

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

ACT Civil and Administrative Tribunal Bill 2008

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2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

ACT Civil and Administrative Tribunal Bill 2008

A Bill for

An Act to establish the ACT Civil and Administrative Tribunal to resolve issues arising under certain legislation, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *ACT Civil and Administrative Tribunal Act 2008*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 (2) If this Act has not commenced within 2 years beginning on its
13 notification day, it automatically commences on the first day after
14 that period.

15 (3) The Legislation Act, section 79 (Automatic commencement of
16 postponed law) does not apply to this Act.

17 **3 Dictionary**

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

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

22 For example, the signpost definition '*contract application*, for part 4
23 (Civil disputes)—see section 15.' means that the term 'contract
24 application' is defined in that section for part 4.

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

1 **4** **Notes**

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

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

5 **5** **Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

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

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

14 *Note 2* *Penalty units*

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

- 1 **Part 2** **Objects and important concepts**
- 2 **6** **Objects of Act**
- 3 The objects of this Act are—
- 4 (a) to provide for a wide range of matters arising under legislation
5 to be resolved by the ACT Civil and Administrative Tribunal;
6 and
- 7 (b) to ensure that access to the tribunal is simple and inexpensive,
8 for all people who need to deal with the tribunal; and
- 9 (c) to ensure that applications to the tribunal are resolved as
10 quickly as is consistent with achieving justice; and
- 11 (d) to ensure that decisions of the tribunal are fair; and
- 12 (e) to enhance the quality of decision making under legislation;
13 and
- 14 (f) to encourage, and bring about, compliance in decision making
15 under legislation; and
- 16 (g) to encourage tribunal members to act in a way that promotes
17 the collegiate nature of the tribunal; and
- 18 *Note* Unless otherwise provided by this Act, the tribunal for the
19 exercise of functions, other than functions in relation to
20 applications, is made up of the presidential members (see s 93).
- 21 (h) to identify and bring to the Attorney-General's attention
22 systemic problems in relation to the operation of authorising
23 laws.

1 **7** **Principles applying to Act**

2 In exercising its functions under this Act, the tribunal must—

- 3 (a) ensure the procedures of the tribunal are as simple, quick,
4 inexpensive and informal as is consistent with achieving
5 justice; and
6 (b) observe natural justice and procedural fairness.

7 **8** **Rules of evidence**

8 (1) To remove any doubt, the tribunal need not comply with the rules of
9 evidence applying in the ACT.

10 (2) However, in exercising its functions, the tribunal must consider—

- 11 (a) the desirability of an approach consistent with the rules of
12 evidence in the ACT; and
13 (b) whether it is practicable to comply with the *Evidence*
14 *Act 1995* (Cwlth) and still give effect to the objects and
15 principles of this Act.

16 (3) The exercise of a function by the tribunal is not affected by a failure
17 to comply with subsection (2).

18 *Note* The tribunal may inform itself in any way it considers appropriate in the
19 circumstances (see s 26).

1 **Part 3 Applications to tribunal**

2 **9 Applications under authorising laws**

3 A person may apply to the tribunal if an authorising law provides
4 that the application may be made.

5 **10 Making an application**

6 An application to the tribunal must—

- 7 (a) comply with the rules; and
8 (b) be in writing, whether with or without the registrar's help; and

9 *Note* The registrar may help a person put an application in writing (see
10 s 13).

- 11 (c) state the reasons for making the application; and
12 (d) for an application for review of a decision—be made within
13 28 days after the day the decision to be reviewed is made; and

14 *Note* The rules may prescribe a longer period for making the
15 application (see s 25 (1) (e) and (2)).

- 16 (e) be lodged at the tribunal registry.

17 *Note 1* If a form is approved under s 117 for an application, the form must be
18 used.

19 *Note 2* A fee may be determined under the *Court Procedures Act 2004*, s 13 for
20 this provision.

21 **11 Applications subject to authorising laws**

22 The right under an authorising law to make an application to the
23 tribunal is subject to any condition stated in the authorising law.

1 **12 When no action taken to be decision**

- 2 (1) This section applies if—
- 3 (a) an entity (the *decision-maker*) is required or allowed to do
- 4 something under an authorising law; and
- 5 (b) the decision-maker has not done the thing within the period for
- 6 doing the thing under the authorising law or, if no period is
- 7 stated under the authorising law, a reasonable period for doing
- 8 the thing; and
- 9 (c) the authorising law provides that a person may apply to the
- 10 tribunal for review of a decision under the authorising law in
- 11 relation to doing the thing.
- 12 (2) The decision-maker is taken to have decided, at the end of the
- 13 period for doing the thing, not to do the thing.

14 **13 Help with applications etc**

- 15 (1) This section applies if the registrar considers that a person making
- 16 an application, or considering making an application, needs help
- 17 with the application.
- 18 (2) The registrar must take reasonably practicable steps to give the
- 19 person the help with the application that the registrar considers
- 20 appropriate.

21 **Examples of help**

- 22 1 advising person about the role of the tribunal
- 23 2 helping person to put application in writing

24 *Note* An example is part of the Act, is not exhaustive and may extend, but

25 does not limit, the meaning of the provision in which it appears (see

26 Legislation Act, s 126 and s 132).

- 1 **14 Advising Attorney-General about systemic problems**
- 2 (1) This section applies if it appears to the tribunal that applications to
- 3 the tribunal indicate a systemic problem in relation to—
- 4 (a) the operation of an authorising law; or
- 5 (b) other matters that come to the tribunal’s attention in the course
- 6 of exercising its functions.
- 7 (2) The tribunal must tell the Attorney-General about the problem.

1 **Part 4** **Civil disputes**

2 **15** **Definitions—pt 4**

3 In this part:

4 ***common boundaries determination*** means a determination under
5 the *Common Boundaries Act 1981*, and includes a variation of a
6 determination.

7 ***contract application*** means an application in relation to a contract,
8 and includes an application for damages for breach of contract.

9 ***damages application*** means an application for damages for
10 negligence or for any other tort except nuisance or trespass.

11 ***debt application*** means an application for the recovery of a debt.

12 ***debt declaration***, in relation to an application, means an order
13 declaring that—

14 (a) the applicant is or is not indebted to the respondent; or

15 (b) the applicant is or is not indebted to the respondent for a stated
16 amount; or

17 (c) the applicant is or is not indebted to the respondent for an
18 amount that is more than a stated amount.

19 ***goods application*** means an application in relation to the provision
20 of goods or services, and includes an application for damages for the
21 detention, or return, of goods.

22 ***nuisance application*** means an application for relief for nuisance.

23 ***residential tenancy application*** means an application under—

24 (a) the *Residential Tenancies Act 1997*; or

25 (b) the standard residential tenancy terms; or

- 1 (c) the standard occupancy terms.
2 *standard occupancy terms*—see the *Residential Tenancies*
3 *Act 1997*, dictionary.
4 *standard residential tenancy terms*—see the *Residential Tenancies*
5 *Act 1997*, dictionary.
6 *trespass application* means an application for relief for trespass to
7 land.

8 **16 Meaning of *civil dispute* and *civil dispute application*—**
9 **Act**

10 In this Act:

11 *civil dispute* means a dispute in relation to which a civil dispute
12 application may be made.

13 *civil dispute application* means an application that consists of 1 or
14 more of the following applications:

- 15 (a) a contract application;
16 (b) a damages application;
17 (c) a debt application;
18 (d) a goods application;
19 (e) a nuisance application;
20 (f) a trespass application;
21 (g) an application for a debt declaration;
22 (h) an application for a common boundaries determination;
23 (i) an application stated to be a civil dispute application in an
24 authorising law.

1 **17** **Civil dispute applications**

2 A person may make a civil dispute application to the tribunal.

3 **18** **\$10 000 limit on civil dispute applications**

4 (1) A civil dispute application cannot be made to the tribunal for an
5 amount greater than the tribunal's jurisdictional limit, unless
6 section 20 (Abandoning excess to come within jurisdiction) or
7 section 21 (Jurisdiction by agreement—amounts over \$10 000)
8 allows the application to be made.

9 (2) The tribunal's jurisdiction is limited to—

10 (a) civil dispute applications claiming amounts of not more than
11 \$10 000; or

12 (b) in relation to debt declarations—applications for declarations
13 for debts of not more than \$10 000.

14 *Note* For working out an amount to decide whether the tribunal has
15 jurisdiction—see s 19.

16 (3) This section does not apply to—

17 (a) an application for a common boundaries determination; or

18 (b) a residential tenancy application; or

19 (c) an application prescribed by regulation.

20 **19** **Working out amount of application for jurisdiction**

21 (1) In working out the amount claimed, or the amount sought to be
22 declared as a debt, to decide whether the tribunal has jurisdiction in
23 relation to a civil dispute application, the following amounts for the
24 application are to be disregarded:

25 (a) a claim for interest;

26 (b) a claim for a lump sum instead of interest.

- 1 (2) In working out the amount claimed, to decide whether the tribunal
2 has jurisdiction in relation to a goods application, the following
3 amounts are to be considered:
- 4 (a) the value of the goods or services;
- 5 (b) any amount claimed for damages for the detention of the
6 goods.

7 **20 Abandoning excess to come within jurisdiction**

- 8 (1) This section applies if a person would be entitled to make an
9 application claiming an amount greater than \$10 000 in a court of
10 competent jurisdiction.
- 11 (2) The person may, by a civil dispute application to the tribunal,
12 abandon the excess by limiting the claim to \$10 000.

13 **21 Jurisdiction by agreement—amounts over \$10 000**

- 14 (1) This section applies if—
- 15 (a) a civil dispute application could be made to the tribunal but for
16 section 18 (\$10 000 limit on civil dispute applications); and
- 17 (b) the parties agree to the application being decided by the
18 tribunal; and
- 19 (c) the tribunal is satisfied that the parties understand that the
20 amount of the claim in excess of \$10 000 is not being
21 abandoned.
- 22 (2) The civil dispute application may be made, and the tribunal has
23 jurisdiction to hear the application, despite section 18.

24 **22 Tribunal jurisdiction and powers of Magistrates Court**

- 25 (1) The tribunal has, in relation to civil dispute applications, the same
26 jurisdiction and powers as the Magistrates Court has under the
27 *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction).

- 1 (2) However, a rule may prescribe provisions of the *Magistrates Court*
2 *Act 1930*, part 4.2 that do not apply in relation to the tribunal.

1 **Part 5 Tribunal procedures**

2 **Division 5.1 Procedures generally**

3 **23 Tribunal decides own procedure**

4 The tribunal may decide its own procedure in relation to a particular
5 matter in a hearing or a step in dealing with an application if no
6 procedure is prescribed under this Act, an authorising law for the
7 application or the rules.

8 *Note 1* The procedures of the tribunal must be as simple, quick, inexpensive
9 and informal as is consistent with achieving justice.

10 *Note 2* A reference to an Act includes a reference to the statutory instruments
11 made or in force under the Act, including regulations (see Legislation
12 Act, s 104).

13 **24 Rule-making power**

14 (1) The tribunal may make rules in relation to the practice and
15 procedure of the tribunal and the tribunal registry.

16 *Note* The power to make rules for the tribunal includes power to make rules
17 in relation to any matter necessary or convenient to be prescribed for
18 carrying out or giving effect to the jurisdiction of the tribunal under any
19 law of the Territory or Commonwealth that authorises or requires
20 anything to be done in or in relation to the tribunal (see Legislation Act,
21 s 45).

22 (2) In making a rule, the tribunal must consider—

23 (a) the requirement to ensure that applications to the tribunal are
24 resolved as quickly as is consistent with achieving justice; and

25 (b) the requirement for procedures of the tribunal to be as simple,
26 quick, inexpensive and informal as is consistent with achieving
27 justice; and

- 1 (c) rules dealing with similar matters under the *Court Procedures*
2 *Rules 2006*; and
- 3 (d) if the rule is a kind mentioned in section 25 (1) (e)—the
4 desirability of being able to rely on the words in the Act.
- 5 (3) This section does not limit the power of the tribunal or a tribunal
6 member to control proceedings.
- 7 (4) A rule is a notifiable instrument.
- 8 *Note* A notifiable instrument must be notified under the Legislation Act.
- 9 (5) The tribunal must provide the rule-making committee, under the
10 *Court Procedures Act 2006*, with a copy of a rule made by the
11 tribunal.

12 **25 Subject matter of rules**

- 13 (1) The rules the tribunal may make under section 24 include, but are
14 not limited to, rules to do the following:
- 15 (a) to allow the tribunal to make orders in a short form;
- 16 (b) to prescribe how the tribunal may deal with applications and
17 other proceedings, including when a tribunal may stop a person
18 representing another person before the tribunal;
- 19 (c) to facilitate the early resolution of matters arising in
20 applications;
- 21 **Example**
- 22 The tribunal may make rules about referring an application to an agency
23 that the tribunal considers is more appropriate to handle the application.
- 24 *Note* An example is part of the Act, is not exhaustive and may extend,
25 but does not limit, the meaning of the provision in which it
26 appears (see Legislation Act, s 126 and s 132).
- 27 (d) to prescribe the functions, and limits on the functions, of the
28 registrar;

- 1 (e) to prescribe a time for doing a thing by a person that is longer
2 than the time for doing the thing provided under this Act or an
3 authorising law—
- 4 (i) in relation to an application to the tribunal; but
5 (ii) not in relation to any thing to be done by the tribunal;
- 6 **Example**
7 a rule about the time for filing an application
- 8 (f) to allow the tribunal to make orders about costs for complying
9 with subpoenas.
- 10 (2) If a rule of a kind mentioned in subsection (1) (e) prescribes a time
11 for doing something that is longer than the time for doing the thing
12 set out in this Act or an authorising law, the time for doing the thing
13 is the longer time prescribed by rule.

14 **26 Tribunal may inform itself**

15 The tribunal may inform itself in any way it considers appropriate in
16 the circumstances.

17 **Examples**

- 18 1 asking an assessor for expert advice on a matter
19 2 relying on previous experience in relation to the matter

20 *Note 1* The tribunal must observe natural justice and procedural fairness (see
21 s 7).

22 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 Legislation Act, s 126 and s 132).

25 **27 Procedures in authorising laws**

- 26 (1) An authorising law may set out procedures for dealing with an
27 application made under the authorising law.

1 (2) Any procedure under an authorising law for dealing with an
2 application prevails over the procedures set out in this Act or the
3 rules for dealing with the application, to the extent of any
4 inconsistency.

5 (3) To remove any doubt, this Act is not inconsistent with an
6 authorising law only because 1 Act deals with a matter and the other
7 does not.

8 **28 Time and place of proceedings**

9 (1) The tribunal sits at the times and places the general president
10 decides.

11 (2) The tribunal must not sit in a place usually used by a court for
12 proceedings unless the general president is satisfied that no other
13 suitable place is available or appropriate in the circumstances.

14 **Division 5.2 Parties**

15 **29 Parties to applications**

16 (1) The parties to an application are the applicant and the respondent,
17 unless this section or an authorising law otherwise provides.

18 (2) The parties to an application for occupational discipline are the
19 entity bringing the application and the person to whom the
20 application relates.

21 (3) The parties to an application for review of a decision are the
22 applicant and the decision-maker.

23 (4) The tribunal may, by written notice to the parties to an application,
24 join a person as a new party to the application.

1 **30 Representation**

2 A person may, in relation to an application before the tribunal,
3 appear in person or be represented by a lawyer or other person
4 prescribed under the rules.

5 *Note* The rules may make provision about when the tribunal may stop a
6 person representing another person before the tribunal (see s 25 (1) (b)).

7 **Division 5.3 Case management**

8 **31 Early resolution of applications**

9 The tribunal must take all reasonably practicable steps to resolve
10 matters arising in an application before the application is heard.

11 **32 Frivolous and vexatious applications**

12 (1) This section applies if—

13 (a) the tribunal considers an application is frivolous or vexatious;
14 or

15 (b) a person who has made an application to the tribunal has been
16 dealt with as frivolous or vexatious by a court or tribunal in
17 Australia.

18 (2) The tribunal may, by order, do 1 or more of the following:

19 (a) refuse to hear the application;

20 (b) dismiss the application;

21 (c) direct that the person who made the application not make a
22 subsequent application to the tribunal of the kind stated in the
23 direction—

24 (i) within a stated period of time; or

25 (ii) without the leave of the tribunal.

1 (3) The tribunal may make an order under subsection (2) on its own
2 initiative or on application by a party.

3 (4) The tribunal may vary or revoke a direction given under
4 subsection (2) (c)—

5 (a) on its own initiative; or

6 (b) on application by the person who is the subject of the order.

7 *Note* The tribunal must observe natural justice and procedural fairness (see
8 s 7).

9 **33 Preliminary conferences**

10 (1) The tribunal may require the parties to an application to attend a
11 preliminary conference.

12 (2) The tribunal may make inquiries, or require further information
13 from a party, for or during a preliminary conference.

14 **Example**

15 The tribunal may talk to the person who made a complaint to which an application
16 for occupational discipline relates.

17 *Note 1* Consequences for failure to comply with an order of the tribunal are set
18 out in s 48 (2) (c) and s 74.

19 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 Legislation Act, s 126 and s 132).

22 **34 Admissibility of evidence given at preliminary conference**

23 (1) Evidence given before the tribunal during a preliminary conference
24 is not admissible against a person in a criminal proceeding.

25 (2) Evidence of any words spoken at a preliminary conference must not
26 be admitted in a proceeding under this Act.

1 **35 Mediation for applications**

2 (1) This section applies if, before the hearing of an application, the
3 tribunal considers that the matter (the *subject matter*) to which the
4 application relates—

5 (a) is suitable for mediation; and

6 (b) is reasonably likely to be resolved by mediation.

7 (2) The tribunal may, by order—

8 (a) refer the subject matter to a registered mediator for mediation;
9 and

10 (b) require the parties to attend the mediation.

11 (3) The tribunal may make the order on its own initiative or on
12 application by a party.

13 *Note* Consequences for failure to comply with an order of the tribunal are set
14 out in s 48 (2) (c) and s 74.

15 (4) In this section:

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

17 **Division 5.4 Hearings**

18 **36 Applications to be heard**

19 The tribunal must hear each application made to it unless the
20 tribunal—

21 (a) refuses to hear the application or dismisses it; or

1 (b) decides not to hold a hearing.

2 *Note 1* The tribunal may refuse to hear an application or dismiss it under
3 s 32 (2) (a) and (b) and decide not to hold a hearing under s 54.

4 *Note 2* The tribunal may make rules to facilitate the early resolution of matters
5 arising in applications, including rules about referring an application to
6 an agency that the tribunal considers is more appropriate to handle the
7 application (see s 25 (1) (c)).

8 **37 Notice of hearing**

9 The registrar must give written notice of the time and place for the
10 hearing of an application to the parties.

11 **38 Hearings usually in public**

- 12 (1) The hearing of an application by the tribunal must be in public.
13 (2) However, this section does not apply to a hearing, or part of a
14 hearing, if the tribunal makes an order under section 39 in relation to
15 the hearing, or part.

16 **39 Hearings in private or partly in private**

- 17 (1) This section applies in relation to an application if—
18 (a) a party to the application—
19 (i) applies for an order under this section; or
20 (ii) is a person under a legal disability; and
21 (b) the tribunal is satisfied that the right to a public hearing is
22 outweighed by competing interests.

23 *Note* See s (4) in relation to competing interests.

- 1 (2) If this section applies in relation to an application, or part of an
2 application, the tribunal may, by order, do 1 or more of the
3 following:
- 4 (a) direct that the hearing of the application, or part of the hearing,
5 take place in private and give directions about the people who
6 may be present;
- 7 (b) give directions prohibiting or restricting the publication of
8 evidence given at the hearing, whether in public or private, or
9 of matters contained in documents filed with the tribunal or
10 received in evidence by the tribunal for the hearing;
- 11 (c) give directions prohibiting or restricting the disclosure to some
12 or all of the parties to the application of evidence given at the
13 hearing, or of a matter contained in a document lodged with the
14 tribunal or received in evidence by the tribunal for the hearing.
- 15 (3) A person must not contravene an order under subsection (2) (b)
16 or (c).
- 17 Maximum penalty: 50 penalty units, imprisonment for 6 months or
18 both.
- 19 (4) For this section, the right to a public hearing is outweighed by
20 competing interests if the tribunal is satisfied that the application, or
21 part of the application, should be kept private—
- 22 (a) to protect morals, public order or national security in a
23 democratic society; or
- 24 (b) because the interest of the private lives of the parties require
25 the privacy; or
- 26 (c) to the extent privacy is strictly necessary, in special
27 circumstances of the application, because publicity would
28 otherwise prejudice the interests of justice.

- 1 **40 Secrecy for private hearings etc**
- 2 (1) In this section:
- 3 *court* includes any entity with power to require the production of
4 documents or answering of questions.
- 5 *divulge* includes communicate.
- 6 *produce* includes allow access to.
- 7 *protected information* means information that is disclosed to, or
8 obtained by, a person to whom this section applies if—
- 9 (a) the information is disclosed to the person because of the
10 exercise of a function under this Act by the person or someone
11 else; and
- 12 (b) at disclosure, the function is being exercised in relation to—
- 13 (i) a hearing held in private; or
- 14 (ii) evidence, or a document, to which a direction under
15 section 39 (2) (b) or (c) applies.
- 16 (2) This section applies to a person who is, or has been—
- 17 (a) a tribunal member; or
- 18 (b) a member of the staff of the tribunal; or
- 19 (c) acting under the direction or authority of the tribunal.
- 20 (3) The person commits an offence if—
- 21 (a) the person—
- 22 (i) makes a record of protected information; and
- 23 (ii) is reckless about whether the information is protected
24 information; or
- 25 (b) the person—
- 26 (i) does something that divulges protected information; and

- 1 (ii) is reckless about whether—
2 (A) the information is protected information; and
3 (B) doing the thing would result in the information being
4 divulged.

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

- 7 (4) This section does not apply if the record is made, or the information
8 is divulged—
9 (a) under this Act or another territory law; or
10 (b) in relation to the exercise of a function, as a person to whom
11 this section applies, under this Act or another territory law.
12 (5) The person need not divulge protected information to a court, or
13 produce a document containing protected information to a court,
14 unless it is necessary to do so for this Act or another territory law.

15 **41 Powers in relation to witnesses etc**

- 16 (1) The tribunal may, by subpoena given to a person, require the person,
17 at a stated time and place, to appear before the tribunal to do 1 or
18 more of the following:

- 19 (a) produce a stated document or other thing relevant to the
20 hearing;
21 (b) give evidence.

22 *Note 1* Notice may be given electronically in certain circumstances (see
23 *Electronic Transactions Act 2001*).

24 *Note 2* If a form is approved under s 117 for this provision, the form must be
25 used.

- 26 (2) A person is taken to have complied with a subpoena under
27 subsection (1) (a) if the person gives the document or other thing to
28 the tribunal before the date stated in the subpoena for its production.

- 1 (3) The tribunal may give a party leave to inspect a document produced
2 under a subpoena.
- 3 (4) The presiding member at the hearing of an application may require a
4 person appearing before the tribunal to give evidence to do 1 or
5 more of the following:
- 6 (a) take an oath;
- 7 (b) answer a question relevant to the hearing;
- 8 (c) produce a stated document or other thing relevant to the
9 hearing.
- 10 *Note 1* The Legislation Act, s 170 and s 171 deal with the application of the
11 privilege against selfincrimination and client legal privilege.
- 12 *Note 2* **Oath** includes affirmation and **take** an oath includes make an
13 affirmation (see Legislation Act, dict, pt 1).
- 14 (5) If a subpoena is issued to give evidence under subsection (1) (b), the
15 subpoena must—
- 16 (a) state the time and place at which the person must appear before
17 the tribunal; and
- 18 (b) contain a statement to the effect that the person may be
19 represented before the tribunal by a lawyer or someone else
20 and that the person may wish to obtain legal advice in relation
21 to the subpoena; and
- 22 (c) contain a statement to the effect that the person may apply to
23 the tribunal for a direction under section 45 (Taking part other
24 than in person).
- 25 *Note* If a form is approved under s 117 for a subpoena, the form must be
26 used.

- 1 **42 Arrest if people fail to appear**
- 2 (1) If a person who is subpoenaed to appear before the tribunal under
3 section 41 does not appear, a presidential member may, on proof of
4 the service of the subpoena, issue a warrant to arrest the person and
5 bring the person before the tribunal.
- 6 (2) However, the presidential member may only issue a warrant if
7 satisfied that—
- 8 (a) the tribunal has taken reasonably practicable steps to contact
9 the person; and
- 10 (b) the issue of a warrant is in the interests of justice.
- 11 (3) In deciding whether it is in the interests of justice to issue a warrant,
12 the tribunal must consider the following:
- 13 (a) the importance of the evidence that the tribunal expects the
14 person to give;
- 15 (b) whether the evidence could be obtained by other means;
- 16 (c) the nature of the application;
- 17 (d) the degree of urgency to resolve the matter;
- 18 (e) the likelihood that issuing the warrant would secure the
19 person’s attendance at the hearing;
- 20 (f) if the tribunal has contacted the person—
- 21 (i) the reason (if any) given by the person for not attending
22 under the subpoena; and
- 23 (ii) the impact of using the warrant for the arrest of the
24 person.
- 25 **43 Executing a warrant**
- 26 (1) This section applies if a presidential member issues a warrant under
27 section 42.

- 1 (2) The warrant authorises a police officer to—
- 2 (a) arrest the person named in the warrant; and
- 3 (b) bring the person before the tribunal.
- 4 (3) A police officer executing the warrant—
- 5 (a) may, with necessary assistance and force, enter any premises to
- 6 arrest the person named in the warrant; and
- 7 (b) must use not more than the minimum amount of force
- 8 necessary to arrest the person and remove the person to the
- 9 place stated in the warrant; and
- 10 (c) must, before removing the person, explain to the person the
- 11 purpose of the warrant; and
- 12 (d) must bring the person immediately before a presidential
- 13 member; and
- 14 (e) if a person is under a legal disability—must inform a parent or
- 15 guardian of the person of the arrest.
- 16 (4) If, after arresting the person, the police officer believes on
- 17 reasonable grounds that the person cannot be brought immediately
- 18 before a presidential member, the police officer must immediately
- 19 release the person.

20 **44 Procedure in absence of party**

- 21 (1) This section applies if, at the time set for the hearing of an
- 22 application, a party fails to appear either personally or by a
- 23 representative.
- 24 (2) The tribunal may—
- 25 (a) order that the application be set down for hearing at another
- 26 time; or
- 27 (b) order that stated other steps be taken before the hearing
- 28 proceeds as the tribunal directs; or

- 1 (c) adjourn the hearing; or
2 (d) proceed with the hearing in the absence of the party either
3 generally or in relation to any relief claimed in the application;
4 or
5 (e) if the party is the applicant—dismiss the application; or
6 (f) if the party is not the applicant or respondent—remove the
7 party from the application.

8 **45 Taking part other than in person**

9 The tribunal may direct that a person may take part or give evidence
10 in a preliminary conference or hearing of an application by a method
11 of communication, or a combination of methods of communication,
12 that allows people to hear what each other person taking part says
13 without the people being in each other's presence.

14 **Examples**

15 a phone link, a satellite link, an internet or intranet link

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

19 **Division 5.5 Other matters**

20 **46 Lodging documents**

21 If a document is required by this Act or an authorising law to be
22 lodged with the tribunal, the document must be lodged at the
23 tribunal registry.

24 *Note* Documents may be lodged electronically in certain circumstances (see
25 *Electronic Transactions Act 2001*).

1 **47** **Amending documents**

2 At any stage in dealing with an application, the tribunal may—

- 3 (a) on its own initiative or on application by a party—order that a
4 document in relation to the application be amended; or
- 5 (b) with the agreement of the parties—give leave to a party to
6 amend a document of the party.

7 **48** **Costs of proceedings**

8 (1) The parties to an application must bear their own costs unless this
9 Act otherwise provides or the tribunal otherwise orders.

10 (2) However—

11 (a) if the tribunal decides an application in favour of the
12 applicant—the tribunal may order the other party to pay the
13 applicant the filing fee for the application; or

14 (b) if the tribunal considers that a party to an application caused
15 unreasonable delay or obstruction before or while the tribunal
16 was dealing with the application—the tribunal may order the
17 party to pay the reasonable costs of the other party arising from
18 the delay or obstruction; or

19 (c) subject to section 49, if a party to the application contravenes
20 an order of the tribunal—the tribunal may order the party to
21 pay the costs or part of the costs of the application to the other
22 party.

23 **49** **Costs for contravening an order**

24 (1) The tribunal may award costs against a party for contravening an
25 order under section 48 (2) (c) only if satisfied that it is in the
26 interests of justice to do so.

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

13 **50 Disclosure of material interests by tribunal members**

- 14 (1) If a tribunal member (the *interested member*) has a material interest
15 in a matter in an application, the interested member must, as soon as
16 practicable after the relevant facts come to the interested member's
17 knowledge, disclose the nature of the interest to—
- 18 (a) the general president, the presiding member and the parties; or
19 (b) if the interested member is the presiding member—the general
20 president and the parties.
- 21 *Note* **Material interest** is defined in s (4). The definition of *indirect interest*
22 in s (4) applies to the definition of **material interest**.
- 23 (2) The interested member must not, unless each party consents—
- 24 (a) take part, or continue to take part, in the tribunal dealing with
25 the application; or
26 (b) exercise any function in relation to the application.

- 1 (3) If the general president becomes aware that a tribunal member is, or
2 will be, part of the tribunal dealing with an application and that the
3 member has a material interest, the president must—
- 4 (a) disclose the conflicting interest to the parties; or
- 5 (b) if the president considers that the member should not take part,
6 or should not continue to take part, in the tribunal dealing with
7 the application—direct the member not to take part or continue
8 to take part.
- 9 (4) In this section:
- 10 *associate*, of a person, means—
- 11 (a) the person’s business partner; or
- 12 (b) a close friend of the person; or
- 13 (c) a family member of the person.
- 14 *executive officer*, of a corporation, means a person (however
15 described) who is concerned with, or takes part in, the corporation’s
16 management, whether or not the person is a director of the
17 corporation.
- 18 *indirect interest*—without limiting the kinds of indirect interests a
19 person may have, a person has an *indirect interest* in a matter if any
20 of the following has an interest in the matter:
- 21 (a) an associate of the person;
- 22 (b) a corporation if the corporation has not more than
23 100 members and the person, or an associate of the person, is a
24 member of the corporation;
- 25 (c) a subsidiary of a corporation mentioned in paragraph (b);
- 26 (d) a corporation if the person, or an associate of the person, is an
27 executive officer of the corporation;

- 1 (e) the trustee of a trust if the person, or an associate of the person,
2 is a beneficiary of the trust;
- 3 (f) a member of a firm or partnership if the person, or an associate
4 of the person, is a member of the firm or partnership;
- 5 (g) someone else carrying on a business if the person, or an
6 associate of the person, has a direct or indirect right to
7 participate in the profits of the business.
- 8 ***material interest***—a tribunal member has a ***material interest*** in a
9 matter if the member has—
- 10 (a) a direct or indirect financial interest in the matter; or
- 11 (b) a direct or indirect interest of any other kind if the interest
12 could conflict with the proper exercise of the member’s
13 functions in relation to the tribunal’s consideration of the
14 matter.

15 **51 Reporting of disclosed tribunal member interests to**
16 **Minister**

- 17 (1) Not later than 31 days after the end of a financial year, the general
18 president must report to the Attorney-General in writing about—
- 19 (a) each disclosure under section 50 made during the financial
20 year; and
- 21 (b) the nature of each interest disclosed; and
- 22 (c) for each disclosure—whether the tribunal member who made
23 the disclosure took part or continued to take part in the tribunal
24 dealing with, or exercised any function in relation to, the
25 application to which the disclosure related; and
- 26 (d) each direction (if any) under section 50 (3) given during the
27 financial year.

- 1 (2) The Attorney-General must give a copy of the report to the relevant
2 committee of the Legislative Assembly within 31 days after the day
3 the Attorney-General receives the report.
- 4 (3) In this section:
- 5 *relevant committee* means—
- 6 (a) a standing committee of the Legislative Assembly nominated
7 by the Speaker for subsection (2); or
- 8 (b) if no nomination under paragraph (a) is in effect—the standing
9 committee of the Legislative Assembly responsible for legal
10 affairs.

- 1 **Part 6** **Powers and decisions of tribunal**
- 2 **Division 6.1** **Powers and decisions generally**
- 3 **52** **Decisions by majority or presiding member**
- 4 (1) This section applies to a tribunal constituted for an application with
5 more than 1 tribunal member.
- 6 (2) A question in the application is decided according to the decision of
7 the majority of members (other than any assessor) of the tribunal for
8 the application.
- 9 (3) If, for any reason, the tribunal cannot reach a majority decision on a
10 question, the decision of the presiding member is the decision of the
11 tribunal on the question.
- 12 **53** **Interim orders**
- 13 (1) This section applies if, before the hearing of an application—
- 14 (a) a party to the application applies to the tribunal for an order
15 under this section; and
- 16 (b) the tribunal is satisfied that, if an order under this section were
17 not made before the hearing of the application, the party
18 applying for the order would be disadvantaged or suffer harm.
- 19 (2) The tribunal may make any order (an *interim order*) it considers
20 appropriate to protect the position of the party that applied for the
21 order.
- 22 *Note* The tribunal must observe natural justice and procedural fairness (see
23 s 7).
- 24 (3) An interim order remains in force until the earliest of the following
25 happens:
- 26 (a) the end of 12 weeks after the day the order is made;

- 1 (b) the tribunal orders otherwise;
- 2 (c) the tribunal makes an order at the end of the hearing to which
- 3 the interim order relates.
- 4 (4) The tribunal may, on application by a party while an interim order is
- 5 in force—
- 6 (a) vary the order; or
- 7 (b) revoke the order; or
- 8 (c) extend the order for a further 14 days.
- 9 (5) If the person against whom an interim order is made is not present
- 10 when the order is made, the registrar must arrange for a copy of the
- 11 order to be served on the person as soon as practicable after the
- 12 order is made.

13 **54 Decisions without hearing**

- 14 (1) The tribunal may give each party to an application written notice to
- 15 the effect that—
- 16 (a) the tribunal proposes to decide the application without holding
- 17 a hearing; and
- 18 (b) if the party wishes to make representations about the proposal,
- 19 the party must make the representations within—
- 20 (i) 21 days after the day the notice is given; or
- 21 (ii) if the tribunal decides that a shorter period is required in
- 22 all the circumstances of the application—the shorter
- 23 period.
- 24 *Note* The rules may prescribe a longer period for making
- 25 representations (see s 25 (1) (e) and (2)).
- 26 (2) The tribunal may decide not to hold a hearing in relation to the
- 27 application only if the tribunal—
- 28 (a) has given notice under subsection (1); and

1 (b) has taken into consideration any representations made by a
2 party within the 21-day period or shorter period decided by the
3 tribunal under subsection (1) (b); and

4 (c) is satisfied that—

5 (i) it is in the public interest not to hold a hearing; and

6 (ii) the tribunal has sufficient information to make an
7 informed decision on the application.

8 *Note* The tribunal must observe natural justice and procedural fairness (see
9 s 7).

10 **55 Powers of tribunal if parties reach agreement**

11 (1) This section applies if, at any stage in dealing with an application—

12 (a) the parties reach agreement—

13 (i) about the terms of a tribunal decision in relation to the
14 application; or

15 (ii) about how to deal with a part of the application or a
16 matter arising out of the application; and

17 (b) the terms (the *agreed terms*) of the agreement are reduced to
18 writing, signed by the parties and lodged with the tribunal; and

19 (c) the tribunal is satisfied that an order or decision in, or
20 consistent with, the agreed terms would be—

21 (i) within the powers of the tribunal; and

22 (ii) appropriate for the tribunal to make.

23 (2) If the agreed terms are about a tribunal decision in relation to the
24 application, the tribunal may, by order, make a decision in
25 accordance with the agreed terms—

26 (a) without holding a hearing; or

1 (b) if a hearing has begun—without completely dealing with the
2 application at the hearing.

3 (3) If the agreed terms are about dealing with part of the application or a
4 matter in relation to the application, the tribunal may give effect to
5 the agreed terms in its decision without dealing with the matter to
6 which the agreed terms relate at the hearing of the application.

7 **56 Other actions by tribunal**

8 The tribunal may, by order—

9 (a) hear an application jointly with another application that arises
10 from the same or similar facts; or

11 (b) make other orders with the consent of the parties to the
12 application or as the tribunal considers necessary or
13 convenient; or

14 (c) amend or set aside a tribunal order if—

15 (i) the order was made after hearing an application in the
16 absence of a party; or

17 (ii) the order is in error in relation to an amount or the name
18 or address of a party, and the tribunal proposes to amend
19 or set aside the order only to correct the error; or

20 (iii) extraordinary circumstances make it appropriate to
21 amend or set aside the order; or

22 (d) take any other action in relation to an application—

23 (i) that the tribunal considers appropriate; and

24 (ii) that is consistent with this Act or an authorising law.

25 *Note 1* The tribunal must observe natural justice and procedural fairness (see
26 s 7).

27 *Note 2* A reference to an Act includes a reference to the statutory instruments
28 made or in force under the Act, including regulations (see Legislation
29 Act, s 104).

1 **57 Powers and decisions in authorising laws**

2 An authorising law may set out the powers of the tribunal, and the
3 decisions it may make on an application made under the authorising
4 law.

5 **58 No limitation on other functions of tribunal**

6 This part does not limit any other function given to the tribunal
7 under this Act or another territory law.

8 **59 Tribunal to record details of order and give copy to
9 parties**

- 10 (1) If the tribunal makes an order on an application, the tribunal must—
11 (a) make and keep a written record of the details of the order; and
12 (b) give each party a copy of the order within 7 days after the day
13 the tribunal makes the order.
- 14 (2) A party may ask the tribunal for a copy of the details of the order
15 within 7 days after the day the tribunal makes the order.
- 16 (3) The tribunal must give the party a copy of the details of the order
17 within 7 days after the day the party asks for a copy.
- 18 (4) This section does not apply to an order under section 53 (Interim
19 orders).

20 *Note* The rules may prescribe a longer period for asking for order details
21 (see s 25 (1) (e) and (2)).

22 **60 Statement of reasons**

- 23 (1) This section applies if—
24 (a) the tribunal makes an order on an application; and
25 (b) within 14 days after the day the order is made, a party asks for
26 a statement of reasons for the making of the order.

1 (2) The tribunal must give the party a written statement of reasons for
2 the making of the order.

3 (3) The statement of reasons must set out—

4 (a) any principles of law relied on by the tribunal; and

5 (b) the way in which the tribunal applied the principles of law to
6 the facts.

7 *Note* The Legislation Act, s 179 deals with what other information must be
8 included in a statement of reasons.

9 (4) This section does not apply to an order under section 53 (Interim
10 orders).

11 *Note* The rules may prescribe a longer period for asking for a statement of
12 reasons (see s 25 (1) (e) and (2)).

13 **61 Making and effect of orders**

14 (1) An order of the tribunal is made by the order being—

15 (a) pronounced in the tribunal by the tribunal for the application
16 making the order; or

17 (b) recorded, in accordance with the tribunal's practice, as having
18 been entered.

19 (2) An order takes effect on the day that the order is made.

20 (3) However, the tribunal may order that the order takes effect on an
21 earlier or later date or at any earlier or later time.

22 **62 Reserving decisions**

23 (1) After the tribunal finishes dealing with an application, the tribunal
24 for an application may reserve the decision on the application, and
25 may deliver the decision on another date or a date to be set.

26 (2) If the tribunal reserves a decision on an application, the tribunal may
27 arrange for a written statement of reasons for the decision to be
28 prepared setting out the proposed order.

- 1 (3) If the tribunal arranges for a statement of reasons to be prepared, the
2 tribunal may arrange for another tribunal member to deliver the
3 statement, even if the tribunal member was not allocated to the
4 tribunal for the application.
- 5 (4) The other tribunal member must, at a convenient time, publish in the
6 tribunal the statement of reasons for the decision.
- 7 (5) The publication by the other tribunal member has the same effect as
8 if, at the time of publication, the tribunal that reserved the decision
9 made the order proposed in the statement of reasons and published
10 the statement.

11 **63 Correction of errors**

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

15 **Division 6.2 Powers and decisions in applications**
16 **for occupational discipline**

17 **64 Definitions—div 6.2**

18 In this division:

19 *ground for occupational discipline*, in relation to a person who is
20 licensed, or registered, under an authorising law has the same
21 meaning as under the authorising law.

22 *subject person*—see section 65.

23 **65 Considerations before making orders on application for**
24 **occupational discipline**

- 25 (1) This section applies if the tribunal is considering an application for
26 occupational discipline against a person (the *subject person*).

- 1 (2) The tribunal may make an order for occupational discipline in
2 relation to the subject person if satisfied that a ground for
3 occupational discipline exists against the person.
- 4 (3) In considering what occupational discipline to use against the
5 subject person, the tribunal must consider the following:
- 6 (a) whether the person took reasonable steps to avoid the action
7 (the *contravention*) that is the ground for occupational
8 discipline;
- 9 (b) whether occupational discipline has previously been used
10 against the person for a similar act;
- 11 (c) whether the person has taken steps to mitigate the effect of the
12 contravention;
- 13 (d) the impact of the contravention on any other person;
- 14 (e) the likelihood that the person will act in a way that is a ground
15 for occupational discipline in the future;
- 16 (f) whether the entity bringing the application has applied for
17 particular occupational discipline to be used and, if so, the kind
18 of occupational discipline applied for.

19 **Example—par (c)**

20 the person has changed a method of work or given a direction to staff to prevent
21 further contraventions

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

- 25 (4) The tribunal may consider any other relevant matter.

26 **66 Orders for occupational discipline**

- 27 (1) This section applies if the tribunal may make an order for
28 occupational discipline in relation to the subject person.

29 *Note* Section 65 sets out when the tribunal may make an order.

- 1 (2) The tribunal may make 1 or more of the following orders for
2 occupational discipline in relation to the subject person:
- 3 (a) reprimand the person;
- 4 (b) require the person to give a written undertaking;
- 5 (c) require the person to complete a stated course of training to the
6 satisfaction of the regulatory body or another stated person;
- 7 (d) give the person a direction;
- 8 *Note* For directions that may be given, see s 67.
- 9 (e) cancel or suspend the person's licence or registration;
- 10 (f) disqualify the person from applying for a licence, or
11 registration, of a stated kind for a stated period or until a stated
12 thing happens;
- 13 (g) direct the regulatory body to—
- 14 (i) place a condition on the person's licence or registration;
15 or
- 16 (ii) remove or amend a condition placed on the person's
17 licence or registration;
- 18 (h) require the person to pay to the Territory or someone else a
19 stated amount (not more than any amount prescribed by
20 regulation);
- 21 (i) if the person gained financial advantage from the action that is
22 the ground for occupational discipline—require the person to
23 pay to the Territory an amount assessed as the amount of
24 financial advantage gained by the person.
- 25 (3) This section does not limit the orders the tribunal may make.

1 (4) In this section:

2 *regulatory body* means the entity responsible for issuing licences of
3 the kind held by the subject person or for registering people in the
4 occupation or profession in which the subject person is registered.

5 **67 Kinds of directions for licensed and registered people**

6 (1) The tribunal may give a direction under section 66 (2) (d) that the
7 tribunal considers appropriate in a particular case.

8 (2) The directions the tribunal may give include a direction to comply
9 with a requirement under an Act, a licence or registration, or to
10 place a condition on a licence or registration.

11 (3) A direction must state the period within which the subject person
12 must comply with the direction.

13 (4) The tribunal may, on application, extend the period for compliance
14 stated in a direction either before or after the end of the stated
15 period.

16 (5) The tribunal must not give a direction under section 66 (2) (d) that
17 would result in inconsistency with an express requirement placed on
18 the subject person's licence or registration under the Act under
19 which the person is licensed or registered.

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

1 **Division 6.3** Powers and decisions in applications
2 for administrative review

3 **68** Review of decisions

- 4 (1) This section applies if the tribunal reviews a decision by an entity.
5 (2) The tribunal may exercise any function given by an Act to the entity
6 for making the decision.

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

- 10 (3) The tribunal must, by order—
11 (a) confirm the decision; or
12 (b) vary the decision; or
13 (c) set aside the decision and—
14 (i) make a substitute decision; or
15 (ii) remit the matter that is the subject of the decision for
16 reconsideration by the decision-maker in accordance with
17 any direction or recommendation of the tribunal.

18 **69** Effect of orders for administrative review

- 19 (1) This section applies if the tribunal makes an order under
20 section 68 (3) in relation to a decision.
21 (2) The order—
22 (a) is taken to be the decision of the decision-maker; and
23 (b) takes effect from the day the decision has or had effect, unless
24 the tribunal orders otherwise.

1 **Part 7** **Enforcement and offences**

2 **70** **Application of Criminal Code, ch 7**

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

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

8 **71** **Enforcement of orders**

9 (1) A money order or non-money order made by the tribunal is, by force
10 of this section, taken to have been filed in the Magistrates Court for
11 enforcement under the *Court Procedures Rules 2006*, part 2.18
12 (Enforcement) on the day the order is made.

13 (2) In this section:

14 *money order*—see the *Court Procedures Rules 2006*, rule 2000.

15 *non-money order*—see the *Court Procedures Rules 2006*,
16 rule 2000.

17 **72** **Faulty filed orders referred back to tribunal**

18 (1) This section applies if there is an error in an order (a *faulty order*)
19 mentioned in section 71 (1) that prevents the Magistrates Court from
20 enforcing the order.

21 (2) The Magistrates Court may refer the faulty order back to the tribunal
22 to allow the tribunal to take action to correct the order.

23 (3) The tribunal takes action to correct a faulty order if—

24 (a) the tribunal amends the order under section 56 (c) (Other
25 actions by tribunal) to correct the error; or

- 1 (b) the tribunal corrects the error in the order under section 63
2 (Correction of errors); or
- 3 (c) if the order cannot be amended under section 56 (c) or the error
4 corrected under section 63—the general president requests a
5 correction to the order under section 78 (Correction requests).

6 **73 Fixed faulty orders**

- 7 (1) This section applies in relation to a faulty order if—
- 8 (a) the tribunal amends the order under section 56 (c) (Other
9 actions by tribunal) to correct the error; or
- 10 (b) the tribunal corrects the error in the order under section 63
11 (Correction of errors); or
- 12 (c) the correction tribunal corrects the order under section 78
13 (Correction requests).
- 14 (2) The faulty order as amended or corrected is taken to have been filed
15 in the Magistrates Court for enforcement under the *Court*
16 *Procedures Rules 2006*, part 2.18 (Enforcement) on the day the
17 order is amended or corrected.
- 18 (3) In this section:
- 19 *faulty order*—see section 72.

20 **74 Failure to comply with order**

- 21 (1) A party to an application must not, without reasonable excuse, fail
22 to comply with a tribunal order.
- 23 (2) If a party contravenes subsection (1), the tribunal may do 1 or more
24 of the following:
- 25 (a) order the person to pay to the Territory a stated amount (not
26 more than any amount prescribed by regulation);

- 1 (b) if the party is the applicant—strike out the application in
2 relation to the dispute;
- 3 (c) if the party is the respondent—make an order in favour of the
4 applicant.
- 5 (3) If the tribunal orders a person who is the subject of an application
6 for occupational discipline to pay an amount, the tribunal must tell
7 the person that, if the person does not pay the amount, the person’s
8 licence or registration may be suspended or cancelled under
9 section 76.
- 10 (4) Failure to tell a person that the person’s licence or registration may
11 be suspended or cancelled does not affect any action the registrar
12 takes in relation to the person under section 76.
- 13 (5) This section does not limit any other power of the tribunal under this
14 Act.

15 **75 Nonpayment of amounts ordered to be paid**

- 16 (1) This section applies if—
- 17 (a) a person is licensed, or registered, under an authorising law;
18 and
- 19 (b) the tribunal orders the person to pay a stated amount within a
20 stated period; and
- 21 (c) the person does not pay the amount within the period or, if the
22 tribunal allows a further period for payment, within the further
23 period.

- 1 (2) The registrar must give the person written notice (a *warning notice*)
2 that the person's licence or registration may be suspended or
3 cancelled if the person does not pay the amount within 14 days after
4 the day the registrar gives the person the notice.

5 *Note 1* For how documents may be served, see the Legislation Act, pt 19.5.

6 *Note 2* The rules may prescribe a longer period for paying an amount under a
7 warning notice (see s 25 (1) (e) and (2)).

8 **76 Suspension or cancellation on warning notice**

- 9 (1) This section applies if—
10 (a) the registrar has given a person who is licensed or registered a
11 warning notice under section 75 relating to the licence or
12 registration; and
13 (b) the person does not pay the amount required to be paid under
14 the warning notice.
15 (2) The tribunal may, after the period for payment of the amount has
16 ended, suspend or cancel the person's licence or registration.
17 (3) The tribunal may act under subsection (2) on application by the
18 regulatory body or on its own initiative.

- 19 (4) In this section:

20 *regulatory body* means the entity responsible for issuing licences of
21 the kind held by the person or for registering people in the
22 occupation or profession in which the person is registered.

1 **Part 8 Referrals and appeals**

2 **Division 8.1 Tribunal referrals and appeals**

3 **77 Referral of questions of law within tribunal**

4 (1) This section applies if a tribunal (the *requesting tribunal*) is dealing
5 with an application.

6 (2) The requesting tribunal may, on its own initiative or on application
7 by a party, ask the appeal president to allocate 1 or more tribunal
8 members to a tribunal (the *ruling tribunal*) to give a ruling on a
9 question of law.

10 (3) If the ruling tribunal gives a ruling on a question of law, the
11 requesting tribunal is bound by the ruling.

12 *Note* *Question of law* includes whether a question is a question of law (see
13 dict).

14 (4) A ruling tribunal is made up of 1 or more of the following tribunal
15 members allocated by the appeal president:

16 (a) a presidential member;

17 (b) a senior member who is a lawyer and has been a lawyer for
18 5 years or more.

19 (5) However, a ruling tribunal must not contain a tribunal member
20 allocated to the requesting tribunal.

21 **78 Correction requests**

22 (1) This section applies if the general president requests a correction to
23 an order made on an application (the *original application*) to the
24 tribunal.

- 1 (2) The appeal president must—
2 (a) allocate 1 or more tribunal members to a correction tribunal to
3 consider the request for correction; and
4 (b) give notice of the request to the parties to the original
5 application.
- 6 (3) The correction tribunal may—
7 (a) hear submissions from the parties as to whether the correction
8 should be made; or
9 (b) if, the tribunal is satisfied that no party would be disadvantaged
10 by the tribunal not hearing submissions—make a decision
11 under subsection (4) without hearing submissions.
- 12 (4) The correction tribunal must—
13 (a) make the correction if, in all the circumstances of the case, the
14 tribunal considers it appropriate to do so; or
15 (b) refuse to make the correction.
- 16 (5) A correction tribunal is made up of 1 or more of the following
17 tribunal members allocated by the appeal president:
18 (a) a presidential member;
19 (b) a senior member who is a lawyer and has been a lawyer for
20 5 years or more.

21 **79 Appeals within tribunal**

- 22 (1) This section applies if—
23 (a) the tribunal has decided an application (the *original*
24 *application*); and
25 (b) the original application was not an appeal from a decision by
26 the tribunal.

- 1 (2) A party to the original application may, by application, appeal the
2 decision to the tribunal on a question of fact or law.

3 **80 Dismissing appeals**

- 4 (1) The appeal president may give an applicant for an appeal written
5 notice that—

- 6 (a) the subject matter of the appeal is substantively similar to other
7 appeals rejected by the tribunal; and
8 (b) the appeal president proposes to dismiss the appeal; and
9 (c) if the applicant wishes to make representations about the
10 proposal, the applicant must make the representations within
11 21 days after the day the notice is given.

12 *Note* The rules may prescribe a longer period for making
13 representations (see s 25 (1) (e) and (2)).

- 14 (2) The appeal president may decide to dismiss the application only if
15 the tribunal—

- 16 (a) has given notice under subsection (1); and
17 (b) has taken into consideration any representations made by the
18 applicant within the 21-day period; and
19 (c) is satisfied that—
20 (i) it is in the public interest for the tribunal not to consider
21 the appeal; and
22 (ii) the appeal president has sufficient information to make an
23 informed decision to dismiss the application.

24 *Note* The tribunal must observe natural justice and procedural fairness (see
25 s 7).

- 26 (3) If the tribunal dismisses an application for an appeal under this
27 section, the applicant may appeal the original decision of the
28 tribunal to the Supreme Court under section 86.

- 1 **81** **Constitution of appeal tribunal**
- 2 (1) This section—
- 3 (a) applies if a party to the original application appeals a decision
- 4 to the tribunal on a question of fact or law; but
- 5 (b) does not apply if the appeal president —
- 6 (i) dismisses an appeal under section 80; or
- 7 (ii) refers the appeal to the Supreme Court under section 85.
- 8 (2) On appeal, the appeal president must allocate tribunal members to
- 9 an appeal tribunal to review the decision on the original application.
- 10 (3) An appeal tribunal is made up of—
- 11 (a) 1 or more presidential members; or
- 12 (b) 1 or more presidential members and 1 or more non-presidential
- 13 members.
- 14 (4) However, an appeal tribunal must not contain a tribunal member
- 15 who was allocated to the tribunal that decided the original
- 16 application.
- 17 (5) In this section:
- 18 *original application*—see section 79.
- 19 **82** **Handling appeals**
- 20 An appeal tribunal may, as the tribunal considers appropriate, deal
- 21 with an appeal—
- 22 (a) as a new application; or
- 23 (b) as a review of all or part of the original decision on the
- 24 application by the tribunal.

1 **Division 8.2** **Supreme Court referrals and appeals**

2 **83** **Removal of applications from tribunal to Supreme Court**

3 (1) On joint application by the parties to an application or an appeal, the
4 tribunal must order that the application be removed to the Supreme
5 Court.

6 (2) On application by a party to an application or an appeal, the tribunal
7 may order that the application be removed to the Supreme Court.

8 **84** **Referral of questions of law to Supreme Court**

9 (1) If the tribunal considers that a question of law that arises in
10 considering an application or an appeal raises an issue of public
11 importance, the tribunal may refer the question to the Supreme
12 Court.

13 (2) The tribunal may act under subsection (1) on its own initiative or on
14 application by a party.

15 **85** **Referral of appeals to Supreme Court**

16 (1) This section applies if—

17 (a) a party to an application appeals the decision on the application
18 to the tribunal under section 79; and

19 (b) the appeal president considers that the appeal could be dealt
20 with more conveniently or effectively by the Supreme Court;
21 and

22 (c) the appeal president considers it would be appropriate for the
23 appeal to be referred to the Supreme Court; and

24 (d) the appeal president has obtained the Supreme Court's leave to
25 refer the appeal.

26 (2) The appeal president—

27 (a) may decide not to deal with the appeal; and

- 1 (b) if paragraph (a) applies—must refer the appeal to the Supreme
2 Court.

3 **86 Appeals to Supreme Court**

- 4 (1) A party to an application for an appeal may appeal to the Supreme
5 Court on a question of fact or law from—
6 (a) a decision of the appeal tribunal; or
7 (b) if the appeal president dismissed the appeal under section 80—
8 the original decision of the tribunal.
9 (2) However, the appeal may be brought only with the Supreme Court’s
10 leave.

11 **87 Sending documents and things to Supreme Court**

- 12 (1) For a Supreme Court proceeding—
13 (a) the tribunal must send to the Supreme Court any document or
14 thing that was before the tribunal that relates to the Supreme
15 Court proceeding; and
16 (b) at the end of the Supreme Court proceeding, the court must
17 return the document or thing to the tribunal.
18 (2) In this section:
19 *Supreme Court proceeding* means—
20 (a) a removal of an application to the Supreme Court under
21 section 83; or
22 (b) a question of law in relation to a proceeding referred to the
23 court under section 84; or
24 (c) a referral of an appeal to the court under section 85; or
25 (d) an appeal of a decision of the tribunal to the court under
26 section 86.

1 **Part 9** **The ACT civil and administrative**
2 **tribunal**

3 **Division 9.1** **Establishment and constitution**

4 **88** **Establishment of tribunal**

- 5 (1) The ACT Civil and Administrative Tribunal is established.
- 6 (2) The tribunal has the following divisions:
- 7 (a) administrative review;
- 8 (b) civil disputes;
- 9 (c) occupational discipline;
- 10 (d) general.
- 11 (3) The tribunal may establish other tribunal divisions.
- 12 (4) The establishment of a tribunal division is a notifiable instrument.

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

14 **89** **Constitution of tribunal for applications**

- 15 (1) The general president must allocate tribunal members to a tribunal
16 for an application.

17 *Note* The general president may allocate people to a tribunal for the hearing
18 of an application or to provide an advisory opinion on an application
19 (see *decision*, dict).

- 20 (2) The general president may allocate to the tribunal for an application
21 1 or more of the following tribunal members:

- 22 (a) a presidential member;
- 23 (b) a non-presidential member.

1 (3) The general president may appoint an assessor to the tribunal for an
2 application.

3 (4) However, the general president must not allocate an assessor to a
4 tribunal unless there is at least one presidential member or non-
5 presidential member allocated to the tribunal.

6 **90 Considerations before allocating tribunal members to**
7 **application**

8 Before allocating a tribunal member to a tribunal for an application,
9 the general president must consider—

10 (a) the nature and complexity of the matter to be decided by the
11 tribunal; and

12 (b) whether to allocate a member with special qualifications or
13 experience; and

14 (c) any other matter for consideration stated in an authorising law.

15 **91 President to nominate presiding member**

16 If a presidential member is not allocated to the tribunal for an
17 application, the general president must nominate a tribunal member
18 allocated to the tribunal as the presiding member.

19 **92 Tribunal member for an application not available**

20 (1) This section applies if a person who is a tribunal member allocated
21 to the tribunal for an application ceases to be a tribunal member, or
22 ceases to be available, before the tribunal finishes dealing with the
23 application.

24 (2) The general president must—

25 (a) direct the remaining members allocated to the tribunal to
26 continue dealing with the application; or

27 (b) allocate another tribunal member to the tribunal for the
28 application to replace the person; or

- 1 (c) direct that a new tribunal be made up for the application.
- 2 (3) The tribunal, however reconstituted under subsection (2), may deal
- 3 with the application as it considers appropriate.

4 **Example**

5 deal with the application anew

6 *Note* An example is part of the Act, is not exhaustive and may extend, but

7 does not limit, the meaning of the provision in which it appears (see

8 Legislation Act, s 126 and s 132).

9 **93 Constitution of tribunal to exercise other functions**

10 Unless otherwise provided under this Act, the tribunal for the

11 exercise of a function other than in relation to an application is made

12 up of the presidential members.

13 *Note* A reference to an Act includes a reference to the statutory instruments

14 made or in force under the Act, including regulations and rules (see

15 Legislation Act, s 104).

16 **Division 9.2 Tribunal members**

17 **94 Appointment of presidential members**

- 18 (1) The Executive may appoint—
- 19 (a) a general president of the tribunal; and
- 20 (b) an appeal president of the tribunal; and
- 21 (c) other presidential members of the tribunal.

22 *Note* For the making of appointments (including acting appointments), see

23 the Legislation Act, pt 19.3.

24 (2) However, the Executive must not appoint a person under

25 subsection (1) unless the person is a lawyer and has been a lawyer

26 for 5 years or more.

27 (3) The Executive may appoint 1 person to the positions of general

28 president and appeal president.

1 (4) The appointment of a presidential member is a notifiable instrument.

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

3 **95 Requirements of appointment—presidential members**

4 (1) The Executive must, in relation to the appointment of presidential
5 members, determine—

6 (a) the criteria that applies to the selection of a person for
7 appointment; and

8 (b) the process for selecting the person.

9 (2) A determination is a notifiable instrument.

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

11 **96 Appointment of non-presidential members**

12 (1) The Attorney-General may appoint a person to the tribunal as a
13 senior member or ordinary member.

14 (2) However, the Attorney-General must not appoint a person under
15 subsection (1) unless satisfied that the person has the experience or
16 expertise to qualify the person to exercise the functions of a senior
17 member or ordinary member.

18 (3) A regulation may make provision in relation to the appointment of
19 senior and ordinary members of the tribunal, including when the
20 Attorney-General may or must be satisfied that a person has the
21 experience or expertise to exercise the functions of a senior member
22 or ordinary member.

23 (4) The appointment of a non-presidential member is a notifiable
24 instrument.

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

1 **97 Appointment of assessors**

- 2 (1) The general president may appoint a person to the tribunal as an
3 assessor.
- 4 (2) However, the general president must not appoint a person under
5 subsection (1) unless satisfied that the person has the experience or
6 expertise to qualify the person to exercise the functions of an
7 assessor.
- 8 (3) An assessor may provide specialist or technical advice to a tribunal
9 for an application, if asked by the tribunal.
- 10 (4) The appointment of an assessor is a notifiable instrument.

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

12 **98 Term of appointment**

- 13 (1) The appointment of a person as a presidential member is for the
14 term—
- 15 (a) stated in the appointment, which must be no less than 7 years;
16 or
- 17 (b) if no term is stated in the appointment—7 years.
- 18 (2) The appointment of a person as a non-presidential member is for the
19 term stated in the appointment or, if no term is stated, for 5 years.

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

23 **99 Ending appointments**

- 24 (1) The Executive may end a person's appointment as a non-
25 presidential member—
- 26 (a) for misbehaviour; or
- 27 (b) for physical or mental incapacity, if the incapacity affects the
28 exercise of the person's functions; or

1 (c) for failure to disclose a material interest under section 50.

2 *Note* A person's appointment also ends if the person resigns (see Legislation
3 Act, s 210).

4 (2) Without limiting what constitutes misbehaviour under this section, a
5 tribunal member misbehaves if the member fails to act consistently
6 with the undertaking given by the member under section 109.

7 *Note* The *Judicial Commissions Act 1994*, s 4 provides that a presidential
8 member may only be removed from office in accordance with that Act.

9 **100 Conditions of appointment generally**

10 A person appointed as a tribunal member holds the position on
11 terms not provided by this Act that are—

12 (a) decided by the Executive; and

13 (b) stated in the appointment.

14 **101 Temporary members if tribunal members absent etc**

15 (1) This section applies if—

16 (a) a person who is a tribunal member (the *absent person*) is
17 expected to be absent or otherwise unavailable; and

18 (b) a person (the *temporary member*) is appointed as a tribunal
19 member on a temporary basis to undertake the functions of the
20 absent member; and

21 (c) the Executive is of the opinion that the temporary member's
22 appointment should continue after the absent member ceases to
23 be absent or unavailable, because of an expected application or
24 special circumstance.

25 (2) The Executive may require, in writing, that the temporary member
26 continue to act under the appointment until the temporary member
27 resigns or the Executive ends the appointment.

- 1 (3) However, the temporary member must not continue to act for more
2 than 1 year after the absent member ceases to be absent or
3 unavailable.

4 **102 Retirement**

- 5 (1) This section applies if a presidential member is—
6 (a) an eligible employee for the *Superannuation Act 1976* (Cwlth);
7 or
8 (b) a member of the superannuation scheme for the
9 *Superannuation Act 1990* (Cwlth); or
10 (c) a member of any other superannuation scheme determined by
11 the Attorney-General.
12 (2) The Executive may retire the tribunal member on the ground of
13 invalidity with the member's consent.
14 (3) A determination is a notifiable instrument.

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

16 **103 Tribunal members not to do other work**

- 17 A presidential member must not, without the Attorney-General's
18 written consent—
19 (a) engage in remunerative employment otherwise than in
20 connection with the member's functions as a tribunal member;
21 or
22 (b) accept appointment to another position under a territory law or
23 a law of the Commonwealth, a State or another Territory.

1 **104 Functions of presidential members generally**

- 2 (1) A presidential member may exercise any function given to
3 presidential members under this Act or another territory law.

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

- 7 (2) To remove any doubt, the exercise of a function by a presidential
8 member does not affect the power of a president to exercise the
9 function.

10 **105 Functions of general president**

- 11 (1) The general president is responsible for ensuring—

12 (a) that decisions are made according to law; and

13 (b) the orderly and prompt discharge of tribunal business.

14 **Examples—par (a)**

15 1 ensuring decisions are free from improper interference

16 2 ensuring the quality and consistency of decision making by tribunal
17 members, including by maintaining skills and resources for that purpose

18 **Example—par (b)**

19 The general president is responsible for allocating people to make up a tribunal
20 for a particular application.

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

- 24 (2) However, the general president must not exercise a function of the
25 appeal president unless the function is delegated to the general
26 president.

- 27 (3) The general president may delegate the president's functions under
28 this Act to the appeal president or another presidential member.

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

1 **106 Functions of appeal president**

- 2 (1) The appeal president is responsible for ensuring the orderly and
3 prompt discharge of tribunal business relating to referrals and
4 appeals under part 8.

5 **Example**

6 The appeal president is responsible for allocating people to make up an appeal
7 tribunal.

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

- 11 (2) The appeal president may only exercise a function of the general
12 president if the function is delegated to the appeal president.

- 13 (3) The appeal president may delegate the president's functions under
14 this Act to the general president or another presidential member.

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

17 **107 Functions of non-presidential members**

- 18 (1) A non-presidential member may exercise a function of a presidential
19 member unless—

20 (a) this Act provides otherwise; or

21 (b) the general president otherwise directs.

- 22 (2) However, the general president must not give a direction about
23 exercising the functions of the appeal president without the appeal
24 president's agreement.

- 25 (3) To remove any doubt, the exercise of a function by a
26 non-presidential member does not affect the power of a presidential
27 member to exercise the function.

1 **108 Functions of assessors**

- 2 (1) An assessor may exercise any function given to an assessor under
3 this Act.
- 4 (2) An assessor cannot delegate the assessor's functions under this Act.

5 **109 Undertaking before exercising tribunal member functions**

6 Before exercising any function as a tribunal member, the member
7 must give an undertaking to the Territory in accordance with
8 schedule 1—

- 9 (a) for a presidential member—before a judge of the Supreme
10 Court; or
- 11 (b) for a non-presidential member or assessor—before a
12 presidential member.

13 **Division 9.3 Registrar and staff**

14 **110 Appointment of registrar**

- 15 (1) The chief executive may appoint a public servant as the tribunal
16 registrar.
- 17 (2) However, the chief executive must not appoint a person under
18 subsection (1) unless satisfied that the person has the experience or
19 expertise to qualify the person to exercise the functions of the
20 registrar.

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

23 *Note 2* In particular, an appointment may be made by naming a person or
24 nominating the occupant of a position (see Legislation Act, s 207).

1 **111 Functions of registrar—non-presidential functions**

2 (1) The registrar may exercise a function of a non-presidential member
3 unless—

4 (a) this Act provides otherwise; or

5 (b) the general president otherwise directs.

6 **Example**

7 The registrar may hear and decide an application and make any order the tribunal
8 may make.

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

12 (2) However, the general president must not give a direction about
13 exercising the functions of the appeal president without the appeal
14 president's agreement.

15 (3) To remove any doubt, the exercise of a function by the registrar
16 does not affect the power of a presidential member to exercise the
17 function.

18 **112 Functions of registrar—other**

19 (1) In addition to the functions given to the registrar under this Act or
20 another territory law, the registrar has the following functions:

21 (a) to provide the public with information about the services
22 provided by or through the tribunal;

23 (b) to provide the public with information about, and refer people
24 to, other services provided by government or otherwise for
25 resolving disputes;

26 (c) to maintain the records of the tribunal.

27 *Note* The registrar may give a person making an application, or
28 considering making an application, the help the registrar
29 considers appropriate (see s 13).

- 1 (2) The registrar must exercise functions in consultation with, and
2 subject to any direction of, the general president.

3 **113 Delegation of functions of registrar**

4 The registrar may delegate functions to a public servant.

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

7 **114 Deputy registrars**

8 (1) The chief executive may appoint 1 or more public servants as
9 deputy registrars of the tribunal.

10 (2) A deputy registrar may exercise a function of the registrar, subject
11 to any direction of the registrar.

12 **115 Staff assisting registrar**

13 The staff assisting the registrar must be employed under the *Public*
14 *Sector Management Act 1994*.

1 Part 10 Miscellaneous

2 116 Protection of members etc from liability

3 (1) A protected person is not personally liable for conduct done
4 honestly and without recklessness—

5 (a) in the exercise of a function under this Act; or

6 (b) in the reasonable belief that the conduct was in the exercise of
7 a function under this Act.

8 (2) Any liability that would, apart from this section, attach to the
9 protected person attaches instead to the Territory.

10 (3) In this section:

11 *conduct* means an act or an omission to do an act.

12 *protected person* means a person who is or has been—

13 (a) a tribunal member; or

14 (b) acting under the direction or authority of the tribunal, including
15 under the direction or authority of the registrar.

16 **Example—par (b)**

17 a registered mediator to whom an application is referred under s 35

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

21 117 Approved forms

22 (1) The tribunal may, in writing, approve forms for this Act.

23 (2) If the tribunal approves a form for a particular purpose, the
24 approved form must be used for that purpose.

25 *Note* For other provisions about forms, see the Legislation Act, s 255.

1 (3) An approved form is a notifiable instrument.

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

3 **118 Regulation-making power**

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

5 *Note* A regulation must be notified, and presented to the Legislative
6 Assembly, under the Legislation Act.

7 (2) A regulation may make provision in relation to the following:

8 (a) an amount payable under an order on application for
9 occupational discipline;

10 (b) an amount payable for failure to comply with a tribunal order;

11 (c) the appointment of non-presidential tribunal members.

12 **119 Act repealed**

13 The *Consumer and Trader Tribunal Act 2003* (A2003-16) is
14 repealed.

1 **Schedule 1 Undertaking for exercise of**
2 **tribunal member functions**
3 (see s 109)

4 I, [*name*], undertake to the Territory that I will well and truly serve in the office
5 of [presidential member/non-presidential member/assessor] and that I will do
6 right to all people, according to law, without fear or favour, affection or ill will.

1 Dictionary

2 (see s 3)

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

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

- 6 • appoint
- 7 • chief executive (see s 163)
- 8 • contravene
- 9 • Executive
- 10 • exercise
- 11 • function
- 12 • interest
- 13 • lawyer
- 14 • proceeding
- 15 • public servant.

16 *appeal president* means the appeal president appointed under
17 section 94.

18 *appeal tribunal* means a tribunal made up under section 81 to
19 review a decision of the tribunal.

20 *assessor* means a person appointed under section 97.

21 *authorising law* means—

- 22 (a) a territory law that provides that an application may be made to
23 the tribunal; and
- 24 (b) for a civil dispute—includes this Act.

25 *civil dispute*—see section 16.

26 *civil dispute application*—see section 16.

27 *common boundaries determination*, for part 4 (Civil disputes)—see
28 section 15.

- 1 **contract application**, for part 4 (Civil disputes)—see section 15.
- 2 **damages application**, for part 4 (Civil disputes)—see section 15.
- 3 **debt application**, for part 4 (Civil disputes)—see section 15.
- 4 **debt declaration**, for part 4 (Civil disputes)—see section 15.
- 5 **decision**, of the tribunal, means—
- 6 (a) an original decision on a matter stated in an application; or
- 7 (b) the review of another entity’s decision stated in an application;
- 8 or
- 9 (c) an advisory opinion on a stated matter referred to the tribunal;
- 10 or
- 11 (d) for an appeal—a decision by the tribunal for the appeal.
- 12 **general president** means the general president appointed under
- 13 section 94.
- 14 **goods application**, for part 4 (Civil disputes)—see section 15.
- 15 **ground for occupational discipline**, for division 6.2 (Powers and
- 16 decisions in applications for occupational discipline)—see
- 17 section 64.
- 18 **non-presidential member** means a senior member or ordinary
- 19 member of the tribunal appointed under section 96.
- 20 **nuisance application**, for part 4 (Civil disputes)—see section 15.
- 21 **occupational discipline**, in relation to a person who is licensed, or
- 22 registered, under an authorising law—
- 23 (a) means any action the tribunal may take in relation to the person
- 24 under the authorising law; and
- 25 (b) includes action the tribunal may take under section 66 (Orders
- 26 for occupational discipline).

- 1 **party**, to an application, means a party to the application under
2 section 29.
- 3 **presidential member** means the general president, appeal president
4 or another presidential member appointed under section 94.
- 5 **question of law** includes whether a question is a question of law.
- 6 **registrar** means the tribunal registrar appointed under section 110.
- 7 **residential tenancy application**, for part 4 (Civil disputes)—see
8 section 15.
- 9 **rules** means the rules of the tribunal made under section 24.
- 10 **standard occupancy terms**, for part 4 (Civil disputes)—see
11 section 15.
- 12 **standard residential tenancy terms**, for part 4 (Civil disputes)—see
13 section 15.
- 14 **subject person**, for division 6.2 (Powers and decisions in
15 applications for occupational discipline)—see section 65.
- 16 **trespass application**, for part 4 (Civil disputes)—see section 15.
- 17 **tribunal** means—
- 18 (a) the ACT Civil and Administrative Tribunal established under
19 section 88; and
- 20 (b) for an application—means the tribunal made up under
21 section 89 for the application; and
- 22 (c) for an appeal—an appeal tribunal.
- 23 **tribunal member** means a presidential member, non-presidential
24 member or assessor.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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