reinstatement of the application.
- (11) If it considers it appropriate to do so, the tribunal may reinstate the application so dismissed and give such directions as appears to it to be appropriate in the circumstances.
- (12) If it appears to the tribunal that an application has been dismissed in error, the tribunal may, on the application of a party to the proceeding or of its own motion, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

**43A Power of tribunal where proceeding frivolous or vexatious**

- (1) Where an application is made to the tribunal for the review of a decision, the tribunal may, at any stage of the proceeding, if satisfied that the application is frivolous or vexatious—
- (a) dismiss the application; and

- (b) if the tribunal considers it appropriate—on the application of a party to the proceeding, direct that the person who made the application shall not, without leave of the tribunal, make a subsequent application to the tribunal of any kind specified in the direction.
- (2) A direction given under subsection (1) (b) has effect despite any other provision of this Act or a provision of any other Act.
- (3) The tribunal may revoke or vary a direction given under subsection (1) (b).

#### **43B Power of tribunal if parties reach agreement**

- (1) If, at any stage of a proceeding for a review of a decision—
  - (a) agreement is reached between the parties or their representatives as to the terms of a decision of the tribunal in the proceeding, or in relation to a part of the proceeding or a matter arising out of the proceeding, that would be acceptable to the parties; and
  - (b) the terms of the agreement are reduced to 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 or consistent with those terms would be within the powers of the tribunal;

the tribunal may, if it appears to it to be appropriate to do so, act in accordance with subsection (2) or (3), as the case requires.

- (2) If the agreement is as to the terms of a decision of the tribunal in the proceeding, the tribunal may make a decision in accordance with those terms without holding a hearing of the proceeding or, if a hearing has commenced, without completing the hearing.
- (3) If the agreement relates to a part of the proceeding or a matter arising out of the proceeding, the tribunal may in its decision in the proceeding give effect to the terms of the agreement without, if it

has not already done so, dealing at the hearing of the proceeding with that part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.

#### **44 Review by tribunal**

- (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; or
  - (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) Where the tribunal is constituted from the Land and Planning Division, it shall endeavour to give its decision within 14 days after the completion of the hearing of a proceeding.
- (3) Subject to this section and to sections 34 and 35, the tribunal shall give reasons either orally or in writing for its decision.
- (4) 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.
- (5) 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.

- (6) The tribunal shall cause a copy of its decision to be given to each party to the proceeding.
- (7) 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 to be a true copy of the decision or order, is, in any proceeding, prima facie evidence of the decision or order.
- (8) Subsections (6) and (7) apply to reasons given in writing by the tribunal for its decision in the same manner as they apply to the decision.
- (9) Subject to subsection (10), a decision of the tribunal comes into operation upon the giving of the decision.
- (10) 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.
- (11) 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.

#### **44A Correction of errors**

The tribunal may correct an error in an order or decision of the tribunal that arises from a clerical mistake or an accidental slip or omission.

**45 Return of documents or things at completion of proceeding**

- (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 thing 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 thing sent to that court in accordance with section 49 (1) (a) in connection with a proceeding before that court to be returned to the tribunal, the president may cause the document or thing to be returned to the person by whom it was furnished to the tribunal.

**46 Appeals to Supreme Court from decisions of tribunal**

- (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 *Supreme Court Act 1933*.
- (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; or
  - (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.
- (6) If, on appeal, an order is made remitting a case to be heard and decided again by the tribunal, the tribunal need not be constituted for the hearing by the person or persons who made the decision to which the appeal relates.

#### **47 Operation and implementation of decision subject to appeal**

- (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 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 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 may make an order varying or revoking the firstmentioned 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.

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

- (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.

#### **49 Sending of documents or things to, and disclosure of documents by, Supreme Court**

- (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 section 35 (4), cause to be sent to the court any document or thing that was 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 document or thing to be returned to the tribunal.
- (2) If there is in force in respect of a document a certificate in accordance with section 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 section 26 (7) (a) or (8) (a) or (b) or section 35 (1) (a) or (2) (a) or (b), as the case may be; and
- (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 5                      Miscellaneous

### 50      **Advisory opinions**

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.

### 51      **Protection of members, mediators, legal practitioners and witnesses**

- (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 mediator has, in the performance of his or her duties as a mediator under this Act, the same protection and immunity as a judge of the Supreme Court.
- (3) A legal practitioner 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.
- (4) 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.

### 51A    **Service of summons on witness**

- (1) A summons shall be served on a witness—
  - (a) personally; or
  - (b) by sending it to the witness's last-known place of residence or employment by a form of post that requires a signature on receipt; or

- (c) by leaving it with a responsible adult at the witness's last known place of residence or employment.
- (2) The summons shall be accompanied by—
  - (a) an undertaking to appear for the signature of the person and return to the tribunal by the date specified in the undertaking; and
  - (b) a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (3) Service of a summons on a witness may be proved by the oath of the person who served it or by affidavit.

### **51B Witnesses entitled to claim expenses**

- (1) Any notice (however described and whether written or oral) requiring a person to appear as a witness at a hearing shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (2) A person is not entitled to refuse to comply with such a notice because it was not accompanied by that form.

### **52 Failure to comply with summons**

- (1) A person served 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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person served with a summons under this Act to produce a document or thing shall not, without reasonable excuse, fail to comply with the summons.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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

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; or
- (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 or thing that the person was required to produce by a summons.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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

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

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### **55 Contempt of tribunal**

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; or

- (c) do any other act or thing that would, if the tribunal were a court of record, constitute a contempt of that court.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **56 Registry**

The Minister shall cause a registry of the tribunal to be established.

### **56A Seal of tribunal**

- (1) The seal of the tribunal shall be of a design approved by the president and shall include the letters and words “ACT Administrative Appeals Tribunal”.
- (2) The seal of the tribunal shall be kept in such custody as the president directs.
- (3) The registrar, or a person authorised by the tribunal or president, shall seal or stamp with the seal of the tribunal any judgment, order, notice, warrant, writ, summons, certificate or process, or any copy of any of those documents, made, given or issued by the tribunal or the registrar.

## **57 Registrar and deputy registrar**

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, by signed writing, delegate to a public servant all or any of his or her powers under this Act.

**58 Confidential information not to be disclosed**

- (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 section 34 (3) or under a similar provision of an enactment other than this Act; or
  - (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 section 35 (1) or (2), as the case may be, and, where the certificate does not specify a reason referred to in section 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 section 34 (3) or under a similar provision of an enactment other than this Act; or
  - (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 section 35 (1) or (2), as the case may be, and, where the certificate does not specify a reason referred to in section 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.

## **59 Witness fees and travelling expenses**

- (1) A person who attends for the purpose of giving evidence before the tribunal pursuant to a summons is entitled to receive such fees and travelling expenses as the tribunal directs in accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.
- (2) Fees and travelling expenses under subsection (1) are payable—
- (a) if the summons was issued at the request of a party—in accordance with the direction of the tribunal; or
- (b) if the summons was not issued at the request of a party—by the Territory.
- (3) The directions the tribunal may make under subsection (2) (a) include a direction that the Territory pay all or part of the relevant fees and travelling allowance.



**60 Giving of notices**

- (1) A notice that is required or permitted by this Act to be served on or given to the person who made a decision may be served on or given to the chief executive or a person nominated in writing by the chief executive.
- (2) The chief executive shall give a copy of each nomination made under subsection (1) to the registrar.

**61 Lodging of documents**

- (1) Where a document is required by this Act to be lodged with the tribunal, the document shall be lodged at the registry.
- (2) A document may be lodged under subsection (1) by electronic transfer, subject to any requirement approved by the president.
- (3) A requirement approved under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) The registrar shall acknowledge in writing the receipt of an application under section 26 (6), 27 (1) or (7), 28 (2), 37 (2) or 41 (2) or (3) that is lodged in writing.

**61A Retaining documents**

- (1) The tribunal shall retain the documents relating to a proceeding for a period of not less than 7 years commencing on the date on which the latest document relating to the proceeding was signed.
- (2) The tribunal shall not dispose of an order, direction or decision of the tribunal.

**62 Legal assistance**

- (1) A person who—
- (a) has made, or proposes to make, an application to the tribunal for a review of a decision; or
  - (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 Act;

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.

**62A Approved forms**

- (1) The president may, in writing, approve forms for this Act.
- (2) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**63 Delegation**

The Minister may, by signed instrument, delegate to a person all or any of his or her powers under this Act, other than powers under section 26 (7) or 35 (1) or (8).

**64 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Schedule 1 Oaths and affirmations of office

(see s 11)

### Part 1.1

#### Oath

I, [name], 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 well and 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.

#### Affirmation

I, [name], do solemnly and sincerely affirm 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 well and 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.

### Part 1.2

#### Oath

I, [name], do swear that I will well and truly serve 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.

**Affirmation**

I, [name], do solemnly and sincerely affirm that I will well and truly serve 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.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

|   |   |
|---|---|
| am = amended  | ord = ordinance   |
| amdt = amendment                                    | orig = original   |
| ch = chapter  | p = page  |
| cl = clause   | par = paragraph   |
| def = definition                                    | pres = present  |
| dict = dictionary                                   | prev = previous   |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously  |
| div = division                                      | prov = provision  |
| exp = expires/expired                               | pt = part   |
| Gaz = Gazette                                       | r = rule/subrule  |
| hdg = heading                                       | reg = regulation/subregulation                                    |
| IA = Interpretation Act 1967                        | renum = renumbered  |
| ins = inserted/added                                | reloc = relocated   |
| LA = Legislation Act 2001                           | R[X] = Republication No   |
| LR = legislation register                           | RI = reissue  |
| LRA = Legislation (Republication) Act 1996          | s = section/subsection  |
| mod = modified / modification                       | sch = schedule  |
| No = number   | sdiv = subdivision  |
| num = numbered                                      | sub = substituted   |
| o = order   | SL = Subordinate Law  |
| om = omitted/repealed                               | <u>underlining</u> = whole or part not commenced or to be expired |

### 3 Legislation history

**Administrative Appeals Tribunal Act 1989 No 51**

notified 10 May 1989 (Gaz 1989 No S160)

commenced 11 May 1989 (s 2 and see Cwlth Gaz 1989 No S164)

as amended by

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

**Land (Planning and Environment) (Consequential Provisions) Act 1991 No 118 pt 2, div 1**

notified 15 January 1992 (Gaz 1991 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

pt 2, div 1 commenced 2 April 1992 (s 2 (2)) and Gaz 1992 No 13)

**Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)

commenced 17 December 1993 (s 2)

**Administrative Appeals Tribunal (Amendment) Act 1994 No 8**

notified 14 March 1994 (Gaz 1993 No S44)

commenced 14 March 1994 (s 2)

**Judicial Commissions (Consequential Amendments) Act 1994 No 10 s 3**

notified 14 March 1994 (Gaz 1994 No S44)

commenced 14 March 1994 (s 2)

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1, pt 2**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1, pt 2 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

## Endnotes

3 Legislation history

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**Administrative Appeals Tribunal (Amendment) Act (No 2) 1994 No 58**

notified 11 October 1994 (Gaz 1994 No S197)  
s 9, s 28 commenced 14 November 1994 (s 2 (2)) and Gaz 1994  
No S250)  
remainder commenced 11 October 1994 (s 2 (1))

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch, pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch, pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No  
S293)

**Administrative Appeals Tribunal (Amendment) Act 1996 No 70**

notified 20 December 1996 (Gaz 1996 No S328)  
ss 1-3 commenced 20 December 1996 (s 2 (1))  
remainder commenced 1 January 1997 (s 2 (2) and Gaz 1996 No  
S352)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41  
sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49  
amdt 3.222)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999  
No 22 pt 2**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 2 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)



**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 No 1 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
s 1, s 2 and s 3 (in pt) commenced 9 March 2000 (s 2 (1))  
amds commenced 9 September 2000 (s 2 (3))

**Administrative Appeals Tribunal Amendment Act 2001 No 5**

notified 8 March 2001 (Gaz 2001 No 10)  
commenced 8 March 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 5**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 5 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Supreme Court Amendment Act 2001 (No 2) 2001 No 54 sch 2 pt 2.1**

notified 15 August 2001 (Gaz 2001 No S57)  
s 1, s 2 commenced 15 August 2001 (IA s 10B)  
sch 2 pt 2.1 commenced 15 August 2001 (s 2)

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal  
(Consequential Amendments) Act 1997 No 41.

**4 Amendment history****Commencement**

s 2 om 2001 No 44 amdt 1.32

**Interpretation for Act**

s 3 am 1994 No 58 s 4; 1996 No 70 s 4  
def **approved form** ins 1996 No 70 s 4  
def **department** om 1994 No 38 sch 1 pt 2  
def **proceeding** ins 1996 No 70 s 4  
def **registrar** am 1996 No 70 s 4; 1999 No 66 s 6 sch 3  
def **tribunal** am 1996 No 70 s 4

## Endnotes

4 Amendment history

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### **Establishment of tribunal**

s 4 am 1996 No 70 s 5

### **Qualifications for appointment**

s 6 am 1997 No 96 sch 1

### **Term of appointment**

s 7 am 1994 No 58 s 5; R5 LA

### **Extension of term of office**

s 7A ins 1996 No 70 s 6

### **Remuneration and allowances**

s 8 om 1997 No 41 sch 1

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

s 11 am 1996 No 70 s 7  
sub 2001 No 5 s 4

### **Retirement**

s 14 sub 1994 No 10 s 3

### **Divisions**

s 17 am 1996 No 70 s 8

### **Arrangement of business**

s 18 am 1994 No 58 s 6; 2001 No 44 amdt 1.33, amdt 1.34; R5 LA

### **Conduct of proceedings**

s 19 am 1994 No 58 s 7  
sub 1996 No 70 s 9

### **Exercise of powers of tribunal**

s 19A ins 1996 No 70 s 9

### **Reconstitution of tribunal in certain cases**

s 20 am 1994 No 58 s 8; 1996 No 70 s 10; R5 LA

### **Questions of law**

s 20A ins 1996 No 70 s 11  
am 1997 No 96 sch 1

### **Tribunal may review certain decisions**

s 24 am 1991 No 118 s 5; 1996 No 70 s 12; R5 LA

### **Persons who may apply to tribunal**

s 25 am 1991 No 118 s 6

### **Notice of decisions and review rights**

s 25A ins 1994 No 58 s 9

### **Code of practice**

s 25B ins 1994 No 58 s 9  
sub 2001 No 44 amdt 1.35

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

s 26 am 1996 No 70 s 13

**Manner of applying for review**

s 27 am 1994 No 58 s 10; 1996 No 70 s 14; R5 LA

**Parties to proceeding before tribunal**

s 28 am 1991 No 118 s 7; 1996 No 70 s 15; R5 LA

**Procedure of tribunal**

s 32 am 1994 No 58 s 11; 1996 No 70 s 16; 2001 No 44 amdt 1.36;  
R5 LA

**Conferences**

s 33 am 1994 No 58 s 12

**Mediation**

s 33A ins 1994 No 58 s 13

**Decisions on material lodged**

s 33B ins 1994 No 58 s 13

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

s 34 am 1994 No 58 s 14; R5 LA

**Participation by telephone etc**

s 34A ins 1994 No 58 s 15  
am 1999 No 22 s 4

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

s 35 am 1996 No 70 s 17; R5 LA

**Public interest questions under s 35**

s 36 am 1996 No 70 s 18; 1997 No 96 sch 1

**Lodging material documents**

s 37 am 1994 No 58 s 16; 1996 No 70 s 19; R5 LA

**Opportunity to make submissions**

s 39 am 1991 No 118 s 8

**Powers of tribunal**

s 40 am 1994 No 58 s 17; 1996 No 70 s 20; 1997 No 96 sch 1; 2001  
No 44 amdt 1.37; R5 LA

**Operation and implementation of decision subject to review**

s 41 am 1994 No 58 s 18; 1996 No 70 s 21; R5 LA

**Power to dismiss application or strike out party**

s 43 am 1994 No 58 s 19; 1996 No 70 s 22; R5 LA

**Power of tribunal where proceeding frivolous or vexatious**

s 43A ins 1994 No 58 s 20

## Endnotes

4 Amendment history

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**Power of tribunal if parties reach agreement**

s 43B ins 1994 No 58 s 20

**Review by tribunal**

s 44 am 1996 No 70 s 23; R5 LA

**Correction of errors**

s 44A ins 1994 No 58 s 21

**Return of documents or things at completion of proceeding**

s 45 am 1996 No 70 s 24

**Appeals to Supreme Court from decisions of tribunal**

s 46 am 1993 No 91 sch 3; 1994 No 58 s 22; 2001 No 54 amdt 2.1

**Operation and implementation of decision subject to appeal**

s 47 am 1999 No 66 sch 3

**Sending of documents or things to, and disclosure of documents by, Supreme Court**

s 49 am 1996 No 70 s 25

**Protection of members, mediators, legal practitioners and witnesses**

s 51 hdg am 1997 No 96 notes

s 51 am 1994 No 58 s 23; 1997 No 96; R5 LA

**Service of summons on witness**

s 51A ins 1996 No 70 s 26

**Witnesses entitled to claim expenses**

s 51B ins 1996 No 70 s 26

**Failure to comply with summons**

s 52 am 1994 No 58 s 24; 1994 No 81 sch; 1996 No 70 s 27

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

s 53 am 1994 No 81 sch; 1996 No 70 s 28

**False or misleading evidence**

s 54 am 1994 No 81 sch

**Contempt of tribunal**

s 55 am 1994 No 58 s 25; 1994 No 81 sch

**Seal of tribunal**

s 56A ins 1996 No 70 s 29

**Registrar and deputy registrar**

s 57 am 1994 No 38 sch 1 pt 2

sub 1994 No 97 sch pt 1

am 1996 No 70 s 30

sub 1999 No 66 sch 3

**Witness fees and travelling expenses**

s 59 am 1994 No 8 s 4  
sub 1996 No 70 s 31

**Fees and charges—determination**

s 59A ins 1994 No 8 s 5  
am 1996 No 70 s 32  
om 2000 No 1 sch

**Fees and charges—payment**

s 59B ins 1994 No 8 s 5  
om 2000 No 1 sch

**Fees and charges—remission, refund, deferral, waiver, exemption**

s 59C ins 1994 No 8 s 5  
om 2000 No 1 sch

**Single application fee for multiple applications**

s 59D ins 1994 No 8 s 5  
om 2000 No 1 sch

**Fees and charges—review of decisions**

s 59E ins 1994 No 8 s 5  
am 1996 No 70 s 33  
om 2000 No 1 sch

**Giving of notices**

s 60 am 1994 No 38 sch 1 pt 2

**Lodging of documents**

s 61 am 1994 No 58 s 26; 1996 No 70 s 34; 2001 No 44 amdt 1.38

**Retaining documents**

s 61A ins 1996 No 70 s 35

**Approved forms**

s 62A ins 1996 No 70 s 36  
sub 2001 No 44 amdt 1.39  
(3)-(6) exp 12 September 2002 (s 62A (6))

**Regulation-making power**

s 64 am 1989 No 38 sch 1  
sub 2001 No 44 amdt 1.40

**Schedule**

sch hdg om 1996 No 70 s 37

**Oaths and affirmations of office**

sch 1 hdg ins 1996 No 70  
sch 1 am 1994 No 10 s 4  
sub 2001 No 5 s 5  
am R5 LA

## Endnotes

### 5 Earlier republications

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#### **ACT Administrative Appeals Tribunal Summons**

sch 2                    ins 1996 No 70 sch  
                              om 2001 No 44 amdt 1.41

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

| <b>Republication No</b> | <b>Amendments to</b> | <b>Republication date</b> |
|-------------------------|----------------------|---------------------------|
| 1                       | Act 1989 No 38       | 30 June 1991              |
| 2                       | Act 1994 No 97       | 31 January 1995           |
| 3                       | Act 1996 No 70       | 1 January 1997            |
| 4                       | Act 1997 No 96       | 31 January 1999           |
| 5                       | Act 2001 No 54       | 16 November 2001          |
| 6                       | Act 2001 No 54       | 24 October 2002           |

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