

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Justice and Community Safety Legislation
Amendment Bill (No 2) 1999**

A BILL

FOR

**An Act to amend the law relating to justice and community
safety, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts
as follows:

1 Name of Act

This Act is the Justice and Community Safety Legislation
5 Amendment Act (No 2) 1999.

2 Commencement

This Act commences on the day it is notified in the Gazette.

3 Act amended

This Act amends the Acts mentioned in the Schedule.

99068 (1999/233) (T68/99)

SCHEDULE

(See s 3)

AMENDMENT OF ACTS

Consumer Credit (Administration) Act 1996

Section 3 (definition of *Chairperson*)—

5 Omit the definition.

Section 3—

Insert the following definitions:

“*consumer member*—see subsection 64 (2).

deputy president means a deputy president of the tribunal.

10 *industry member*—see subsection 64 (2).

member, of the tribunal, means the president, a deputy president or a non-presidential member.

non-presidential member means a member of the tribunal who is not a presidential member.

15 *president* means the president of the tribunal.

presidential member means the president or a deputy president.”.

Section 61—

Add at the end the following subsection:

20 “(2) Without limiting subsection (1), the tribunal has power to do everything necessary or convenient to be done in relation to the carrying out of its functions.”.

Division 2 of Part 4—

Repeal the Division, substitute the following Division:

“Division 2—Tribunal members

25 “62 **Membership of tribunal**

“(1) The tribunal consists of—

- (a) the president; and
- (b) the deputy presidents; and
- (c) the non-presidential members.

SCHEDULE—continued

“(2) The members of the tribunal are to be appointed by the Executive.

“63 **Presidential members**

“(1) A person is eligible to be appointed president only if the person is a magistrate.

5 “(2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

“64 **Non-presidential members**

“(1) The Executive must appoint as non-presidential members—

10 (a) persons who, in its opinion, represent the interests of credit providers and finance brokers; and

(b) persons who, in its opinion, represent the interests of persons who obtain consumer credit from credit providers or through finance brokers.

15 “(2) A member appointed under paragraph (1) (a) is an *industry member*, and a member appointed under paragraph (1) (b) is a *consumer member*.

“65 **Terms of appointment generally**

“(1) A member may be appointed as a full-time or part-time member.

20 “(2) A member holds office on the terms not provided by this Act that are decided by the Executive.

“(3) This section does not apply to a member who is a magistrate.

“66 **Matters to be included in instrument of appointment etc**

The instrument appointing, or evidencing the appointment of, a member must state—

25 (a) the period for which the member is appointed; and

(b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

“67 **Duration of appointment**

“(1) A member is to be appointed for a term of not longer than 5 years.

30 “(2) The Executive may end the appointment of a member who is not a magistrate—

SCHEDULE—continued

- 5 (a) for misbehaviour or physical or mental incapacity; or
(b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- “(3) The Executive must end the appointment of—
- 10 (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
(b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
(c) a non-presidential member if the Executive is satisfied that the member no longer represents the interests of the people the member was appointed to represent; or
15 (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.”.

Sections 71, 72 and 73—

Repeal the sections, substitute the following sections:

“71 Constitution of tribunal

- 20 “(1) The tribunal is to be constituted for a proceeding by—
(a) a presidential member; and
(b) a non-presidential member who is an industry member; and
(c) a non-presidential member who is a consumer member.
- “(2) However, the tribunal may be constituted for a proceeding only by
25 a presidential member if—
(a) there is only 1 party to the proceeding and the president considers that the proceeding is unlikely to involve another party; or
(b) there are 2 or more parties to the proceeding and all the parties agree to the tribunal being constituted only by a presidential
30 member; or
(c) the proceeding is a proceeding prescribed under the regulations for this paragraph.
- “(3) Also, if a member of the tribunal other than the presidential member ceases to be a member, or to be available for the proceeding,

SCHEDULE—continued

before its completion, the presidential member and any remaining non-presidential member may finish the proceeding if the presidential member considers it desirable to do so.

“72 Role of president

5 “(1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal’s business.

“(2) Without limiting subsection (1), the president may give directions about the members who are to constitute the tribunal for a particular proceeding.

10 **“73 Presiding member**

The presidential member must preside at a proceeding.”.

Section 75—

Repeal the section, substitute the following section:

“75 Directions by presidential member

15 The presidential member may give directions about the procedure to be followed in a proceeding for—

- (a) reducing the costs of the parties to the proceeding; and
- (b) achieving a prompt hearing of the matters in issue between the parties.”.

20 **Section 76—**

Omit “Chairperson”, substitute “presidential member”.

Section 77—

Repeal the section, substitute the following section:

“77 Deciding questions

25 “(1) The presidential member is to decide a question of law arising in a proceeding.

“(2) If there is a division of opinion about another question arising in a proceeding, the question is decided—

- (a) according to the opinion of the majority of members constituting the tribunal; or

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SCHEDULE—continued

- (b) if there is no majority on the question—according to the opinion of the presidential member.”.

Subsection 78 (1)—

Omit the subsection, substitute the following subsection:

- 5 “(1) The presidential member may, at the request of a party to a proceeding, refer a question of law arising in the proceeding to the Supreme Court for a decision.”.

Subsection 81 (1)—

Omit the subsection, substitute the following subsection:

- 10 “(1) If, at any stage of a proceeding, the presidential member is of the opinion that a person should be a party to the proceeding, the presidential member may join the person as a party.”.

Subsection 82 (1)—

Omit the subsection, substitute the following subsection:

- 15 “(1) The presidential member is to fix a time and place for the conduct of a proceeding.”.

Paragraph 86 (1) (a)—

Omit the paragraph, substitute the following paragraph:

- “(a) if directed to do so by the presidential member; or”.

20 **Paragraph 86 (5) (a)—**

Omit the paragraph, substitute the following paragraph:

- “(a) if summoned at the direction of the presidential member—the fees and allowances as are payable to a witness before the Supreme Court; or”.

25 **Section 87—**

Repeal the section, substitute the following section:

“87 Taking of evidence

- “(1) At a hearing, the tribunal may take evidence on oath or affirmation and, for that purpose the presidential member may—

SCHEDULE—continued

- (a) require a witness at the hearing either to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to a witness at the hearing.

“(2) At a hearing, the presidential member may require a witness—

- 5
- (a) to answer a question put to the witness; or
 - (b) to produce a document or anything else relevant to the hearing.

“(3) A witness at a hearing must not, without reasonable excuse, fail—

- 10
- (a) to take an oath or make an affirmation when required to do so by the presidential member under paragraph (1) (a); or
 - (b) to give evidence when required to do so by the presidential member under subsection (2).

Maximum penalty (for subsection (3)): 50 penalty units, imprisonment for 6 months or both.”.

Heading to section 100—

- 15 Omit “Minister”, substitute “Executive”.

Subsection 100 (1)—

Omit “Minister”, substitute “Executive”.

Paragraph 102 (c)—

Omit the paragraph, substitute the following paragraph:

- 20 “(c) a reference to the chairperson of a board of inquiry were a reference to—
- (i) the presidential member constituting the tribunal (whether alone or with other members); or
 - (ii) the person appointed under subsection 100 (1); and”.

25 **Paragraph 109 (e)—**

Omit “Chairperson”, substitute “president”.

Section 116—

Omit “Chairperson”, substitute “presidential member”.

Section 133 and 139—

- 30 Repeal the sections.

SCHEDULE—continued

Section 141—

Repeal the section, substitute the following sections:

“141 Regulation-making power

“(1) The Executive may make regulations for this Act.

5 “(2) The regulations may create offences punishable by maximum penalties of not more than 10 penalty units.

“142 Transitional provisions about tribunal members

“(1) If a person held appointment as chairperson immediately before the commencement of this section, the person is taken, on the commencement,
10 to be appointed as the president for the unexpired part of the term for which the person was appointed as chairperson.

“(2) If a person held appointment as acting chairperson immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period
15 of 5 years to begin on the commencement.

“(3) If a person held appointment as a member mentioned in paragraph 62 (b) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as an industry member for the unexpired part of the term for which the person was appointed as a
20 member.

“(4) If a person held appointment as a member mentioned in paragraph 62 (c) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a consumer member for the unexpired part of the term for which the person was appointed as a
25 member.

“(5) This section expires 3 months after it commences.”.

Credit Act 1985

Subsection 5 (1) (definition of *Tribunal* or *Credit Tribunal*)—

Omit the definition, substitute the following definition:

30 “***tribunal*** means the credit tribunal.”.

SCHEDULE—continued

Subsection 5 (1) (definitions of *Chairperson, land, and member*)—

Omit the definitions.

Discrimination Act 1991

Section 4—

5 Insert the following definitions:

 “*deputy president* means a deputy president of the tribunal.

member, of the tribunal, means the president or a deputy president.

president means the president of the tribunal.”.

Paragraph 32 (c)—

10 Omit “perform duties or”, substitute “exercise”.

Paragraph 68 (1) (c)—

 Omit “a power or performing a function”, substitute “a function or power”.

Subsection 93 (1)—

15 Omit “at such times and”.

Paragraph 108N (a)—

 Omit “a power or the performance of a duty or function”, substitute “a function or power”.

Heading to Division 1 of Part 9A—

20 Before section 110A, insert the following heading in Part 9A:

 “*Division 1—Establishment, functions and powers*”.

Section 110B to 110F—

 Repeal the sections, substitute the following section and Divisions:

“110B Functions and powers

25 “(1) The tribunal has the functions and powers given to it under this Act.

SCHEDULE—continued

“(2) Without limiting subsection (1), the tribunal has power to do everything necessary or convenient to be done in relation to the carrying out of its functions.

“Division 2—Tribunal members

5 **“110C Membership of tribunal**

“(1) The tribunal consists of the president and deputy presidents.

“(2) The members of the tribunal are to be appointed by the Executive.

“110D Eligibility for appointment

10 “(1) A person is eligible to be appointed president only if the person is a magistrate.

“(2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

“110E Terms of appointment generally

“(1) A member may be appointed as a full-time or part-time member.

15 “(2) A member holds office on the terms not provided by this Act that are decided by the Executive.

“(3) This section does not apply to a member who is a magistrate.

“110F Matters to be included in instrument of appointment etc

20 The instrument appointing, or evidencing the appointment of, a member must state—

(a) the period for which the member is appointed; and

(b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

“110G Duration of appointment

25 “(1) A member is to be appointed for a term of not longer than 5 years.

“(2) The Executive may end the appointment of a member who is not a magistrate—

(a) for misbehaviour or physical or mental incapacity; or

30 (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors,

SCHEDULE—continued

compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

“(3) The Executive must end the appointment of—

- 5 (a) a member who is a magistrate if the member ceases to be a magistrate; or
- (b) a member who is not a magistrate if the member—
- (i) ceases to be eligible for appointment; or
- (ii) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

10 **“Division 3—Registrar and deputy registrars**

“110H Registrar and deputy registrars

“(1) The registrar of the Magistrates Court is the registrar of the tribunal.

15 “(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, in writing, delegate to a public servant all or any of his or her powers under this Act.

20 **“Division 4—Other provisions**

“110I Constitution of tribunal

The tribunal is to be constituted for a hearing by a single member.

“110J Role of president

25 “(1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal’s business.

“(2) Without limiting subsection (1), the president may give directions about the member who is to constitute the tribunal for a particular proceeding.”.

Subsection 111 (2)—

30 Omit “performance”, substitute “exercise”.

SCHEDULE—continued

Subsection 119 (1)—

Omit “perform”, substitute “exercise”.

Subsection 119 (2)—

Omit “performance”, substitute “exercise”.

5 **Subsection 119 (3)—**

Omit the subsection, substitute the following subsection:

“(3) The exercise by a person of the commissioner’s functions under an authorisation under subsection (1) is taken, for all purposes, to be the exercise by the commissioner of the functions.”.

10 **Paragraph 121 (f)—**

Omit “a power or the performance, or purported performance, of a function or duty”, substitute “a function or power”.

Subsection 122 (1) (definition of *person to whom this sections applies*)—

(a) Omit “*sections*”, substitute “*section*”.

15 (b) Omit from paragraph (e) “a power or perform a duty or function”, substitute “a function or power”.

Subsection 122 (1) (definition of *protected information*, paragraph (b))—

20 Omit “a power or the performance of a duty or function”, substitute “a function or power”.

Subsection 122 (2)—

Omit “a power, or the performance of a duty or function”, substitute “a function or power by the person”.

Paragraphs 124 (1) (a), (b) and (c)—

25 Omit “performance”, substitute “exercise”.

Heading to section 125—

Omit “Performance”, substitute “Exercise”.

Section 125—

Omit “performance”, substitute “exercise”.

SCHEDULE—continued

Section 127—

Repeal the section, substitute the following sections:

“127 Regulation-making power

“(1) The Executive may make regulations for this Act.

5 “(2) Without limiting subsection (1), the regulations may except persons, activities or other things from the operation of particular provisions of Part 3, 5 or 7.”.

“128 Transitional provisions about tribunal members

10 “(1) If a person held appointment as president immediately before the commencement of this section, the person continues, subject to this Act, as president for the remainder of the term for which the person was appointed as president.

15 “(2) If a person held appointment as acting president immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period of 5 years to begin on that commencement.

“(3) This section expires 3 months after it commences.”.

Guardianship and Management of Property Act 1991

Subsection 3 (1)—

20 Omit “a power, or performs a duty or function,”, substitute “a function or power”.

Section 4—

Insert the following definition:

25 “*member*, of the tribunal, means the president, a deputy president or a non-presidential member.”.

Section 4 (definition of *Crimes Act*)—

Omit the definition, substitute the following definition:

“*Crimes Act* means the *Crimes Act 1900*.”.

SCHEDULE—continued

Paragraph 10 (4) (f)—

- (a) Omit “duties and functions to be performed, and the powers to be exercised,”, substitute “functions and powers to be exercised”.
- (b) Omit “perform and”.

5 **Subsection 16 (1)—**

Omit “powers or the performance of his or her duties or functions”, substitute “functions or powers”.

Subsection 18 (1)—

10 Omit “powers, or the performance of functions or duties,”, substitute “functions or powers”.

Paragraph 24 (1) (a)—

Omit “Trustee Act”, substitute “*Trustee Act 1925*”.

Subsection 24 (2)—

Omit the subsection.

15 **Paragraph 31 (b)—**

Omit “perform the duties and functions, or exercise the powers,”, substitute “exercise the functions or powers”.

Paragraph 31 (c)—

20 Omit “neglected or failed to perform the duties and functions, or exercise the powers,”, substitute “failed to exercise the functions or powers”.

Subsection 34 (1)—

Omit the subsection, substitute the following subsection:

25 “(1) Subject to subsection (2), the tribunal is to sit in such places, including places outside the Territory, as the president decides.”.

Paragraph 55 (a)—

Omit “performance of a function or duty or the exercise of a power”, substitute “exercise of a function or power”.

SCHEDULE—continued

Heading to Division 1 of Part 4—

Before section 57, insert the following heading in Part 4:

“Division 1—Establishment, functions and powers”.

Sections 58 to 66—

5 Repeal the sections, substitute the following section and Divisions:

“58 Functions and powers

“(1) The tribunal has the functions and powers given to it under this Act.

“(2) Without limiting subsection (1), the tribunal has power to do
10 everything necessary or convenient to be done in relation to the carrying
out of its functions.

“Division 2—Tribunal members

“59 Membership of tribunal

“(1) The tribunal consists of—

- 15 (a) the president; and
(b) the deputy presidents; and
(b) the non-presidential members.

“(2) The members of the tribunal are to be appointed by the Executive.

“60 Presidential members

20 “(1) A person is eligible to be appointed president only if the person is a
magistrate.

“(2) A person is eligible to be appointed deputy president only if the
person is a magistrate or a lawyer of at least 5 years standing.

“61 Non-presidential members

25 The Executive must appoint as non-presidential members people
who, in its opinion, have appropriate expertise, training or experience in
relation to, and are otherwise suitable to deal with, the needs of people
who, because of a physical, mental, psychological or intellectual condition,
need assistance or protection from abuse, exploitation or neglect.

SCHEDULE—continued

“62 Terms of appointment generally

“(1) A member may be appointed as a full-time or part-time member.

“(2) A member holds office on the terms not provided by this Act that are decided by the Executive.

5 “(3) This section does not apply to a member who is a magistrate.

“63 Matters to be included in instrument of appointment etc

The instrument appointing, or evidencing the appointment of, a member must state—

- 10 (a) the period for which the member is appointed; and
(b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

“64 Duration of appointment

“(1) A member is to be appointed for a term of not longer than 5 years.

15 “(2) The Executive may end the appointment of a member who is not a magistrate—

- (a) for misbehaviour or physical or mental incapacity; or
(b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

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“(3) The Executive must end the appointment of—

- (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
(b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
(c) a non-presidential member if the Executive is satisfied that the person is no longer a suitable person to deal with the needs of people who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect; or
30 (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

SCHEDULE—continued

“Division 3—Registrar and deputy registrars

“65 Registrar and deputy registrars of tribunal

“(1) The registrar of the Magistrates Court is the registrar of the tribunal.

5 “(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.

10 “(4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

“Division 4—Other provisions

“66 Constitution of tribunal

“(1) The tribunal may exercise its powers only if constituted by—

- 15 (a) a presidential member; or
(b) a presidential member and 2 non-presidential members.

“(2) However, if—

- 20 (a) the tribunal is constituted for an inquiry by a presidential member and 2 non-presidential members; and
(b) a non-presidential member ceases to be a member, or to be available for the inquiry, before the completion of the inquiry;
the presidential member and any remaining non-presidential member may finish the inquiry if the presidential member considers it desirable to do so.

“66A Role of president

25 “(1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal’s business.

“(2) Without limiting subsection (1), the president may give directions about—

- 30 (a) how the tribunal is to be constituted for a particular matter; and
(b) the members who are to constitute the tribunal for a particular matter.

SCHEDULE—continued

“66B Deciding questions

“(1) The presidential member is to decide a question of law arising in a matter.

5 “(2) If there is a division of opinion about another question arising in a matter, the question is decided—

(a) according to the opinion of the majority of members constituting the tribunal; or

(b) if there is no majority on the question—according to the opinion of the presidential member.

10 **“66C Protection of members etc**

“(1) This section applies to a person who is or has been—

(a) a member of the tribunal; or

(b) the registrar or a deputy registrar of the tribunal; or

(c) a person acting under the tribunal’s direction or authority; or

15 (d) a participant in a matter before the tribunal.

“(2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

“66D Secrecy

20 “(1) In this section—

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

25 *person to whom this section applies* means a person who is or has been—

(a) a member of the tribunal; or

(b) the registrar or a deputy registrar of the tribunal; or

(c) authorised to exercise a function or power under this Act in relation to the tribunal.

30 *produce* includes permit access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section

SCHEDULE—continued

applies because of the exercise of a function or power under this Act in relation to the tribunal.

“(2) A person to whom this section applies must not—

- (a) make a record of protected information; or
- 5 (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

unless the record is made, or the information divulged or communicated, in relation to the exercise of a function or power, as a person to whom this section applies, under this Act or another Act.

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

“(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of the other person.

“(4) A person to whom this section applies is not required—

- 15 (a) to divulge or communicate protected information to a court; or
- (b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.”.

Section 77—

20 Repeal the section, substitute the following section:

“77 Regulation-making power

“(1) The Executive may make regulations for this Act.

“(2) Without limiting subsection (1), the regulations may make provision with respect to—

- 25 (a) the making of applications to the tribunal; and
- (b) the imposition and remission of fees in relation to the making of applications and the provision of copies of the records of proceedings before the tribunal; and
- 30 (c) the creation of offences punishable by maximum penalties of not more than 10 penalty units.”.

Section 78—

After section 77, insert the following section:

SCHEDULE—continued

“78 Transitional provisions about tribunal members

5 “(1) If a person held appointment as president immediately before the commencement of this section, the person continues, subject to this Act, as president for the remainder of the term for which the person was appointed as president.

“(2) If a person held appointment as acting president immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period of 5 years to begin on the commencement.

10 “(3) If a person held appointment as a non-presidential member immediately before the commencement of this section, the person continues, subject to this Act, as a non-presidential member for the remainder of the term for which the person was appointed as a non-presidential member.

15 “(4) This section expires 3 months after it commences.”.

Interpretation Act 1967

Subsection 7 (5) (definition of agent)—

Omit “performs”, substitute “exercises”.

Section 7A—

20 Before “NSW” insert “former”.

Section 13B—

Repeal the section, substitute the following sections:

“13B Change of name of entity or position

25 “(1) This section applies if an Act changes the name of an entity or position established under an Act.

“(2) The entity or position continues in existence under the new name and its identity is not affected by the change.

30 “(3) A reference in an Act or document to the entity or position by its previous name is taken, after the change, to be a reference to the entity or position by its new name.

SCHEDULE—continued

“13BA Change of membership of body

“(1) This section applies if an Act changes the membership of a body established under an Act.

5 “(2) The body continues in existence as newly constituted and its identity is not affected by the change.

“(3) Without limiting subsection (2), the change does not affect—

- (a) any function, power, right, liability or property of the body; or
- (b) the bringing of a proceeding, or the continuation of a proceeding, by or against the body; or
- 10 (c) the undertaking of an investigation or inquiry, or the continuation of an investigation or inquiry, in relation to anything done or not done by the body.”.

New section 23A—

After section 23 insert the following section:

15 **“23A References to Territory implied**

“(1) In an Act—

- (a) a reference to an entity or position by name or description is a reference to the entity or position of that name or description in and for the Territory; and
- 20 (b) a reference to a place, jurisdiction or anything else by name or description is a reference to the place, jurisdiction or thing of that name or description in and of the Territory.

“(2) In an Act, a reference to an entity or position established under an Act whose name includes the words ‘of the Australian Capital Territory’, ‘for the Australian Capital Territory’, ‘(ACT)’, or words having a similar effect, need not include the words.”.

Section 25—

Repeal the section, substitute the following section:

“25 References to occupant of position

30 In an Act, a reference to the occupant of a position includes a reference to anyone for the time being occupying the position.”.

SCHEDULE—continued

Subsections 25A (1) and (2)—

Omit “an office”, substitute “a position”.

Subsection 26 (1)—

5 Omit “may be performed, or the power may be exercised”, substitute “or power may be exercised”.

Subsections 26 (2) and (3)—

Omit the subsections, substitute the following subsection:

10 “(2) If an Act gives a function or power to the occupant of a position, the function or power may be exercised by the person for the time being occupying the position.”.

Sections 28 and 28A—

Repeal the sections, substitute the following sections:

“28 Appointments—general

15 “(1) This section applies if an Act authorises or requires an entity (the *appointer*) to appoint a person (the *appointee*)—

- (a) to a position under an Act; or
- (b) to exercise a power or do anything else under an Act.

“(2) The appointer may make the appointment by naming the appointee or by naming a position occupied by the appointee.

20 “(3) The appointer’s power to make the appointment includes the power—

- (a) to suspend the appointment and end the suspension; or
- (b) to end the appointment and appoint someone else or reappoint the appointee if the appointee is eligible to be appointed to the position; or
- 25 (c) to reappoint the appointee if the appointee is eligible to be appointed to the position.

30 “(4) If the appointer’s power is the power to make an appointment to a position, the power to make the appointment also includes the power to appoint a person to act in the position—

- (a) during any vacancy, or all vacancies, in the position, whether or not an appointment has previously been made to the position; or

SCHEDULE—continued

(b) during any period, or all periods, when the appointee cannot for any reason exercise the functions of the position.

5 “(5) The power to suspend, end the appointment or to appoint a person to act is exercisable in the same way, and subject to the same conditions, as the power to make the appointment.

Example

If the appointment power is exercisable only on the recommendation of a body, the power to suspend, end the appointment or appoint a person to act is exercisable only on the recommendation of the body.

10 “(6) Without limiting subsection (5), if the Act (or another Act) requires—

- (a) the appointee to hold a qualification; or
(b) that the appointer (or someone else) be satisfied about the appointee’s suitability (whether in terms of knowledge, experience or any other personal quality) before appointing the appointee to the position;

a person may only be appointed to act in the position if the person holds the qualification or the appointer (or other person) is satisfied about the person’s suitability.

20 *Examples*

1 If an Act requires the appointee to be a magistrate, a person can be appointed to act in the position only if the person is a magistrate.

2 If an Act requires the appointee to be a lawyer of at least 5 years standing, a person can be appointed to act in the position only if the person is a lawyer of at least 5 years standing.

25 3 If an Act requires the appointee to have, in the Executive’s opinion, appropriate expertise, training or experience in relation to the needs of a particular group of people, a person can be appointed to act in the position only if the person has, in the Executive’s opinion, that expertise, training or experience.

30 “(7) An appointment or suspension, or the ending of an appointment or suspension, must be made, or evidenced by, writing signed by the appointer.

“(8) An appointment ends if the person appointed resigns by signed notice of resignation given to the appointer.

35 “(9) However, if the appointer is the Executive, the notice of resignation may be given to a Minister.

SCHEDULE—continued

“(10) An appointment, or anything done under an appointment, is not invalid merely because of a defect or irregularity in relation to the appointment.

“(11) In subsections (7) to (10)—

5 *appointment* includes an appointment to act.

“28A Acting appointments—incidents

“(1) This section applies if an Act gives an entity (the *appointer*) a power to appoint a person (the *appointee*) to act in a position under an Act.

10 “(2) The instrument making or evidencing the appointment may provide that the appointment has effect only in stated circumstances or subject to stated conditions or limitations.

Examples

1 1 The instrument relating to a standing (or dormant) acting appointment for a position provides that when the substantive occupant of the position (Y) is overseas X may act in the
15 position, but may exercise stated powers of the position only with Y’s approval.

2 X is appointed to act in Y’s position if Y is out of the Territory and a declaration of acute fire danger is published under the Bushfire Act.

“(3) The appointer may—

20 (a) decide the terms and conditions of the appointment, including any remuneration and allowances; and

(b) end the appointment at any time.

“(4) If the appointee acts in the position while it is vacant, the appointee may not act for more than 1 year after the position became vacant.

25 “(5) Subject to subsection (2), if the appointee is acting in a position that becomes vacant while the appointee is acting, the appointee may continue to act until—

(a) the appointer ends the appointment; or

(b) the vacancy is filled; or

(c) 1 year after the position became vacant;

30 whichever happens first.

“(6) If the appointee acts in the position because the occupant of the position cannot exercise his or her functions and the occupant resumes the exercise of the functions, the appointment no longer authorises the appointee to act on that occasion.

SCHEDULE—continued

“(7) If the appointee is the occupant of another position under an Act (the *substantive position*), the appointee does not cease to occupy the substantive position merely because of the appointee’s appointment or because the appointee acts under the appointment.

5 “(8) While the appointee is acting in the position—

(a) the appointee has, subject to the instrument making or evidencing the appointment, all the functions and powers of the occupant of the position; and

10 (b) all Acts apply in relation to the appointee as if the appointee were the occupant of the position.

“(9) Anything done by or in relation to the appointee while the appointee purports to act in the position is not invalid merely because—

(a) the occasion for the appointment had not arisen or had ended; or

(b) the appointment had ended; or

15 (c) the occasion for the appointee to act had not arisen or had ended.”.

Section 29A—

Omit “office or”.

Paragraph 29B (c)—

20 Omit “or performed”.

Paragraph 29B (d)—

Omit “or performance”.

New section 31AA—

After section 31 insert the following section in Division 3 of Part 3:

25 “31AA Provisions relating to bodies

“(1) If an Act authorises or requires a body to exercise a function or power, it may do so by resolution.

30 “(2) If an Act authorises or requires a signature by a person and the person is a body, the signature of a person authorised by the body for the purpose is taken to be the signature of the body.

SCHEDULE—continued

“(3) If an Act gives a function or power to a body, the exercise of the function or power is not affected merely because of vacancies in the body’s membership.

5 “(4) Without limiting subsection (3), if a body does something in exercise of a function or power under an Act and the membership of the body changes, the thing done by the body continues in force but may be ended or changed by the body as constituted for the time being.”.

Table to section 57, item 8, column 3—

10 Omit “performance of functions, or exercise of powers,” substitute “exercise of functions or powers”.

Schedule 2, subclause 6 (1) (definition of *person*, paragraph (b))—

Omit “of persons whether incorporated or unincorporated”.

Schedule 2, subclause 14 (1)—

15 Omit “may be performed, or the power may be exercised”, substitute “or power may be exercised”.

Schedule 2, subclause 14 (2)—

Omit the subclause, substitute the following subclause:

20 “(2) If a former UK Act gives a function or power to the occupant of a position, the function or power may be exercised by the person for the time being occupying the position.”.

Dictionary (definition of *Act*, paragraph (b))—

Omit “continued”, substitute “former”.

Dictionary (definition of *name*)—

Omit the definition, substitute the following definition:

25 *name* includes—

- (a) for an Act—the Act’s short title; and
- (b) for an instrument—the instrument’s citation; and
- (c) for a position—the position’s title or designation.

SCHEDULE—continued

Dictionary (definition of *statutory office holder*)—

Omit “holder of an office established”, substitute “person occupying a position”.

Dictionary (definition of *Territory authority*)—

5 Omit “, whether or not incorporated,”.

Dictionary—

Insert the following definitions:

“*body* includes any group of people joined together for a common purpose, whether or not incorporated.

10

Examples

- 1 A company.
- 2 A statutory corporation, whether or not it has members.
- 3 An association, club or society.
- 4 A partnership
- 15 5 A joint venture

clerk, in relation to the Legislative Assembly, means the Clerk of the Legislative Assembly.

Note The office of Clerk is established under the *Public Sector Management Act 1994*.

20

commissioner for land and planning means the Commissioner for Land and Planning under the *Land (Planning and Environment) Act 1991*.

commissioner for revenue means the Commissioner for Australian Capital Territory Revenue under the *Taxation Administration Act 1999*.

25

Commonwealth Gazette means the *Commonwealth of Australia Gazette* or the *Australian Government Gazette*.

Note The *Australian Government Gazette* was published from 1 July 1973 to 30 June 1976.

30

designation, of a position under the *Public Sector Management Act 1994*, includes a designation given under that Act.

electoral commission means the Australian Capital Territory Electoral Commission established by the *Electoral Act 1992*.

SCHEDULE—continued

electoral commissioner means the Electoral Commissioner under the *Electoral Act 1992*.

exercise a function includes perform the function.

5 *fire brigade* means the Australian Capital Territory Fire Brigade established by the *Fire Brigade (Administration) Act 1974*.

fire commissioner means the Fire Commissioner under the *Fire Brigade (Administration) Act 1974*.

master, in relation to the Supreme Court, means the Master of the Supreme Court.

10 *Note* The office of master is established under the *Supreme Court Act 1933*.

nurse means a registered nurse under the *Nurses Act 1988*.

occupy, in relation to a position, includes hold, or exercise the functions of, an office.

15 *registrar of firearms* means the Registrar of Firearms under the *Firearms Act 1996*.

registrar of liquor licences means the Registrar of Liquor Licences under the *Liquor Act 1975*.

rural firefighting service means the Rural Firefighting Service established by the *Bushfire Act 1936*.

20 ***Juries Act 1967***

Paragraph 42C (5) (ca)—
Omit the paragraph.

Paragraph 42C (5) (e)—
Add at the end “or”.

25 **Subsection 42C (5)—**
After paragraph (e) insert the following paragraph:
“(f) to a legal practitioner to obtain legal advice in relation to a disclosure mentioned in paragraph (a), (b), (c), (d) or (e).”

30 **Paragraph 42C (6) (ca)—**
Omit the paragraph.

SCHEDULE—continued

Paragraph 42C (6) (d)—

Add at the end “or”.

Subsection 42C (6)—

After paragraph (d) insert the following paragraph:

- 5 “(e) by a legal practitioner from his or her client for the purpose of giving legal advice to the client in relation to a disclosure mentioned in paragraph (a), (b), (c) or (d).”

Mental Health (Treatment and Care) Act 1994

10 **Section 4 (definitions of *child, community advocate, discrimination commissioner and doctor*)—**

Omit the definitions.

Section 4—

Insert the following definitions:

- 15 “***community member*** means a member of the tribunal appointed under paragraph 78 (1) (d).

deputy president means a deputy president of the tribunal.

member, of the tribunal, means the president, a deputy president or a non-presidential member.

- 20 ***mental health services member*** means a member of the tribunal appointed under paragraph 78 (1) (c).

non-presidential member means a member of the tribunal who is not a presidential member.

presidential member means the president or a deputy president.

- 25 ***psychiatrist member*** means a member of the tribunal appointed under paragraph 78 (1) (a).

psychologist member means a member of the tribunal appointed under paragraph 78 (1) (b).”

SCHEDULE—continued

Section 9—

Omit “performing a function or exercising a power under this Act, or pursuant to”, substitute “exercising a function or power under this Act, or under”.

5 **Section 12—**

Omit “performance”, substitute “exercise”.

Section 12A—

Repeal the section.

Subsection 48N (1)—

10 Omit “perform”, substitute “exercise”.

Paragraph 48N (2) (b)—

Omit “performed”, substitute “exercised”.

Subsection 68 (1)—

Insert the following definition:

15 *relevant court*, in relation to a person subject to an order to determine fitness, means the court that made the order.

Subsection 68 (4)—

Omit the subsection, substitute the following subsection:

20 “(4) The tribunal must notify the relevant court of its determination and may make recommendations to the court about how the person should be dealt with.”.

Division 1 of Part 9—

Repeal the Division, substitute the following Divisions:

“Division 1—Tribunal members

25 “76 **Membership of tribunal**

“(1) The tribunal consists of—

(a) the president; and

(b) the deputy presidents; and

SCHEDULE—continued

(c) the non-presidential members.

“(2) The members of the tribunal are to be appointed by the Executive.

“77 **Presidential members**

5 “(1) A person is eligible to be appointed president only if the person is a magistrate.

“(2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

10 “(3) However, a person is not eligible to be appointed president or deputy president if the person has been the subject of a mental health order or proceeding within the previous 12 months.

“78 **Non-presidential members**

“(1) The Executive must appoint as non-presidential members—

- 15 (a) persons who are psychiatrists (the *psychiatrist members*); and
(b) persons who are psychologists (the *psychologist members*); and
(c) persons who are not psychiatrists or psychologists, but who, in the Executive’s opinion, have skills and experience in providing mental health clinical services, including mental health nurses, occupational therapists or social workers (the *mental health services members*); and
20 (d) persons who are members of the community who are not persons mentioned in paragraphs (a) to (c) but who, in the Executive’s opinion, are suitable to deal with the needs of mentally dysfunctional people (the *community members*).

25 “(2) A person is not eligible to be appointed as a non-presidential member if the person has been the subject of a mental health order or proceeding within the previous 12 months.

“79 **Terms of appointment generally**

“(1) A member may be appointed as a full-time or part-time member.

30 “(2) A member holds office on the terms not provided by this Act that are decided by the Executive.

“(3) This section does not apply to a member who is a magistrate.

SCHEDULE—continued

“80 Matters to be included in instrument of appointment etc

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) the period for which the member is appointed; and
- 5 (b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

“81 Duration of appointment

“(1) A member is to be appointed for a term of not longer than 5 years.

“(2) The Executive may end the appointment of a member who is not a
10 magistrate—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of
15 remuneration for the benefit of creditors.

“(3) The Executive must end the appointment of—

- (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
- 20 (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
- (c) a psychiatrist member or psychologist member if the member ceases to be eligible for appointment; or
- (d) a mental health services member or community member if the Executive is satisfied that the person is no longer a suitable
25 person to deal with mentally dysfunctional people; or
- (e) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer; or
- 30 (f) any member if the member is the subject of an order under section 26 (which is about involuntary psychiatric treatment orders and community care orders).

SCHEDULE—continued

“Division 2—Registrar and deputy registrars

“82 Registrar and deputy registrars of tribunal

“(1) The registrar of the Magistrates Court is the registrar of the tribunal.

5 “(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.

10 “(4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

“Division 3—Other provisions about the tribunal

“83 Constitution for exercise of powers

“(1) For the purpose of—

- 15 (a) making an order for an assessment under section 16; or
- (b) making an order for the removal of a person under section 18; or
- (c) ordering the detention of a person under subsection 41 (2); or
- (d) ordering the release of a person under section 46;

the tribunal is to be constituted by a presidential member.

“(2) For the purpose of—

- 20 (a) making a mental health order; or
- (b) reviewing a mental health order under section 36; or
- (c) making an order for the administration of convulsive therapy under section 55; or
- (d) making a determination under section 68; or
- 25 (e) reviewing a determination under section 69; or
- (f) making a recommendation under section 70; or
- (g) reviewing an order for detention under section 72; or
- (h) reviewing the conditions in force in relation to a person released from detention under section 73;

30 the tribunal is to be constituted by—

- (i) a presidential member; and

SCHEDULE—continued

- (j) a psychiatrist member, a psychologist member or a mental health services member depending on whom the president considers to be most suitable to deal with the matter; and
- (k) a community member.

5 “(3) However, a magistrate must not constitute or be a member of the tribunal for a purpose mentioned in subsection (1) or (2) if the proceeding before the tribunal—

- 10 (a) relates to an order made by the magistrate requiring the person the subject of the proceeding to submit to the jurisdiction of the tribunal; or
- (b) arises from a finding made by the magistrate under Part 6 of the *Magistrates Court Act 1930* in relation to the person the subject of the proceeding; or
- 15 (c) arises from a determination made by the magistrate in relation to bail for the person the subject of the proceeding.

“(4) If—

- (a) the tribunal is constituted for a proceeding by a presidential member and 2 non-presidential members (as mentioned in subsection (2)); and
- 20 (b) a non-presidential member ceases to be a member, or to be available for the proceeding, before the completion of the proceeding;

the presidential member and the remaining non-presidential member may finish the proceeding.

25 “(5) However, if the presidential member believes that it would be prejudicial to the interests of a person who is the subject of the proceeding, the proceeding must be completed by the tribunal constituted by the presidential member, the remaining non-presidential member and—

- 30 (a) if the remaining non-presidential member is a community member—a psychiatrist member, a psychologist member or a mental health services member depending on whom the president considers to be most suitable to deal with the matter; and
- (b) if the remaining non-presidential member is not a community member—a community member.

35 “(6) If the tribunal is reconstituted under subsection (5), the reconstituted tribunal may have regard to any evidence or information, or

SCHEDULE—continued

documents produced to the tribunal as previously constituted under subsection (2).

“84 Role of president

5 “(1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal’s business.

“(2) Without limiting subsection (1), the president may give directions about the members who are to constitute the tribunal for a particular proceeding.

“85 Deciding questions

10 “(1) The presidential member is to decide a question of law arising in a proceeding.

“(2) If there is a division of opinion about another question arising in a proceeding, the question is decided—

- 15 (a) if the tribunal is constituted under subsection 83 (2), (3) or (5)—
- (i) according to the opinion of the majority of members constituting the tribunal; or
 - (ii) if there is no majority on the question—according to the opinion of the presidential member; or
- 20 (b) if the tribunal is constituted under subsection 83 (4)—according to the opinion of the presidential member.

“86 Protection of members etc

“(1) This section applies to a person who is or has been—

- 25 (a) a member of the tribunal; or
- (b) the registrar or a deputy registrar of the tribunal; or
- (c) a person acting under the tribunal’s direction or authority; or
- (d) a participant in a proceeding before the tribunal.

“(2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

30 **“86A Secrecy**

“(1) In this section—

SCHEDULE—continued

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

person to whom this section applies means a person who is or has been—

- (a) a member of the tribunal;
- (b) the registrar or a deputy registrar of the tribunal; or
- (c) authorised to exercise a function or power under this Act in relation to the tribunal.

produce includes permit access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function or power under this Act in relation to the tribunal.

“(2) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

unless the record is made, or the information divulged or communicated, in relation to the exercise of a function or power, as a person to whom this section applies, under this Act or another Act.

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

“(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of the other person.

“(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.”.

Heading to Division 2 of Part 9—

Omit the heading, substitute the following heading:

SCHEDULE—continued

“Division 4—Procedural matters”.

Section 88—

Repeal the section, substitute the following section:

“88 Sittings

5 The tribunal is to sit in such places, including places outside the Territory, as the president decides.”.

Subsections 92 (1), 93 (1) and (2) and 97 (4) and (5)—

Omit “president”, substitute “presidential member”.

Section 99—

10 Repeal the section.

Subsection 101 (1), paragraph 101 (2) (a), subsection 101 (3), section 102 and subsections 107 (1) and 108 (1) and (2)—

Omit “president”, substitute “presidential member”.

Paragraph 111 (a)—

15 Omit “performance” , substitute “exercise”.

Subsection 122A (2)—

(a) Omit “or perform, or is exercising or performing, any power, duty or function”, substitute “, or is exercising, a function or power”.

20 (b) Omit “or perform that power, function or duty”, substitute “the function or power”.

Subsection 122B (3)

Omit “powers, functions or duties”, substitute “functions or powers”.

25 **New section 149—**

Add at the end the following section:

“149 Transitional provisions about tribunal members

“(1) If a person held appointment as president immediately before the commencement of this section, the person continues, subject to this Act, as

SCHEDULE—continued

president for the remainder of the term for which the person was appointed as president.

5 “(2) If a person held appointment as acting president immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period of 5 years to begin on the commencement.

10 “(3) If a person held appointment as a member of the panel mentioned in paragraph 76 (1) (b) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a psychiatrist member for the unexpired part of the term for which the person was appointed as a member of the panel.

15 “(4) If a person held appointment as a member of the panel mentioned in paragraph 76 (1) (c) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a psychologist member for the unexpired part of the term for which the person was appointed as a member of the panel.

20 “(5) If a person held appointment as a member of the panel mentioned in paragraph 76 (1) (d) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a community member for the unexpired part of the term for which the person was appointed as a member of the panel.

25 “(6) If a person held appointment as a member of the panel mentioned in paragraph 76 (1) (e) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a mental health services member for the unexpired part of the term for which the person was appointed as a member of the panel.

“(7) This section expires 3 months after it commences.”.

Parole Orders (Transfer) Act 1983

Section 6—

30 Add at the end the following subsection:

“(3) The Minister may, in writing, delegate to a public servant all or any of his or her powers under or in relation to this section.”.

SCHEDULE—continued

Tenancy Tribunal Act 1994

Section 3—

Insert the following definitions:

“*deputy president* means a deputy president of the tribunal.

5 *member*, of the tribunal, means the president, a deputy president or a non-presidential member.

non-presidential member means a member of the tribunal who is not a presidential member.

owner member—see subsection 64 (2).

10 *president* means the president of the tribunal.

presidential member means the president or a deputy president of the tribunal.

tenant member—see subsection 64 (2).”.

Subsection 43 (2) and section 44—

15 Omit “President”, substitute “presidential member”.

Heading to section 45—

Omit “President’s”, substitute “Presidential member’s”.

Subsection 45 (1)—

Omit “President”, substitute “presidential member”.

20 **Section 50—**

Repeal the section, substitute the following section:

“50 Deciding questions

“(1) The presidential member is to decide a question of law arising in a hearing.

25 “(2) If there is a division of opinion about another question arising in a hearing, the question is to be decided—

(a) according to the opinion of the majority of members constituting the tribunal; or

SCHEDULE—continued

- (b) if there is no majority on the question—according to the opinion of the presidential member.”.

Section 56—

Omit “of the President”, substitute “the presidential member”.

5 **Heading to Division 1 of Part 8—**

Before section 60, insert the following heading in Part 8:

“Division 1—Establishment, functions and powers

Sections 61 to 72—

Repeal the sections, substitute the following section and Divisions:

10 **“61 Functions and powers**

“(1) The tribunal has the functions and powers given to it under this Act.

“(2) Without limiting subsection (1), the tribunal has power to do everything necessary or convenient to be done in relation to the carrying out of its functions.

15 **“Division 2—Tribunal members**

“62 Membership of tribunal

“(1) The tribunal consists of—

(a) the president; and

(b) the deputy presidents; and

20 (b) the non-presidential members.

“(2) The members of the tribunal are to be appointed by the Executive.

“63 Presidential members

“(1) A person is eligible to be appointed president only if the person is a magistrate.

25 “(2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

“64 Non-presidential members

“(1) The Executive must appoint as non-presidential members—

SCHEDULE—continued

- (a) persons who, in its opinion, represent the interests of tenants; and
- (b) persons who, in its opinion, represent the interests of owners.

“(2) A member appointed under paragraph (1) (a) is a *tenant member*, and a member appointed under paragraph (1) (b) is an *owner member*.

5 “65 **Terms of appointment generally**

“(1) A member may be appointed as a full-time or part-time member.

“(2) A member holds office on the terms not provided by this Act that are decided by the Executive.

“(3) This section does not apply to a member who is a magistrate.

10 “66 **Matters to be included in instrument of appointment etc**

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) the period for which the member is appointed; and
- (b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

15 “67 **Duration of appointment**

“(1) A member is to be appointed for a term of not longer than 5 years.

“(2) The Executive may end the appointment of a member who is not a magistrate—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

25 “(3) The Executive must end the appointment of—

- (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
- (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
- (c) a non-presidential member if the Executive is satisfied that the member no longer represents the interests of the people the member was appointed to represent; or

SCHEDULE—continued

- (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

“Division 3—Registrar and deputy registrars

5 **“68 Registrar and deputy registrars of tribunal**

“(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.

10 “(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, in writing, delegate to a public servant all or any of his or her powers under this Act.

“Division 4—Other provisions about the tribunal

15 **“69 Constitution of tribunal**

“(1) The tribunal is to be constituted by—

- (a) a single presidential member; or
- (b) a presidential member, a tenant member and an owner member.

“(2) However, if —

20 (a) the tribunal is constituted for a hearing by a presidential member and 2 non-presidential members (as mentioned in paragraph (1) (b)); and

(b) a non-presidential member ceases to be a member, or to be available for the hearing, before the completion of the hearing;

25 the presidential member and any remaining non-presidential member may finish the hearing if the presidential member considers it desirable to do so.

“70 Role of president

“(1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal’s business.

30 “(2) Without limiting subsection (1), the president may give directions about—

SCHEDULE—continued

- (a) how the tribunal is to be constituted for a particular matter; and
- (b) the members who are to constitute the tribunal for a particular matter.

“71 Protection of members

- 5 “(1) This section applies to a person who is or has been—
- (a) a member of the tribunal; or
 - (b) the registrar or a deputy registrar of the tribunal; or
 - (c) a person acting under the tribunal’s direction or authority; or
 - (d) a participant in a proceeding before the tribunal.
- 10 “(2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.”.

Section 84—

After section 83, insert the following section:

15 **“84 Transitional provisions about tribunal members**

- “(1) If a person held appointment as president immediately before the commencement of this section, the person continues, subject to this Act, as president for the remainder of the term for which the person was appointed as president.
- 20 “(2) If a person held appointment as acting president immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period of 5 years to begin on the commencement.
- 25 “(3) If a person held appointment as a member of the group mentioned in paragraph 62 (3) (a) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as a tenant member for the unexpired part of the term for which the person was appointed as member of the group.
- 30 “(4) If a person held appointment as a member of the group mentioned in paragraph 62 (3) (b) immediately before the commencement of this section, the person is taken, on the commencement, to be appointed as an owner member for the unexpired part of the term for which the person was appointed as member of the group.

SCHEDULE—continued

“(5) This section expires 3 months after it commences.”.

Endnote

Penalty units

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.