



Australian Capital Territory

# **Administrative Appeals Tribunal Act 1989**

**A1989-51**

**Republication No 21**

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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 7 May 2008. It also includes any amendment, repeal or expiry affecting the republished law to 7 May 2008.

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 includes 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.



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# 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 Name of Act

This Act is the *Administrative Appeals Tribunal Act 1989*.

### 1A Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*registered mediator*—see the *Mediation Act 1997*, dictionary.' means that the term 'registered mediator' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 2 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## **2A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **3 Decisions by unincorporated bodies**

If a board, committee or other unincorporated body constituted by 2 or more people is authorised by an enactment to make decisions, this Act applies as if the board, committee or other body were a person authorised to make the decisions.

## **Part 1A Objects and important concepts**

### **3A Main objects of Act**

The main objects of this Act are—

- (a) to establish an independent administrative appeals tribunal; and
- (b) to review decisions made by decision-makers under enactments if authorised by enactments; and
- (c) to ensure that the AAT is accessible; and
- (d) to ensure that proceedings in the AAT are efficient, effective and as informal as possible; and
- (e) to ensure decisions of the AAT are fair; and
- (f) to foster an atmosphere in which administrative review is viewed positively as a way of enhancing the delivery of services and programs; and
- (g) to encourage, and bring about, compliance by administrators with Territory laws.

### **3B Role and main object of land and planning division**

- (1) The land and planning division of the tribunal forms part of the planning and land system within the ACT.
- (2) The main object of the land and planning division of the tribunal is to contribute to the orderly and sustainable development of the ACT by making decisions that are consistent with the land and planning system and with the social, environmental and economic background of the ACT.

## 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.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (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 the person:
- (a) is a judge; or
  - (b) is a lawyer 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 the person is a lawyer 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 the person—
  - (a) is a lawyer 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 the person—
  - (a) is a lawyer; 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 relation to which decisions may be made in the exercise of powers given by an enactment, being decisions in relation to 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 the member 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)), if 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 the person 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 must not be appointed for more than 7 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

- (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 end of the term of office of a member, the Executive may, in writing, extend the term for a specified period.
- (2) Before the end of a term of office of a member that has been extended under subsection (1) or this subsection, the Executive may, in writing, 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—direction to continue acting**

- (1) This section applies if a person has been appointed as an acting member of the tribunal because another member (the *absent member*) is or is expected to be absent or unavailable.
- (2) The Executive may, because of a pending proceeding or other special circumstances, direct that the acting member must continue to act under the appointment after the absent member ceases to be absent or unavailable until the acting member resigns or the Executive ends the appointment.
- (3) However—
  - (a) a direction under subsection (2) must be given before the absent member ceased to be absent or unavailable; and
  - (b) an acting member must not continue to act for more than 12 months after the absent member ceases to be absent or unavailable.

**10 Delegation by president**

The president may delegate the president's functions under this Act to a member.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**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) If 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 the terms and conditions about remuneration or otherwise that the Minister decides.
- (2) If 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) If 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 exercise 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) If 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 given 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, in writing, assign particular non-presidential members to particular divisions.
- (3) If 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) The provisions of this Act (other than division 4.5) apply to each division of the tribunal.

*Note* Div 4.5 applies only to applications for review of decisions under the *Heritage Act 2004*, *Planning and Development Act 2007* and *Tree Protection Act 2005*.

### 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*, s 104).
- (2) Without limiting the operation of subsection (1), the president may give directions about 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) If the president gives a direction about 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 beginning of the hearing of the proceeding; or
  - (b) if, for 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 decided—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) about the persons who are to constitute the tribunal for the purposes of the proceeding.

- (4) In giving a direction about 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 to which division 4.5 (Land, planning and environment applications) applies must be conducted in the land and planning division.

- (2) Any other proceeding must be conducted in the general division or, if a regulation provides for the proceeding to be conducted in another division, the other division.

### **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 about 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 about the members who are to constitute the tribunal for the proceeding but the hearing has not begun—
    - (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 about 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, 39A, 40 (6), 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, on the president's own initiative or application in accordance with subsection (2), give a direction varying the constitution of the tribunal for the purposes of a proceeding in the way the president considers appropriate 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) If 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) If 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) If 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) If, 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) If, 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, on its own initiative or 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) If 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 lawyer 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) if 1 only of those non-presidential members is a senior member—that member shall preside; or
    - (ii) if 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) if 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) If the hearing of any proceeding has been begun or completed by the tribunal constituted by 2 or more members but before the matter to which the proceeding relates has been decided, 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) If 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 the places the president decides.

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

### **Division 4.1              Review, applications and parties**

#### **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 given by that enactment; or
  - (b) for the review of decisions made in the exercise of powers given, or that may be given, by another enactment having effect under that enactment.
- (2) If 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) If an enactment makes provision in accordance with this section for making applications to the tribunal for the review of decisions by a person made in the exercise of a power given to the person, the provision also applies to decisions made in the exercise of the power by anyone else who is lawfully authorised to exercise the power.
- (4) The tribunal has power to review any decision in relation to which application is made to it under any enactment.
- (5) For an enactment that makes provision in accordance with this section for the making of applications to the tribunal for review of

decisions, a failure by a person to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, as the period within which that person is required or permitted to do that act or thing shall be taken to be the making of a decision by that person at the end of that period not to do that act or thing.

- (6) If 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, 39A (1) and 44 (1) and (3) in relation to such applications, and those provisions have effect subject to any provisions so included.
- (7) The operation of a provision of section 20 shall not be taken to be excluded or modified by an enactment unless the enactment makes express provision for the exclusion or modification of the operation of that provision.
- (8) If—
- (a) a person has made a decision in relation to which an application may be made to the tribunal; and
  - (b) the person made the decision because of holding, or exercising the duties of, an office or appointment; and
  - (c) the person no longer holds that office or exercises those duties;
- this Act has effect as if the decision had been made by—
- (d) the person for the time being holding or exercising the duties of that office or appointment; or
  - (e) if there is no person for the time being holding or exercising the duties of that office or appointment or the office no longer exists—the person that the president, or another member authorised by the president, specifies.

## 25                      Persons who may apply to tribunal

- (1) If 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 or not incorporated, established by or under a law of the Commonwealth.

*person* includes an unincorporated association.

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

## 25A                     Notice of decision and review rights

- (1) A person who makes a reviewable decision shall take the steps that are reasonable in the circumstances to give to any person whose interests are affected by the decision written notice—
  - (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 (5); or
  - (b) if 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.

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

- (1) If—
- (a) a person makes a decision in relation to 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 written notice given to the person who made the decision, requests that person to give to the applicant a written 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;

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) If a person to whom such a request is made is of the opinion that the applicant is not entitled to be given the statement, the person shall, as soon as practicable but in any case within 28 days after receiving the request, give to the applicant a written notice 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) in relation 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) if 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 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, written notice 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 Territory in a judicial proceeding that the matter should not be disclosed;

subsections (8) and (9) have effect.

- (8) 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 relation to which a certificate has been given under subsection (7); and
  - (b) if the statement would be false or misleading if it did not include that matter—is not required to give the statement.
- (9) If a certificate is given under subsection (7) 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 last mentioned statement.
- (10) 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 written 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 has already been given to the applicant.
- (11) If the tribunal, on 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, if 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 in relation 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 (5)—shall be lodged with the tribunal within the prescribed time.

*Note*      A fee may be determined under the *Court Procedures Act 2004* for this provision.

- (2) If, in an application, a person does not give an address where 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 given by the person where such documents may be served.
- (3) Subject to subsection (4), the prescribed time for subsection (1) (d) is the period beginning on the day when 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 when 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 written statement 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 when a document setting out the terms of the decision is given to the applicant—the day when 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 when the statement is given or the applicant is notified in accordance with section 26 (9) that the statement will not be given; or

- (iii) in any other case—the day when a document setting out the terms of the decision is given to the applicant.
- (4) For a decision that is taken to be made under section 24 (5), the prescribed time for subsection (1) (d) is the period beginning on the day when 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 (5) to constitute the making of the decision makes or purports to make, after the end of that period, a decision either to do or not to do that act or thing, being a decision the terms of which were recorded in writing and set out in a document that was given to the applicant—on the 28th day after—
    - (i) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day when 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) If—
- (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) the other matters it considers relevant.
- (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, on written application 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 ended.
- (11) Before deciding an application for an extension of time, the tribunal may, if it considers appropriate, 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 the further time

the tribunal allows, stating that he or she wishes to oppose the application, the tribunal shall not decide 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 must give written notice of an application for a review of a decision, in accordance with the approved form, 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 entity that has been made a party to the proceeding by the tribunal on application by the entity under subsection (2) or section 28A.
- (2) If 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.

*Note* If a form is approved under s 62A for this provision, the form must be used.

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

(a) because of a decision made by the person in the exercise of the duties of an office or appointment; or

(b) because of section 24 (8);

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

(4) In this section:

*person* includes an unincorporated association.

## **28A           Entities notified about planning and development decisions may be joined**

(1) This section applies if a person applies for the review of a decision under the *Planning and Development Act 2007*.

(2) An interested entity for the decision may apply in writing to the tribunal to be made a party to the proceeding on the application for review.

*Note*       If a form is approved under s 62A for this provision, the form must be used.

(3) If an interested entity applies under subsection (2), the tribunal must, by order, make the interested entity a party to the proceeding.

(4) In this section:

*interested entity*, for a reviewable decision—see the *Planning and Development Act 2007*, section 407 (Definitions—ch 13).

## **29           Intervention by Minister**

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

(2) If 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 the costs the Minister considers were reasonably incurred by that party in relation to the proceeding because of that intervention.

**30 Tribunal to decide persons whose interests are affected by decision**

If 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.

**Division 4.2 Mediation and hearings before tribunal**

**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 the way it considers appropriate.
- (2) The tribunal may hold a directions hearing in relation to a proceeding.
- (3) Without limiting the operation of this section, a direction about the procedure to be followed at or in relation to 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 about the procedure to be followed in relation to the hearing of a proceeding before the tribunal may be varied or revoked at any time by a direction given under section 19A (Exercise of powers of tribunal).
- (5) An authorisation by the president under this section to give directions about the procedure to be followed in relation to 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) If an application is made to the tribunal for a review of a decision, the president may, if the president considers 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 for 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, about any words spoken or act done at a conference held under this section.
- (4) If—
  - (a) a conference held under this section in relation to 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 beginning 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 generally**

- (1) If an application is made to the tribunal for a review of a decision, the president may, if the president considers 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 registered 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, about any words spoken or act done at a mediation held under this Act.

- (4) A person who mediates in relation to 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**

If—

- (a) the tribunal is satisfied that a proceeding may be decided on the material that has been lodged with the tribunal without hearing the parties; and

- (b) the parties consent to the proceeding being so decided;

the tribunal may decide 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) If—

- (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 the steps that are necessary and reasonable to ensure the public nature of the hearing is preserved.

- (3) If 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 about 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 about 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 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 about 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 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 about 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 other Territory; or
  - (b) for any other reason specified in the certificate that could form the basis for a claim by the State or other 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, for 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) If 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) If, in relation to a proceeding to which the relevant official would not, apart from 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 exercise 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) If, 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) If 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) If 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, apart from 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 the other members (if any) that the president directs.
- (4) A decision by the tribunal—
- (a) under section 35 (5) about 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 exercise 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 lawyer or other person, 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 its own initiative, 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) If 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 when that person so receives notice or the day when the tribunal makes a decision 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 the shorter period that the tribunal decides.
- (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) If 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 written notice 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) if the proceeding arises under the *Planning and Development Act 2007*—14 days; or
  - (b) in any other case—28 days.
- (12) In subsection (11), a reference to the *Planning and Development Act 2007* includes a reference to the *Land (Planning and Environment) Act 1991*.
- (13) Subsection (12) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (14) Subsections (12) and (13) and this subsection expire 6 months after the day this subsection commences.

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

If 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 in relation 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.

**39A           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 the order staying or otherwise affecting the operation or implementation of the decision to which the current proceeding relates or a part of that decision that the tribunal considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.
- (3) If 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), give notice of the request 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 giving a copy of the request to the other parties to the proceeding; or
  - (b) in any other case—in the other way that 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, if 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 the conditions specified in the order; and
  - (b) has effect, subject to subsection (10), until—
    - (i) if 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).

## **Division 4.3                      Powers of tribunal**

### **40                      Powers of tribunal**

- (1) For the purpose of reviewing a decision, the tribunal may—
- (a) take evidence on oath; 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) The registrar may, by written notice (a *subpoena*) given to a person, require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
- (a) to give evidence;

(b) to produce a stated document or other thing relevant to the hearing.

*Note* If a form is approved under s 62A for this provision, the form must be used.

- (3) The registrar must issue a subpoena to a person if the president, or the member of the tribunal presiding at the hearing, directs.
- (4) The tribunal may give a party to a proceeding leave, subject to any specified condition, to—
- (a) inspect a document or other thing produced under a subpoena; and
  - (b) make copies of such a document for the purpose of the proceeding.
- (5) A person is taken to have complied with a subpoena under subsection (2) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for its production.
- (6) The tribunal may set aside a subpoena issued under subsection (2).
- (7) The member presiding at the hearing of a proceeding before the tribunal may—
- (a) require a person appearing before the tribunal to give evidence to take an oath; and
  - (b) administer an oath to the person; and
  - (c) if the person participates in a way mentioned in section 34A (Participation by telephone etc)—administer an oath to the person in the way the member considers appropriate.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (8) The member presiding at the hearing of a proceeding before the tribunal may require a person appearing before the tribunal to give evidence to do either or both of the following:
- (a) to answer a question relevant to the hearing;
  - (b) to produce a stated document or other thing relevant to the hearing.

*Note*        The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (9) The oath to be taken or made by a person for this section is an oath that the answers the person will give to questions asked will be true.
- (10) A person subpoenaed to appear before the tribunal may request to be represented by a lawyer or other person and, on such a request being made, the tribunal may allow the person to be so represented.
- (11) The power of the tribunal under subsection (1) (a) to take evidence on oath 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.
- (12) If 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 (11)—
- (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) or (8) 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 if 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.

## **42 How 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 about 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) If 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 begun 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 relation to an application for the review of a decision (other than 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) if 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—
  - (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 the directions that 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 its own initiative, reinstate the application and give the directions that appear to it to be appropriate in the circumstances.

#### **43A Power of tribunal if proceeding frivolous or vexatious**

- (1) If 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 about 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 about 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 begun, 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 given by any relevant enactment on the person who made the decision and shall make a written decision—
  - (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) If 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) If the tribunal does not give written reasons for its decision, a party to the proceeding may, within 28 days after the day when a copy of the decision of the tribunal is served on that party, request the tribunal to give to that party a written statement 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) If 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 must give a copy of its decision 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 way as they apply to the decision.
- (9) Subject to subsection (10), a decision of the tribunal comes into operation on 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, if 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, on 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 when 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.

## **Division 4.4                      After end of tribunal proceeding**

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

- (1) If—
- (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 ended but no such appeal has been instituted;

the president may cause a document or thing given to the tribunal for the purposes of the proceeding to be returned to the person by whom it was given.

- (2) If the Supreme Court causes a document or thing sent to that court in accordance with section 49 (1) (a) in relation to 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 given to the tribunal.

### **46                      Appeals from tribunal to Supreme Court**

- (1) A party to a proceeding before the tribunal may appeal to the Supreme Court on a question of law from a decision of the tribunal in the proceeding.
- (2) The appeal may be brought only with the Supreme Court's leave.

*Note*        See the *Court Procedures Rules 2006*, r 5052 (Appeals to Supreme Court—general powers), r 5072 (Appeals to Supreme Court—time for filing application for leave to appeal) and r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

**48                      Referral of questions of law to Supreme Court**

- (1) If the tribunal considers that a question of law raises an issue of public importance, the tribunal may refer the question to the Supreme Court.
- (2) The tribunal may act under subsection (1) on its own initiative or on application by a party.

**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), send to the court any document or thing that was before the tribunal in relation to 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 return the document or thing to the tribunal.
- (2) If there is in force in relation to a document a certificate in accordance with section 26 (7) 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 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 relation to 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 exercise of his or her duties as an officer of the court.

## **Division 4.5**                      **Land, planning and environment applications**

### **49A**                      **Application of div 4.5**

This division applies to applications for review by the tribunal of a decision under the following Acts:

- *Heritage Act 2004*
- *Planning and Development Act 2007*
- *Tree Protection Act 2005*.

*Note*                      The rest of pt 4 also applies to applications for review of a decision under the Acts mentioned in this section (see s 17 (4)).

### **49B**                      **Meaning of *application* for div 4.5**

In this division:

***application*** means an application for review of a decision under any of the following Acts:

- *Heritage Act 2004*
- *Planning and Development Act 2007*
- *Tree Protection Act 2005*.

**49C            Time for deciding land, planning and environment applications**

- (1) The tribunal must decide an application within 120 days after the day the application is made.
- (2) However, the president may, in writing, extend the period for deciding the application if satisfied that the extension is in the interests of justice.
- (3) If the tribunal does not decide the application within the 120 days, the president must ensure that the tribunal's annual report for the year when the application was decided includes—
  - (a) details of the period of time it took to decide the application; and
  - (b) if the 120 day period was extended under subsection (2)—the reasons for the extension.
- (4) A failure to comply with this section in relation to an application does not affect the validity of a decision on the application.
- (5) In this section:

*tribunal's annual report* means the report prepared by the tribunal under the *Annual Reports (Government Agencies) Act 2004*.

**49D            Mediation for land, planning and environment applications**

- (1) Before hearing an application, the tribunal—
  - (a) must consider whether the application is suitable for mediation; and
  - (b) if the tribunal considers the application is suitable for mediation and that it is reasonably likely that the application may be resolved by mediation—may, on its own initiative, refer the application to a registered mediator and direct the parties to the application to attend the mediation.

- (2) Also, the tribunal may refer the application to a registered mediator and direct the parties to attend the mediation on application by a party.

#### **49DA Applications for review if decision reconsidered**

- (1) This section applies if—
- (a) the planning and land authority refuses an application for development approval, or for the amendment of a development application, (the *application*), or approves the application subject to a condition; and
  - (b) the applicant for the application applies for review of the original decision; and

*Note* **Original decision**—see s (3).

- (c) the applicant applies for reconsideration of the original decision under the *Planning and Development Act 2007*, division 7.3.10 (Reconsideration of decisions on development applications), whether before or after the applicant applies for review of the original decision; and
  - (d) before the tribunal decides the application for review, the planning and land authority reconsiders the original decision and substitutes another decision (the *substitute decision*).
- (2) The application for review of the original decision is taken to be an application for review of the substitute decision.

- (3) In this section:

**development application**—see the *Planning and Development Act 2007*, dictionary.

**development approval**—see the *Planning and Development Act 2007*, dictionary.

**original decision** means a decision mentioned in subsection (1) (a).

## **49E           Costs in land, planning and environment proceedings**

- (1) The tribunal may award costs of an application or part of an application against a party to the application if the party contravenes a tribunal direction.

### **Examples of contravention of tribunal direction**

- 1 failing to provide further information in relation to the proceeding on the application
- 2 failing to provide a list of contentions on which reliance is to be placed at the hearing of the application

*Note*       An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the tribunal may award costs under subsection (1) only if satisfied that it is in the interests of justice to do so.
- (3) In deciding whether it is in the interests of justice to award costs, the tribunal must consider the following:
- (a) whether the contravention was deliberate or could easily have been avoided;
  - (b) whether (and if so, the extent to which) the contravention has affected the tribunal's ability to hear the proceeding expeditiously;
  - (c) the importance to the community of people being able to afford to bring applications to the tribunal.
- (4) The tribunal may consider any other relevant matter.
- (5) Costs are payable in accordance with the scale of costs in the rules under the *Court Procedures Act 2004* applying in relation to the Supreme 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 the way it considers appropriate.

### 51                      **Protection of members, mediators, lawyers and witnesses**

- (1) A member has, in the exercise of duties as a member, the same protection and immunity as a judge of the Supreme Court.
- (2) A mediator has, in the exercise 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 lawyer 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 subpoenaed 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 subpoena on witness**

- (1) A subpoena 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 subpoena 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 subpoena 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.

**54 Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**55 Contempt of tribunal**

A person commits an offence if the person does something in the face, or within the hearing, of the tribunal that would be contempt of court if the tribunal were a court of record.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**56 Registry**

The Minister must establish 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 the custody that 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, subpoena, 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 delegate the registrar's functions under this Act to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**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, about the matter to which the evidence would relate and the tribunal has not decided 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, if 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 about that matter available to the parties to a proceeding before the tribunal and, for 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 given to the tribunal in relation to 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 decided 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, if 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 under a subpoena is entitled to receive the fees and travelling expenses that 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 subpoena was issued at the request of a party—in accordance with the direction of the tribunal; or
  - (b) if the subpoena 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 to decision-makers**

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

**60A Service of documents**

- (1) If a person nominates an address in Australia where documents may be served on the person, a document required by this Act to be served (however described) on the person may be sent to the person at that address.
- (2) For this Act, a document is taken to be served (however described) on an individual whose place of residence or employment is unknown if it is served in accordance with a direction of the tribunal.

**61 Lodging of documents**

- (1) If 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.

- (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 39A (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 beginning on the day when 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 relation to a matter arising under this Act;

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

- (2) If 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 the conditions that the Minister

determines, of the legal or financial assistance in relation to the proceeding that 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.

**63 Delegation**

The Minister may, by signed writing, 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.

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## 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 exercise 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 exercise 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 exercise 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 exercise the duties of that office.

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## Dictionary

(see s 1A)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Australia
- document
- Executive
- exercise
- function
- Supreme Court.

***application***, for division 4.5 (Land, planning and environment applications)—see section 49B.

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

***decision*** includes—

- (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) keeping, or refusing to deliver up, an article; or
- (g) doing or refusing to do anything else.

***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 a subordinate 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 decide a question relating to the tribunal's jurisdiction; and
- (h) in relation to 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).

**registered mediator**—see the *Mediation Act 1997*, dictionary.

**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.

## 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.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	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))  
amnds 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.

**Administrative Appeals Tribunal Amendment Act 2002  
A2002-57**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
remainder commenced 1 July 2003 (s 2)

## Endnotes

3 Legislation history

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### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.2**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

### **Heritage Act 2004 A2004-57 sch 1 pt 1.1**

notified LR 9 September 2004  
s 1, s 2 commenced 9 September 2004 (LA s 75 (1))  
sch 1 pt 1.1 commenced 9 March 2005 (s 2 and LA s 79)

### **Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.2**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

### **Justice and Community Safety Legislation Amendment Act 2005 (No 3) A2005-43 sch 1 pt 1.1**

notified LR 30 August 2005  
s 1, s 2 commenced 30 August 2005 (LA s 75 (1))  
sch 1 pt 1.1 commenced 1 October 2005 (s 2 (3) and CN2005-18)

### **Tree Protection Act 2005 A2005-51 sch 1 pt 1.1**

notified LR 29 September 2005  
s 1, s 2 commenced 29 September 2005 (LA s 75 (1))  
sch 1 pt 1.1 commenced 29 March 2006 (s 2 and LA s 79)

### **Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.1**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.1 commenced 23 November 2005 (s 2)

### **Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.2**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 2 pt 2.2 commenced 29 September 2006 (s 2 (1))

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.3**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.3 commenced 12 April 2007 (s 2 (1))

**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.2**

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 3 pt 3.2 commenced 11 July 2007 (s 2 (1))

**Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.1**

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.1 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

**Justice and Community Safety Legislation Amendment Act 2008 A2008-7 sch 1 pt 1.2**

notified LR 16 April 2008

s 1, s 2 commenced 16 April 2008 (LA s 75 (1))

sch 1 pt 1.2 commenced 7 May 2008 (s 2)

**4 Amendment history****Dictionary**

s 1A ins A2007-3 amdt 3.15

**Notes**

s 2 om 2001 No 44 amdt 1.32

ins A2005-53 amdt 1.1

**Offences against Act—application of Criminal Code etc**

s 2A ins A2005-53 amdt 1.1

**Decisions by unincorporated bodies**

s 3 am 1994 No 58 s 4; 1996 No 70 s 4

defs reloc to dict A2007-3 amdt 3.16

sub A2007-3 amdt 3.17

def *department* om 1994 No 38 sch 1 pt 2**Objects and important concepts**

pt 1A hdg ins A2002-57 s 5

**Main objects of Act**

s 3A ins A2002-57 s 5

## Endnotes

4 Amendment history

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### **Role and main object of land and planning division**

s 3B ins A2002-57 s 5

### **Establishment of tribunal**

s 4 am 1996 No 70 s 5

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

s 5 am A2007-16 amdt 3.2

### **Qualifications for appointment**

s 6 am 1997 No 96 sch 1

### **Term of appointment**

s 7 am 1994 No 58 s 5; ss renum R5 LA; A2007-16 amdt 3.3

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

s 7A ins 1996 No 70 s 6

### **Remuneration and allowances**

s 8 om 1997 No 41 sch 1

### **Acting appointments—direction to continue acting**

s 9 sub A2007-16 amdt 3.4

### **Delegation by president**

s 10 sub A2007-16 amdt 3.5

### **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; A2002-57 s 6; A2007-25 amdt 1.1

### **Arrangement of business**

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

### **Conduct of proceedings**

s 19 am 1994 No 58 s 7  
sub 1996 No 70 s 9; A2005-43 amdt 1.1

### **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; ss renum R5 LA

### **Questions of law**

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



**Review, applications and parties**

div 4.1 hdg ins A2002-57 s 7

**Tribunal may review certain decisions**

s 24 am 1991 No 118 s 5; 1996 No 70 s 12; ss renum R5 LA;  
A2007-16 amdt 3.6; A2007-25 amdt 1.2; ss renum R20 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; A2007-16 amdt 3.7; A2008-7 amdt 1.18,  
amdt 1.19; ss renum R21 LA

**Manner of applying for review**

s 27 am 1994 No 58 s 10; 1996 No 70 s 14; ss renum R5 LA;  
A2004-60 amdt 1.3

**Parties to proceeding before tribunal**

s 28 am 1991 No 118 s 7; 1996 No 70 s 15; ss renum R5 LA;  
A2007-25 amdts 1.3-1.5; ss renum R20 LA

**Entities notified about planning and development decisions may be joined**

s 28A ins A2007-25 amdt 1.6

**Mediation and hearings before tribunal**

div 4.2 hdg ins A2002-57 s 8

**Procedure of tribunal**

s 32 am 1994 No 58 s 11; 1996 No 70 s 16; 2001 No 44 amdt 1.36;  
ss renum R5 LA; A2007-3 amdt 3.18

**Conferences**

s 33 am 1994 No 58 s 12

**Mediation generally**

s 33A hdg sub A2002-57 s 9  
s 33A ins 1994 No 58 s 13  
am A2002-57 s 10, s 11

**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; ss renum R5 LA

## Endnotes

4 Amendment history

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### **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; ss renum R5 LA; A2007-16  
amds 3.8-3.11

### **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; ss renum R5 LA;  
A2007-25 amdt 1.7, amdt 1.8  
(12)-(14) exp 30 September 2008 (s 37 (14) (LA s 88  
declaration applies))

### **Opportunity to make submissions**

s 39 am 1991 No 118 s 8

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

s 39A (prev s 41) am 1994 No 58 s 18; 1996 No 70 s 21; ss renum  
R5 LA  
renum and reloc A2002-57 s 13

### **Powers of tribunal**

div 4.3 hdg ins A2002-57 s 12

### **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; ss renum R5 LA; A2005-53  
amds 1.2-1.12; ss renum A2005-53 amdt 1.13

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

s 41 renum and reloc as s 39A A2002-57 s 13

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

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

### **Power of tribunal if proceeding frivolous or vexatious**

s 43A ins 1994 No 58 s 20

### **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; ss renum R5 LA

### **Correction of errors**

s 44A ins 1994 No 58 s 21

**After end of tribunal proceeding**

div 4.4 hdg ins A2002-57 s 14

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

s 45 am 1996 No 70 s 24

**Appeals from tribunal to Supreme Court**

s 46 am 1993 No 91 sch 3; 1994 No 58 s 22; 2001 No 54 amdt 2.1  
sub A2004-60 amdt 1.4  
(5), (6) exp 10 January 2006 (s 46 (6))  
sub A2006-40 amdt 2.45

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

s 47 am 1999 No 66 sch 3  
om A2006-40 amdt 2.45

**Referral of questions of law to Supreme Court**

s 48 sub A2004-60 amdt 1.5

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

s 49 am 1996 No 70 s 25; A2008-7 amdt 1.19, amdt 1.20

**Land, planning and environment applications**

div 4.5 hdg ins A2002-57 s 15

**Application of div 4.5**

s 49A ins A2002-57 s 15  
am A2004-57 amdt 1.1; A2005-51 amdt 1.1; A2007-25  
amdt 1.9

**Meaning of *application* for div 4.5**

s 49B ins A2002-57 s 15  
am A2004-57 amdt 1.2; A2005-51 amdt 1.2; A2007-25  
amdt 1.9

**Time for deciding land, planning and environment applications**

s 49C ins A2002-57 s 15  
am A2004-9 amdt 1.2

**Mediation for land, planning and environment applications**

s 49D ins A2002-57 s 15

**Applications for review if decision reconsidered**

s 49DA ins A2007-25 amdt 1.10

**Costs in land, planning and environment proceedings**

s 49E ins A2002-57 s 15  
am A2004-60 amdt 1.6

## Endnotes

4 Amendment history

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### **Protection of members, mediators, lawyers and witnesses**

s 51 hdg am 1997 No 96 notes  
s 51 am 1994 No 58 s 23; 1997 No 96; ss renum R5 LA; A2005-53  
amdt 1.14

### **Service of subpoena on witness**

s 51A hdg am A2005-53 amdt 1.15  
s 51A ins 1996 No 70 s 26  
am A2005-53 amdt 1.15

### **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  
om A2005-53 amdt 1.16

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

s 53 am 1994 No 81 sch; 1996 No 70 s 28  
om A2005-53 amdt 1.16

### **Application of Criminal Code, ch 7**

s 54 am 1994 No 81 sch  
sub A2005-53 amdt 1.16

### **Contempt of tribunal**

s 55 am 1994 No 58 s 25; 1994 No 81 sch  
sub A2005-53 amdt 1.16

### **Seal of tribunal**

s 56A ins 1996 No 70 s 29  
am A2005-53 amdt 1.17

### **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  
am A2007-16 amdt 3.12

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

s 59 am 1994 No 8 s 4  
sub 1996 No 70 s 31  
am A2005-53 amdt 1.18

### **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 to decision-makers**

s 60 am 1994 No 38 sch 1 pt 2  
sub A2007-3 amdt 3.19

**Service of documents**

s 60A ins A2007-3 amdt 3.19

**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))

**References to subpoena**

s 63A ins A2005-53 amdt 1.19  
exp 23 November 2006 (s 63A (2))

**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  
pts renum R5 LA

## Endnotes

4 Amendment history

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### ACT Administrative Appeals Tribunal Summons

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

### Dictionary

dict ins A2007-3 amdt 3.20  
def **application** ins A2002-57 s 4  
reloc from s 3 A2007-3 amdt 3.16  
def **approved form** ins 1996 No 70 s 4  
reloc from s 3 A2007-3 amdt 3.16  
def **decision** ins A2007-3 amdt 3.20  
def **deputy president** reloc from s 3 A2007-3 amdt 3.16  
def **deputy registrar** reloc from s 3 A2007-3 amdt 3.16  
def **enactment** reloc from s 3 A2007-3 amdt 3.16  
def **full-time member** reloc from s 3 A2007-3 amdt 3.16  
def **judge** reloc from s 3 A2007-3 amdt 3.16  
def **member** reloc from s 3 A2007-3 amdt 3.16  
def **non-presidential member** reloc from s 3 A2007-3  
amdt 3.16  
def **officer of the tribunal** reloc from s 3 A2007-3 amdt 3.16  
def **part-time member** reloc from s 3 A2007-3 amdt 3.16  
def **president** reloc from s 3 A2007-3 amdt 3.16  
def **presidential member** reloc from s 3 A2007-3 amdt 3.16  
def **proceeding** ins 1996 No 70 s 4  
reloc from s 3 A2007-3 amdt 3.16  
def **registered mediator** ins A2002-57 s 4  
reloc from s 3 A2007-3 amdt 3.16  
def **registrar** am 1996 No 70 s 4; 1999 No 66 sch 3  
reloc from s 3 A2007-3 amdt 3.16  
def **senior member** reloc from s 3 A2007-3 amdt 3.16  
def **tribunal** am 1996 No 70 s 4  
reloc from s 3 A2007-3 amdt 3.16

## 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. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
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
6 (RI)	A2001-54 ‡	6 February 2003
7	A2002-57	1 July 2003
8*	A2002-57	21 July 2003
9	A2004-9	13 April 2004
10	A2004-60	10 January 2005
11	A2004-60	9 March 2005
12	A2005-43	1 October 2005
13	A2005-53	23 November 2005
14	A2005-53	11 January 2006
15*	A2005-53	29 March 2006
16	A2006-40	29 September 2006
17	A2006-40	24 November 2006
18	A2007-3	12 April 2007

## Endnotes

5 Earlier republications

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
19	A2007-16	11 July 2007
20	A2007-25	31 March 2008

‡ includes retrospective amendments by A2002-49

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