

**2008**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY STATEMENT**

**ACT Civil and Administrative Tribunal Bill 2008**

**Presented by the authority of  
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## GENERAL LAW TRIBUNAL BILL 2008

### Explanatory Statement

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

### Overview of Bill

In the 2006 budget papers, the ACT government announced that the “government will review tribunal structures, with a view to increasing efficiency and cost-effectiveness”.

In July 2007, an options paper on reforming the structure of ACT tribunals was circulated to stakeholders for consultation. The options paper examined possible options for reform of the structure of tribunals in the ACT. It examined the role of ACT tribunals generally and how they are currently structured, looked at recent changes to tribunal structures in other jurisdictions, considered options for increasing efficiency and cost-effectiveness of tribunal structures and put forward different options for improving tribunal structures.

After extensive consultation, it was determined that consolidation of a number of existing ACT tribunals would offer many benefits, including:

- enhancing access to justice through renewed focus on fast effective decision making (including an internal review system within the tribunal itself);
- improvements at the governance and legislative level (including new provisions designed to protect statutory independence of the tribunal);
- improving the allocation of resources (such as reducing the vulnerability of small tribunals to the negative effects of staff absence); and
- better training opportunities and support services for registry staff and tribunal members.

The following jurisdictions and tribunals have been consolidated into the ACT Civil and Administrative Tribunal:

- a) Administrative Appeals Tribunal;
- b) Architects Board;
- c) Chief Surveyor (when acting as a tribunal);
- d) Commissioner for Fair Trading (when acting as a tribunal in relation to motor vehicle dealers, tobacco and finance brokers);
- e) Construction Occupations Registrar (when acting as a tribunal);
- f) Consumer and Trader Tribunal;
- g) Credit Tribunal;
- h) Discrimination Tribunal;
- i) Essential Services Consumer Council;
- j) Guardianship and Management of Property Tribunal;
- k) Health Professionals Tribunal;

- l) Legal Profession Disciplinary Tribunal;
- m) Liquor Licensing Board of the ACT;
- n) Mental Health Tribunal;
- o) Residential Tenancies Tribunal; and
- p) Small Claims jurisdiction.

## **Outline of Provisions**

### **Part 1 – Preliminary**

#### **Clause 1 Name of Act**

States the title of the Act, which is the *ACT Civil and Administrative Tribunal Act 2008*.

#### **Clause 2 Commencement**

States that the Act commences on a day fixed by the Minister by written notice, and provides that if the Act has not commenced within two years beginning on the notification day, it automatically commences on the first day after that period.

The implementation of these reforms is necessarily complex and warrants the provision of longer than usual commencement arrangements.

#### **Clause 3 Dictionary**

Provides that the dictionary at the end of the Act is part of the Act. The dictionary defines key words and expressions used in the Act, and includes references to other words and expressions defined in other parts of the Act or in other legislation.

#### **Clause 4 Notes**

Provides that notes included in this Act are only explanatory.

#### **Clause 5 Offences against Act – application of Criminal Code etc**

Provides that other legislation applies in regard to the offences against this Act. This clause increases awareness of the Criminal Code and alerts the reader to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to this Act.

### **Part 2 – Objects and important concepts**

#### **Clause 6 Objects of Act**

Sets out the objects of the Act. The objects are:

- to provide for a wide range of matters arising under legislation to be resolved by the ACT Civil and Administrative Tribunal;

- to ensure that access to the tribunal is simple and inexpensive, for all people who need to deal with the tribunal;
- to ensure that applications to the tribunal are resolved as quickly as is consistent with achieving justice;
- to ensure that decisions of the tribunal are fair;
- to enhance the quality of decision making under legislation;
- to encourage tribunal members to act in a way that promotes the collegiate nature of the tribunal; and
- to identify and bring to the Attorney-General's attention systemic problems in relation to the operation of authorising laws.

### **Clause 7 Principles applying to Act**

Provides that the tribunal must ensure the procedures of the tribunal are as simple, quick, inexpensive and informal as is consistent with achieving justice, and that the tribunal must observe natural justice and procedural fairness.

### **Clause 8 Rules of evidence**

Subsection (1) provides that the tribunal need not comply with the rules of evidence under the *Evidence Act 1995* (Cwlth). Subsection (2) provides that the tribunal must consider the desirability of an approach consistent with the rules of evidence in the ACT and whether it is practicable to comply with the *Evidence Act 1995* (Cwlth) and still give effect to the objects and principles of this Act. The exercise of a function by the tribunal is not affected by a failure to comply with subsection (2).

The Tribunal is to seek after the substantial merits of a case in accordance with law, but in so doing is not to allow matters of a technical nature to subvert that goal.

These provisions have been designed to allow the tribunal flexibility. In many of the tribunal's jurisdictions, litigants will be self-represented and unlikely to be concerned about the intricacies of the rules of evidence. In other jurisdictions, parties will be represented.

## **Part 3 – Applications to Tribunal**

### **Clause 9 Applications under authorising laws**

Provides that a person may apply to the tribunal if an authorising Act provides that the application may be made.

### **Clause 10 Making in application**

Sets out requirements for applications. Applications must:

- comply with the rules;
- be in writing (with or without the registrar's assistance);
- state the reasons for making the application;

- for an application for review of a decision – be made within 28 days after the day the decision to be reviewed is made; and
- be lodged with the registry.

If a form is approved under clause 117 for an application, the form must be used. A fee may be determined under section 13 of the *Court Procedures Act 2004* for this clause.

### **Clause 11 Applications subject to authorising laws**

States that the right under an authorising Act to make an application to the tribunal is subject to any condition stated in the authorising Act.

### **Clause 12 When no action taken to be decision**

Provides that the decision-maker is taken to have decided, at the end of the period for doing the thing, not to do the thing, if:

- a decision-maker is required or allowed to do something under an authorising Act; and
- the decision-maker has not done the thing within the period required under the authorising Act; and
- the authorising Act provides that a person may apply to the tribunal for review of a decision under the authorising Act in relation to doing the thing.

This provision is designed to assist with applications concerning the review of administrative decisions. Attention is particularly drawn to the inclusion of a new provision that applies when a decision maker has taken an unreasonable time to do a thing under the authorising Act, notwithstanding that the authorising Act does not fix a specific time for the doing of the thing.

### **Clause 13 Help with applications etc**

Provides that should the registrar consider that a person making, or considering making an application, requires assistance with making the application, the registrar must take reasonably practicable steps to assist a person making an application.

### **Clause 14 Advising Attorney-General about system problems**

Provides that if it appears to the tribunal that applications to the tribunal indicate a systemic problem in relation to an authorising law, or other matters that come to the tribunal's attention in the course of exercising its functions, the tribunal is required to advise the Attorney-General of the problem.

This provision is designed to allow the tribunal to provide information to the Attorney-General that might result in the Assembly legislating to address a systemic problem.

## **Part 4 – Civil disputes**

**Clause 15 Definitions – pt 4**

Defines terms used in part 4 of the Act.

**Clause 16 Meaning of *civil dispute* and *civil dispute application* – Act**

Provides that in the Act, *civil dispute* means a dispute in relation to which a *civil dispute application* may be made.

Also provides that in the Act, *civil dispute application* means one or more of the following:

- a contract application;
- a damages application;
- a debt application;
- a debt declaration;
- a goods application;
- a nuisance application;
- a trespass application;
- a debt declaration;
- an application for common boundaries determination; and
- an application stated to be a *civil dispute application* in the authorising Act.

**Clause 17 Civil dispute applications**

Provides that a person may make a *civil dispute application* to the tribunal.

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

Provides that the tribunal's jurisdiction on *civil dispute applications* is limited to applications claiming amounts of not more than \$10,000, or applications for declarations for debts of not more than \$10,000. An application may not be made for an amount greater than the tribunal's jurisdiction limit, unless clause 20 or 21 allows the application to be made. This clause does not apply to an application for a common boundaries determination, residential tenancy application, or an application prescribed by regulation.

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

Provides that in working out the amount claimed, or the amount sought to be declared as a debt, to decide whether the tribunal has jurisdiction in relation to a *civil dispute application*, a claim for interest and a claim for a lump sum instead of interest are to be disregarded.

To decide whether the tribunal has jurisdiction in relation to a good application, the value of the goods or services and any amount claimed for damages from the detention of the goods are to be considered.

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

Provides that if a person would be entitled to make a civil dispute application claiming an amount greater than \$10,000 in a court of competent jurisdiction, the person may, by application to the tribunal, abandon the excess by limiting the claim to \$10,000.

**Clause 21 Jurisdiction by agreement – amounts over \$10 000**

Provides that if a civil dispute application for a decision on a civil dispute could be made but for the \$10,000 limit, and the parties agree to the application being decided by the tribunal, and understand that the amount of the claim in excess of \$10,000 is not being abandoned, the tribunal may hear the civil dispute application.

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

Provides that the tribunal has, in relation to civil dispute applications, the same jurisdiction and powers as the Magistrates Court has under the *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction). A rule may prescribe provisions of part 4.2 which do not apply in relation to the tribunal.

**Part 5 – Tribunal procedures**

**Division 5.1 – Procedures generally**

**Clause 23 Tribunal decides own procedure**

Provides that the tribunal may decide its own procedure if no procedure is prescribed under this Act or the authorising Act. However, procedure must be consistent with the objects of the Act (see clauses 6 and 7).

**Clause 24 Rule-making power**

This clause creates a rule-making power for the tribunal in relation to the practice and procedure of the tribunal and registry.

In making a rule, the tribunal must consider the following issues:

- requirement to ensure that applications are resolved as quickly as is consistent with achieving justice;
- requirement for procedures to be as simple, quick, inexpensive and informal as is consistent with achieving justice;
- rules dealing with similar matters under the *Court Procedures Rules 2006*; and
- if the rule is of the kind mentioned in clause 25(1)(e) (prescribe a time for doing a thing by a person that is longer than the time for doing the thing provided under this Act or an authorising law) – the desirability of being able to rely on the words in the Act.

The clause does not limit the power of the tribunal or a member to control proceedings. It is also provided that a rule is a notifiable instrument.

The tribunal must provide the rule-making committee, under the *Court Procedures Act 2004*, with a copy of a rule made by the tribunal.

The provision of a rule making power is given to the tribunal consistently with the approach adopted by the Assembly under the *Court Procedures Act 2004*, where a conscious effort has been made to diminish the role of black letter law (statute law) in areas of procedural law that are within the expert day to day management of a judicial decision maker. However, the grant of the power does not imply that the tribunal need create a detailed body of rules.

A distinguishing feature of tribunals is the absence of rules of the kind often encountered within a court – while the rule-making power is considered desirable, the subject matter of the jurisdiction of the tribunal and the objectives of the tribunal would generally preclude the need to create detailed rules of that nature. In particular, the requirement to consider a similar rule made under the *Court Procedures Rules 2006* is not intended to compel acceptance by the tribunal of that rule – it is simply to ensure that the tribunal is aware of the approach taken by the courts to a like circumstance. In such a circumstance, the tribunal is free to adopt the approach taken under the *Court Procedures Rules 2006* or to adopt a different approach (including not making a rule at all).

#### **Clause 25 Subject matter of rules**

This clause gives examples of possible subject matter for tribunal rules made under clause 24. The rules may address the following matters:

- allow the tribunal to make orders in a short form;
- prescribe how the tribunal may deal with applications and other proceedings, including when a tribunal may stop a person representing another person before the tribunal;
- facilitate the early resolution of matters arising in applications;
- prescribe the functions and limits on functions of the registrar;
- prescribe a time for doing a thing that is longer than the time allowed under this Act or an authorising Act, in relation to an application to the tribunal, but not in relation to any thing to be done by the tribunal; and
- allow the tribunal to make orders about costs for complying with subpoenas.

#### **Clause 26 Tribunal may inform itself**

Provides that the tribunal may inform itself in any way it considers appropriate in the circumstances. For example, the tribunal may ask an assessor for expert advice, or rely on previous experience.

#### **Clause 27 Procedures in authorising laws**

Provides that procedures set out in an authorising Act prevail over the procedures set out in this Act or rules made under this Act to the extent of any inconsistency. To remove any doubt, this Act is not inconsistent with an



authorising Act only because one Act deals with a matter and the other does not.

### **Clause 28 Time and place of proceedings**

Provides that the general president decides when and where the tribunal will sit. However, the tribunal must not sit in a place usually used by a court for proceedings, unless the general president is satisfied that no other suitable place is available or appropriate in the circumstances.

## **Division 5.2 – Parties**

### **Clause 29 Parties to applications**

This clause sets out the parties to applications. The parties to an application are the applicant and the respondent, unless this clause or an authorising Act otherwise provides.

The qualifications to this rule are:

- The parties to an application for occupational discipline are the territory entity bringing the application and the person to whom the application relates;
- The parties to an application for review of a decision are the applicant and the decision-maker;
- The tribunal may, by written notice, join a person as a new party to the application.

### **Clause 30 Representation**

Provides that a lawyer or another person prescribed by the rules may represent a person in relation to an application. It is noted that the rules may make provision for when the tribunal may stop a person representing another person before the tribunal, in accordance with clause 25(1)(b).

## **Division 5.3 – Case management**

### **Clause 31 Early resolution of applications**

Consistent with the objects of the Act, this clause provides that the tribunal must take all reasonably practicable steps to resolve matters arising in an application before the application is heard.

### **Clause 33 Frivolous and vexatious applications**

This clause sets out the procedures for frivolous and vexatious applications. If the tribunal considers an application is frivolous or vexatious, or the person making the application has been dealt with as vexatious or frivolous by a court or tribunal in Australia, the tribunal may by order do one or more of the following:

- refuse to hear the application;

- dismiss the application; or
- direct that the person who made the application not make a subsequent application to the tribunal of the kind stated in the direction within a stated period of time, or without the leave of the tribunal.

The tribunal may make an order under this clause on its own initiative or on application by a party to the proceeding. The tribunal may vary the order on its own initiative or on application by the person who is the subject of the order.

### **Clause 33 Preliminary conferences**

Provides that the tribunal may require the parties to an application to attend a preliminary conference. A preliminary conference may assist in narrowing the issues for the hearing and may assist the parties in preparing for a tribunal hearing.

This clause also provides that the tribunal may make inquiries or require further information from a party. The inquiries that a registrar can make include talking to the person who made a complaint to which an application for occupational discipline relates.

### **Clause 34 Admissibility of evidence given at preliminary conference**

Provides that evidence given during a preliminary conference is not admissible against a person in a criminal proceeding. Evidence of any words spoken at a preliminary conference must not be admitted to a proceeding under this Act.

### **Clause 35 Mediation for applications**

Provides that before a hearing of an application, if the tribunal considers that the subject matter is suitable for mediation and is reasonably likely to be resolved by mediation, the tribunal may refer the proceedings to a registered mediator (as defined in the *Mediation Act 1997*) and order that the parties attend mediation. The tribunal may make such an order on its own initiative or on the application by a party.

## **Division 5.4 – Hearings**

### **Clause 36 Applications to be heard**

Provides that the tribunal must hear each application made to it unless the tribunal refuses to hear the application or dismisses it or decides not to hold a hearing.

### **Clause 37 Notice of hearing**

Provides that the registrar must give written notice of the time and place for the hearing to the parties.

### **Clause 38 Hearings usually in public**

Sets the standard that all hearings of the tribunal must be in public, unless clause 39 applies to part, or all of a hearing.

### **Clause 39 Hearings in private or partly in private**

Provides exceptions to the rule stated in clause 38 that hearings should usually be in public.

If a party to the application is a person under a legal disability or applies for an order under this clause, and the tribunal is satisfied that the right to a public hearing is outweighed by competing interests, the tribunal may make one or more of the following orders:

- direct that the hearing, or part of the hearing, take place in private and give directions about the people who may be present;
- give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or private, or of matters contained in documents filed with the tribunal or received in evidence by the tribunal for the hearing; or
- give direction prohibiting or restricting the disclosure to some or all of the parties to the application of evidence given at the hearing, or of a matter contained in a document lodged with the tribunal or received in evidence by the tribunal for the hearing.

The maximum penalty that applies to contravention of an order under subclauses (2)(b) or (c) is 50 penalty units, six months imprisonment or both.

For the purpose of this clause, the right to a public hearing is outweighed by competing interests if the tribunal is satisfied that the application, or part of the application, should be kept private:

- to protect morals, public order or national security in a democratic society; or
- because the interest of the private lives of the parties require the privacy; or
- to the extent privacy is strictly necessary, in special circumstances of the application, because publicity would otherwise prejudice the interests of justice.

This clause is consistent with the right to a fair trial stated in section 21 of the *Human Rights Act 2004*. The wording of section 21 has been adopted to ensure consistency.

### **Clause 40 Secrecy for private hearings etc**

This clause creates an offence where information that is protected under clause 39 is disclosed in certain circumstances. This clause has been included to compel compliance with the right to fair trial principles expounded in clauses 38 and 39.

A person who is, or has been, a tribunal member, or tribunal staff member, or acting under the direction or authoring of the tribunal, commits an offence if the person makes a record of protected information, and is reckless about whether the information is protected information. Such a person may also commit an offence if the person does something that divulges protected information, and is reckless about whether the information is protected information and doing the thing would result in the information being divulged.

The maximum penalty that applies to these offences is 50 penalty units, six months imprisonment or both.

This clause does not apply if the record is made, or information divulged, under this Act or another territory law, or in relation to the exercise of a function under this Act or another territory law.

To clarify, the person need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

#### **Clause 41 Powers in relation to witnesses etc**

Provides the tribunal's powers in relation to witnesses and related matters:

- Subsection (1) provides that the tribunal may subpoena a person to appear before the tribunal at a stated time and place to produce a stated document or other thing relevant to the hearing, and/or give evidence;
- Subsection (2) states that a person is taken to have complied with a subpoena under subsection (1)(a) if the person gives the document or other thing to the tribunal before the date stated in the subpoena for its production;
- Subsection (3) states that the tribunal may give a party leave to inspect a document provided under subpoena;
- Subsection (4) provides that the presiding member may require a person appear before the tribunal to take an oath, answer a question relevant to the hearing, and/or produce a stated document or other thing relevant to the hearing; and
- Subsection (5) sets out the requirements for a subpoena issued under subsection (1)(a):
  - state the time and place at which the person must appear;
  - contain a statement to the effect that the person may be represented before the tribunal by a lawyer or someone else and that the person may wish to obtain legal advice in relation to the subpoena;
  - contain a statement to the effect that the person may apply to the tribunal for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 32 (1) (Use of a link in audio proceedings) allowing the person to appear by means of an audiovisual link at a place if a link is available; and
  - be accompanied by a notice containing information about the functions of the tribunal.

## **Clause 42 Arrest if people fail to appear**

Sets out the procedure in the event that a person subpoenaed under clause 41 fails to appear.

A presidential member may, on proof of the service of the subpoena, issue a warrant to arrest the person and bring the person before the tribunal.

The power to issue a warrant under this clause is subject to a number of conditions, to ensure that the power is used proportionately and in appropriate circumstances.

The presidential member may only issue a warrant if satisfied that:

- the tribunal has taken reasonably practicable steps to contact the person; and
- the issue of a warrant is in the interests of justice.

Subsection (3) defines the matters the tribunal must consider in determining whether issuing a warrant is in the interests of justice:

- the importance of the evidence that the tribunal expects the person to give;
- whether the evidence could be obtained by other means;
- the nature of the application;
- the degree of urgency to resolve the matter;
- the likelihood that issuing the warrant would secure the person's attendance at the hearing; and
- if the tribunal has contacted the person, the reason (if any) given by the person for not attending under the subpoena, and the impact of using the warrant for the arrest of the person.

## **Clause 43 Executing a warrant**

This clause defines the procedures to be followed in exercising the power to issue a warrant under clause 42.

The warrant authorises a police officer to arrest the person named in the warrant and bring the person before the tribunal.

A police officer executing the warrant:

- may, with necessary assistance and force, enter any premises to arrest the person named in the warrant;
- must use not more than the minimum amount of force necessary to arrest the person and remove the person to the place stated in the warrant;
- must, before removing the person, explain to the person the purpose of the warrant;
- must bring the person immediately before a presidential member; and
- if a person is under a legal disability – must inform a parent or guardian of the person of the arrest.

To avoid doubt, if, after arresting the person, the police officer believes on reasonable grounds that the person cannot be brought before a presidential member immediately, the police officer must immediately release the person.

Together, these provisions confirm that the power to arrest under clause 42 is not a power of detention, and is only for the purpose of taking a subpoenaed person directly to the tribunal to give evidence.

#### **Clause 44 Procedure in absence of party**

This clause sets out the tribunal procedures when a party fails to appear either personally or by a representative. In such circumstances, the tribunal may:

- order that the proceeding be set down for hearing at another time;
- order that stated other steps be taken before the hearing proceeds as the tribunal directs;
- adjourn the hearing;
- proceed with the hearing in the absence of the party either generally or in relation to any relief claimed in the application;
- if the party is the applicant – dismiss the application; or
- if the part is not the applicant or respondent – remove the party from the application.

#### **Clause 45 Taking part other than in person**

Provides for the tribunal to allow a person to take part or give evidence in a preliminary conference or a hearing of an application by method of communication that allows people to hear what each other person taking part says without the people being in each other's presence, such as via telephone, satellite link, internet or intranet link.

### **Division 5.5 – Other matters**

#### **Clause 46 Lodging documents**

Provides that if a document is required to be lodged with the tribunal, the document must be lodged at the tribunal registry.

#### **Clause 47 Amending documents**

Provides that the tribunal may amend documents to a proceeding at any stage. The tribunal may order that a document be amended, either by its own initiative or on application by a party. Alternatively, with agreement of both parties, the tribunal may give leave to a party to amend a document of the party.

#### **Clause 48 Costs of proceedings**

Provides that the parties must bear their own costs unless this Act or the tribunal otherwise orders:

- If the tribunal decides a proceeding on an application in favour of the applicant, the tribunal may order the other party to pay the applicant the filing fee for the application;
- If the tribunal considers that a party caused unreasonable delay or obstruction before or during the proceeding, the tribunal may require the party to pay the reasonable costs of the other party arising from the delay or obstruction; and
- Subject to clause 49 (costs for contravening an order), if a party to the application contravenes an order of the tribunal – the tribunal may order the contravening party to pay all or part of the costs of the application to the other party.

#### **Clause 49 Costs for contravening an order**

Provides that the tribunal may award costs against a party for contravening an order only if the tribunal is satisfied that it is in the interests of justice to do so.

The clause sets out the matters that the tribunal must consider to be satisfied that ordering costs in such circumstances is in the interests of justice:

- whether the contravention was deliberate or could easily have been avoided;
- whether (and if so, the extent to which) the contravention has affected the tribunal’s ability to hear the application promptly
- the importance to the community of people being able to afford to bring applications to the tribunal.

The tribunal may consider any other relevant matter in considering the interests of justice for this purpose.

The clause also provides for costs to be payable in accordance with the scale of costs in the rules under the *Court Procedures Act 2004* applying in relation to the Supreme Court.

#### **Clause 50 Disclosure of material interests by tribunal members**

This clause, together with clause 51, ensures that the independence of the tribunal is maintained through implementation of procedures for the disclosure of material interests, and creates a mechanism for an appropriate response by the tribunal in that event.

This clause sets out the procedures when a tribunal member has a material interest in an issue in a proceeding.

Tribunal members must disclose a material interest in an issue in a proceeding as soon as practicable after the relevant facts come to the member’s knowledge. The tribunal member must disclose the material interest to the presiding member and the parties, or if the member is the presiding member, to the parties only. “Material interest” is defined as a member holding a direct or indirect financial interest in the matter, or a direct or indirect interest of any other kind if the interest could conflict with the proper

exercise of the member's functions in relation to the tribunal's consideration of the matter.

A tribunal member with a material interest must not take part, or continue to take part in the proceeding or exercise any function in relation to the proceeding unless each party consents.

If the general president becomes aware of a presiding member's material interest, the general president must disclose the interest to the parties, or if the general president considers that the member should not take part or continue to take part, direct the member to cease taking part in the proceedings.

The clause also contains definitions of important terms used in the clause.

### **Clause 51 Reporting of disclosed governing board interests to Minister**

This clause creates a yearly reporting requirement with respect to material interests disclosed pursuant to clause 50.

The general president must report to the Attorney-General in writing no more than 31 days after the end of each financial year. The report must disclose:

- each disclosure made under clause 50 during the year;
- the nature of each interest disclosed;
- whether the tribunal member continued to take part in the tribunal dealing with, or exercised any function in relation to, the application to which the disclosure related; and
- each direction (if any) under subsection 50(3) given during the financial year.

The Attorney-General is required to give a copy of the report to the relevant committee of the Legislative Assembly within 31 days after the day the Attorney-General receives the report. The relevant committee is the standing committee nominated by the speaker, or if no committee is nominated, the standing committee responsible for legal affairs.

## **Part 6 – Powers and decisions of tribunal**

### **Division 6.1 – Powers and decisions generally**

#### **Clause 52 Decisions by majority or presiding member**

Provides that when the tribunal is constituted by more than one member, the decision of the majority of tribunal members (excluding any assessor) decides a question in an application. If, for any reason, the tribunal cannot reach a majority decision on a question, the decision of the presiding member is the decision of the tribunal on the question.



### **Clause 53 Interim orders**

This clause deals with tribunal procedures and powers in relation to the making of interim orders. The tribunal may make any interim order it considers appropriate to protect the position of a party which applies for an interim order, if, before hearing an application, the tribunal is satisfied that if an interim order is not made, the party applying for the interim order would be disadvantaged or suffer harm. The tribunal must observe natural justice and act rationally when making interim orders.

The clause provides that an interim order remains in force until the earliest of the following happens:

- the end of 12 weeks after the day the interim order is made;
- the tribunal orders otherwise;
- the tribunal makes an order at the end of the hearing to which the interim order relates.

The tribunal is also given the power to vary, revoke or extend interim orders for a further 14 days (on application by a party).

Should the person against whom an interim order is made not be present when the order is made, the registrar must arrange for a copy of the order to be served on the person as soon as practicable after the order is made.

### **Clause 54 Decisions without hearing**

Sets out the circumstances in which the tribunal may make a decision without hearing an application.

If the tribunal decides to make a decision without a hearing, the tribunal must give each party written notice, and include a statement to the effect that if the party wishes to make representations about the proposal, the party must make the representations within 21 days of the day the notice is given.

The tribunal may only make a decision without hearing an application if:

- the tribunal has given written notice to the parties as set out above; and
- has taken into consideration any representation made by a party within the 21 day period, and
- is satisfied that it is in the public interest not to hold a hearing, and the tribunal has sufficient information to make an informed decision on the application.

The tribunal must observe natural justice and procedural fairness in accordance with clause 7 when deciding whether to make a decision without hearing an application.

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

Sets out the powers and procedures to be followed by the tribunal in the event of parties reaching agreement at any stage in the tribunal's dealing with an application.

The tribunal may make a decision in accordance with terms agreed by the parties without holding a hearing, or without completing a hearing in progress, in the following circumstances:

- the parties have reached agreement about the terms of a tribunal decision in relation to the application or about how to deal with a part of the application or a matter arising out of the application; and
- the terms (the agreed terms) of the agreement are lodged in written form with the tribunal, and signed by the parties; and
- the tribunal is satisfied that an order or decision in, or consistent with, the agreed terms would be within the powers of the tribunal.

If the agreed terms are about a tribunal decision in relation to the application, the tribunal may, by order, make a decision in accordance with the agreed terms without holding a hearing or without completely dealing with the application at the hearing. If the agreed terms are about dealing with part of the application of a matter in relation to the application, the tribunal may give effect to the agreed terms in its decision without dealing with the matter to which the agreed terms relate at the hearing of the application.

**Clause 56 Other actions by tribunal**

This clause sets out other powers of the tribunal in relation to orders. The tribunal may, by order:

- hear applications jointly;
- make other orders with the consent of the parties to the application or as the tribunal considers necessary or convenient;
- amend or set aside a tribunal order if the order was made after hearing an application in the absence of a party, or the order is in error in relation to an amount or the name or address of a party, and the tribunal proposes to amend or set aside the order only to correct the order, or extraordinary circumstances make it appropriate to amend or set aside the order; or
- take any other action in relation to an application that the tribunal considers appropriate, and that is consistent with this Act or an authorising Act.

The tribunal must observe natural justice and procedural fairness when making orders, as required by clause 7.

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

Provides that an authorising Act may set out the powers of the tribunal, and the decisions it may make on an application made under the authorising Act.

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

Provides that this part of the Act does not limit any other function given to the tribunal under this Act or another territory law.

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

Sets out the record keeping requirements for tribunal orders, and procedure for handling requests by parties for copies of orders.

If the tribunal makes an order on an application, the tribunal must:

- make and keep a written record of the details of the order; and
- given each party a copy of the order within seven days after the day the tribunal makes the order.

A party may ask the tribunal for a copy of the details of the order within seven days of the day the tribunal makes the order, and the tribunal must give the party a copy of the order within seven days after the party asks for a copy.

This clause does not apply to interim orders made under clause 53.

**Clause 60 Statement of reasons**

Provides that if a party requests a written statement of reasons within 14 days of the day the order is made, a written statement of reasons must be provided to the requesting party.

The statement of reasons must set out any principles of law relied on by the tribunal and the way in which the tribunal applied the principles of law to the facts.

This clause does not apply to interim orders made under clause 53.

**Clause 61 Making and effect of orders**

Sets out the requirements for the making and effect of tribunal orders.

An order of the tribunal is made by the order being pronounced in the tribunal by the tribunal for the application making the order, or recorded in accordance with the tribunal's practice, as having been entered.

An order takes effect on the day that the order is made. However, the tribunal may order that the order takes effect on an earlier or later date or at any earlier or later time.

**Clause 62 Reserving decisions**

This clause sets out the procedural options available to tribunal members when the tribunal reserves a decision:

- In the event of a reserved decision, the tribunal may arrange for a written statement of reasons for the decision to be prepared, setting out the proposed order.
- If the tribunal arranges for a statement of reasons to be prepared, the tribunal may arrange for another member to deliver the statement of reasons, even if the member was not allocated to the tribunal for the application.
- The other member must, as a convenient time, publish in the tribunal the statement of reasons for the decision.

To remove any doubt, it is stated that the publication by the other tribunal member has the same effect as if, at the time of publication, the tribunal that reserved the decision made the order proposed in the statement of reasons and published the statement of reasons.

### **Clause 63 Correction of errors**

Provides that clerical mistakes or accidental slips or omissions made in an order may be corrected by the tribunal.

## **Division 6.2 – Powers and decisions in applications for occupational discipline**

### **Clause 64 Definitions – div 6.2**

Sets out definitions for terms used in division 6.2.

### **Clause 65 Considerations before making orders on application for occupational discipline**

This clause sets out the matters the tribunal must consider when determining what occupational discipline to use against a person who is the subject of an application for occupational discipline.

The tribunal may make an order for occupational discipline in relation to the subject person if satisfied that grounds for occupational discipline exist against the person.

In considering what occupational discipline to use against the subject person, the tribunal must consider the following:

- whether the person took reasonable steps to avoid the action (the contravention) that is the grounds for occupational discipline;
- whether occupational discipline has previously been used against the person for a similar act;
- whether the person has taken steps to mitigate the effect of the contravention (for example, the person has changed a method of work or given a direction to staff to prevent further contraventions);
- the impact of the contravention on any other person;

- the likelihood the person will act in a way that is grounds for occupational discipline in the future; and
- whether the entity bringing the application has applied for particular occupational discipline to be used and, if so, the kind of occupational discipline applied for.

The tribunal may also consider any other relevant matter when considering what occupational discipline to use against the subject person.

### **Clause 66 Orders for occupational discipline**

This clause sets out the orders for occupational discipline that may be made by the tribunal in relation to the subject person, if the tribunal may make an order pursuant to clause 61. The tribunal may make the following orders:

- reprimand the person;
- require the person to give a written undertaking;
- require the person to complete a stated course of training to the satisfaction of the regulatory body or another state person;
- give the person a direction (refer clause 67);
- cancel or suspend the person's licence or registration;
- disqualify the person from applying for a licence, or registration, of a stated kind for a stated period or until a stated thing happens;
- direct the regulatory body (entity responsible for issuing licences of the kind held by the subject person or for registering people in the occupation or profession in which the subject person is registered) to place a condition on the person's licence or registration, or remove or amend a condition placed on the person's licence or registration;
- require the person to pay an amount to the territory or someone else of not more than the prescribed amount; and
- if the person gained financial advantage from the conduct the subject of the application for occupational discipline – require the person to pay to the Territory an amount assessed as the amount of financial advantage gained by the person.

This clause does not limit the orders the tribunal may make.

### **Clause 67 Kinds of directions for licensed and registered people**

Details the kinds of directions that may be given to licensed and registered people pursuant to paragraph 66(2)(d). The clause also sets out the form and procedure required for directions given under the clause.

The tribunal may give a direction that the tribunal considers appropriate in a particular case, but types of directions may include direction to comply with a requirement under the Act, a licence or registration, or a condition on a licence or registration.

A direction must state a time period for compliance, although a tribunal may on application extend the compliance period. The tribunal must not give a direction under paragraph 66(2)(d) that would result in inconsistency with an

express requirement placed on the person's licence or registration under the relevant legislation.

### **Division 6.3 – Powers and decisions in applications for administrative review**

#### **Clause 68 Review of decisions on application**

This clause sets out the powers of the tribunal and decisions that may be made in relation to administrative review. The tribunal may exercise any function given to a decision-maker under an Act. The tribunal must, by order, confirm, vary, or set aside the original decision. If the tribunal sets aside the original decision, it must make a substitute decision or remit the matter for reconsideration by the decision-maker.

#### **Clause 69 Effect of orders for administrative review**

Sets out the effect of order under clause 68 (review of decisions). The order under subsection 68(3) is taken to be a decision of the original decision-maker, and takes effect from the day when the original decision has or had effect, unless the tribunal orders otherwise.

### **Part 7 – Enforcement and offences**

#### **Clause 70 Application of Criminal Code, ch 7**

Confirms that a proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7. This clause engages the offence procedures in chapter 7, which include perjury, falsifying evidence, failing to attend and refusing to be sworn.

#### **Clause 71 Enforcement of orders**

Confirms that money orders or non-money orders made by the tribunal are taken to have been filed in the Magistrates Court for enforcement under the *Court Procedures Rules 2006*, part 2.18 on the day the order is made. The clause also contains definitions for this clause.

#### **Clause 72 Faulty filed orders referred back to tribunal**

This clause sets out the procedure for dealing with faulty orders under subsection 71(1), and allows the Magistrates Court to refer the faulty order back to the tribunal to allow the tribunal to correct the order.

The tribunal takes action to correct a faulty order if:

- the tribunal amends the order under subsection 56(c) (other actions by the tribunal) to correct the error;
- the tribunal corrects the order under clause 63 (correction of errors); or
- if the order cannot be amended under either subsection 56(c) or clause 63, the general president requests a correction to the order under clause 78 (correction requests).

### **Clause 73 Fixed faulty orders**

Provides that an order fixed under subsection 56(c), clause 63 or clause 78 is taken to have been filed in the Magistrates Court for enforcement under part 2.18 of the *Court Procedures Rules 2006*.

### **Clause 74 Failure to comply with order**

Sets out the options available to the tribunal in the event that a party fails to comply with a tribunal order:

- the tribunal may order the person to pay to the Territory a stated amount (not more than any amount prescribed by regulation);
- if the party is the applicant, the tribunal may strike out the application;
- if the party is the respondent, the tribunal may make an order in favour of the applicant.

Where the tribunal orders a person the subject of an application for occupational discipline to pay an amount, the tribunal must inform the person that failure to pay may result in suspension or cancellation of their licence or registration under clause 76 (suspension or cancellation on warning notice). However, failure by the tribunal to tell a person of the possibility of suspension or cancellation does not affect any action the registrar takes in relation to the person under clause 76.

To avoid doubt, it is stated that this clause does not limit any other power of the tribunal under this Act.

### **Clause 75 Nonpayment of amounts ordered to be paid**

This clause sets out the requirement for a written notice (a warning notice) in the event that a person licensed or registered under an authorising Act fails to make a payment ordered by the tribunal within the stated time.

The warning notice must be issued by the registrar, and must state that the person's licence or registration may be suspended or cancelled if the person does not pay the amount within 14 days after the day the registrar gives the person the notice. The rules of service for a warning notice are set out in pt 19.5 of the *Legislation Act 2001*.

### **Clause 76 Suspension or cancellation on warning notice**

This clause sets out the powers of the tribunal in the event of non-compliance with a warning notice issued under clause 75.

If the person does not pay the amount required under the warning notice, the tribunal may, after the period for payment has ended, suspend or cancel the person's licence or registration. The tribunal may act to suspend or cancel a licence or registration in such circumstances on its own initiative, or on the application by the regulatory body. Regulatory body is defined.

## **Part 8 – Referrals and appeals**

### **Division 8.1 – Tribunal referrals and appeals**

#### **Clause 77 Referral of questions of law within tribunal**

This clause sets out the procedure in the event of a referral of questions of law within the tribunal.

A tribunal dealing with an application may, on its own initiative or on application by a party, ask the appeal president to allocate one or more tribunal members to the ruling tribunal to give a ruling on a question of law. A ‘question of law’ includes whether a question is a question of law (defined in the dictionary). If the ruling tribunal gives a ruling on a question of law, the requesting tribunal is bound by the ruling.

The clause also states the composition requirements for a ruling tribunal. The ruling tribunal may be composed of one or more of the following tribunal members allocated by the appeal president:

- a presidential member;
- a senior member who is a lawyer and has been a lawyer for five years or more.

To ensure independence, a ruling tribunal must not contain a tribunal member allocated to the requesting tribunal.

#### **Clause 78 Correction requests**

This clause grants a power to the general president to request a correction of an order made on an application (the original application) to the tribunal.

If the general president requests a correction, the appeal president must allocate one or more members to consider the request for correction, and give notice of the request to the parties to the original application.

With respect to submissions, the correction tribunal has a discretion to hear submissions from the parties as to whether the correction should be made. If the tribunal is satisfied that no party would be disadvantaged by the tribunal not hearing submissions, the tribunal may make a decision without hearing submissions.

The corrections tribunal must either make the correction (if in all the circumstances of the case, the tribunal considers it appropriate to do so), or refuse to make the correction.

The clause also states the composition requirements for a correction tribunal. The correction tribunal may be composed of one or more of the following tribunal members allocated by the appeal president:

- a presidential member;



- a senior member who is a lawyer and has been a lawyer for five years or more.

There is no prohibition on allocating a member who made the original decision to the correction tribunal, as it may be appropriate in the circumstances for the original presiding member to correct the original decision.

### **Clause 79 Appeals within tribunal**

Establishes the power of a party to the original application to apply to appeal the decision to the tribunal on a question of fact or law.

### **Clause 80 Dismissing appeals**

Sets out the procedures to be followed by the appeal president in the event that the appeal president proposes to dismiss an appeal.

Under subsection (1), the tribunal must give written notice to the applicant that the subject matter of the appeal is substantively similar to other appeals rejected by the tribunal, and the appeal president proposes to dismiss the appeal, and if the applicant wishes to make representations about the proposal, the applicant must make the representations within 21 days after the day the notice is given.

Under subsection (2), the appeal president may decide to dismiss the application only if the tribunal:

- has given written notice under subsection (1); and
- has taken into consideration any representation made by the applicant within 21 days after the day the notice is given; and
- is satisfied that it is in the public interest for the tribunal to not consider the appeal, and the appeal president has sufficient information to make an informed decision to dismiss the application.

The appeal president must observe natural justice and procedural fairness in deciding to dismiss an appeal under clause 80 (pursuant to the objects of the Act as set out in clause 7).

Subsection (3) confirms that if the tribunal dismisses an application for an appeal under this clause, the option to appeal the original decision to the Supreme Court under clause 86 is still available to the applicant.

### **Clause 81 Constitution of appeal tribunal**

The appeal tribunal may be composed of one or more of the following tribunal members allocated by the appeal president:

- a presidential member;
- a presidential member and one or more non-presidential members.

To ensure independence, an appeal tribunal must not contain a tribunal member who was allocated to the tribunal that decided the original application.

This clause does not apply if the appeal president dismisses an appeal under clause 80, or refers the appeal to the Supreme Court under clause 85.

### **Clause 82 Handling appeals**

This clause sets out how the appeal tribunal is to handle appeals. The appeal tribunal may, as the tribunal considers appropriate, deal with an appeal as a new application, or as a review of all or part of the original decision on the application by the tribunal.

## **Division 8.2 – Supreme Court referrals and appeals**

### **Clause 83 Removal of applications from tribunal to Supreme Court**

States that, on joint application by the parties to an application or an appeal, the tribunal must order that the application be removed to the Supreme Court. However, if only one party applies, the tribunal retains the discretion to order that the application be removed to the Supreme Court.

### **Clause 84 Referral of questions of law to Supreme Court**

On its own initiative or on the application by a party, if the tribunal considers that a question of law that arises in considering an application or an appeal raises an issue of public importance, the tribunal may refer the question to the Supreme Court.

### **Clause 85 Referral of appeals to Supreme Court**

This clause sets out the circumstances in which the appeal president may refer an appeal within the tribunal under clause 79 to the Supreme Court.

The appeal president may decide not to deal with an appeal, and refer the appeal to the Supreme Court if:

- a party to an application appeals the original decision on the application to the tribunal under clause 79; and
- the appeal president considers that the appeal could be dealt with more conveniently or effectively by the Supreme court; and
- the appeal president considers it would be appropriate for the appeal to be referred to the Supreme Court; and
- the appeal president has obtained the Supreme Court's leave to refer the appeal.

### **Clause 86 Appeals to Supreme Court**

This clause sets out the circumstances in which a party to an application for an appeal may appeal to the Supreme Court on a question of fact or law.

A party to an application for an appeal may appeal to the Supreme Court from a decision of the appeal tribunal, or the original decision of the tribunal (in the event that the appeal president dismissed the appeal under clause 80).

However, an appeal may be brought only with the Supreme Court's leave.

### **Clause 87 Sending documents and things to the Supreme Court**

This clause sets out the procedure for sending documents and things to the Supreme Court in the event of a Supreme Court proceeding under division 8.2. The tribunal must send to the Supreme Court any document or thing that was before the tribunal that relates to the Supreme Court proceeding, and at the end of the Supreme Court Proceeding, the court must return the document or thing to the tribunal. 'Supreme Court proceeding' is defined.

## **Part 9 – The ACT Civil and Administrative Tribunal**

### **Division 9.1 – Establishment and constitution**

#### **Clause 88 Establishment of tribunal**

This clause establishes the ACT Civil and Administrative Tribunal, which includes the following four divisions:

- administrative review;
- civil disputes;
- occupational discipline; and
- general.

The clause makes it clear that the tribunal may create other tribunal divisions by way of notifiable instrument.

#### **Clause 89 Constitution of tribunal for applications**

Sets out the requirements for the constitution of the tribunal for applications.

The general president must allocate one or more tribunal members for an application, and may also appoint an assessor. To clarify, the general president may not allocate an assessor to a tribunal unless there is at least one member already allocated to the tribunal.

#### **Clause 90 Considerations before allocating tribunal members to application**

Sets out the matters the general president must consider before allocating members to a tribunal for an application:

- the nature and complexity of the matter to be decided by the tribunal;
- whether to allocate a member with special qualifications or experience; and
- any other matter for consideration stated in an authorising law.

**Clause 91 President to nominate presiding member**

States that, in the event that there is no presidential member allocated to a tribunal for an application, the general president must nominate an allocated member as the presiding member for the tribunal.

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

This clause outlines options available to the general president in the event that a member allocated to a tribunal for an application ceases to be a tribunal member, or ceases to be available, before the tribunal finishes dealing with the application.

The general president must:

- direct the remaining members allocated to the tribunal to continue dealing with the application; or
- allocate another tribunal member to the tribunal for the application to replace the unavailable person; or
- direct that a new tribunal be made up for the application.

To clarify, the tribunal, however reconstituted under this clause, may deal with the application as it considers appropriate (for example, the reconstituted tribunal may deal with the application anew).

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

Provides that, unless otherwise stated in the Act, the tribunal, for the exercise of a function other than in relation to an application, is constituted by the presidential members.

**Division 9.2 – Tribunal members****Clause 94 Appointment of presidential members**

This clause sets out the requirements for appointment of presidential members to the tribunal.

The Executive may appoint a general president, and appeal president, and other presidential members. The Executive may appoint the same person to the position of both general and appeal president. A person must be a lawyer, and have been a lawyer for five years or more to be eligible to be appointed as a presidential member of the tribunal.

The appointment of a presidential member is a notifiable instrument.

**Clause 95 Requirements of appointment – presidential members**

States that the Executive must determine the criteria and selection process that applies to the selection of a person for presidential appointment.

Making selection criteria and the appointments process publicly available improves the transparency of the presidential member appointment process.

A determination under this section is a notifiable instrument.

#### **Clause 96 Appointment of non-presidential members**

Provides for the appointment of non-presidential members of the tribunal.

The Attorney-General may appoint both senior and ordinary non-presidential members. However, the Attorney-General may not appoint a person as a non-presidential member unless satisfied that the person has the experience or expertise to qualify the person to exercise the functions of a senior or ordinary tribunal member. A regulation may make provision in relation to the appointment of a senior or ordinary member.

The appointment of a non-presidential member is a notifiable instrument.

#### **Clause 97 Appointment of assessors**

Provides the appointment of assessors to the tribunal.

The general president may appoint a person to the tribunal as an assessor, but may not appoint a person unless satisfied that the person has the experience or expertise to qualify the person to exercise the functions of an assessor.

To clarify the role of the assessor, the assessor may provide specialist or technical advice to a tribunal for an application, if asked by the tribunal.

The appointment of an assessor is a notifiable instrument.

#### **Clause 98 Term of appointment**

Sets out the length of appointment for both presidential and non-presidential tribunal members.

The term of appointment of a person as a presidential member is for the term stated in the appointment, which must be no less than seven years. If no term is stated in the appointment, the appointment is for seven years.

The term of appointment of a person as a non-presidential member is for the term stated in the appointment. If no term is stated in the appointment, the appointment is for five years.

#### **Clause 99 Ending appointments**

Sets out the criteria for ending presidential and non-presidential member appointments.

The Executive may end a person's appointment as a non-presidential member for misbehaviour, or for physical or mental incapacity (if the incapacity affects the exercise of the person's functions), or for failure to disclose a material interest under clause 50.

A tribunal member misbehaves if the member fails to act inconsistently with the undertaking given by the member under clause 109 (see words of undertaking in Schedule 2), however misbehaviour is not limited to such a failure.

A note has been included to confirm that a presidential member may only be removed from office in accordance with section 4 of the *Judicial Commissions Act 1994*. Giving tenure to presidential members confirms their independence.

### **Clause 100 Conditions of appointment generally**

Provides that general conditions of appointment are those determined by the Executive or stated in the instrument of appointment.

### **Clause 101 Temporary members if tribunal members absent etc**

Provides for temporary members and the extension of a term of appointment because of circumstances arising in the tribunal.

### **Clause 102 Retirement**

Provides for the retirement of members through invalidity for the purposes of superannuation schemes.

### **Clause 103 Tribunal members not to do other work**

Provides that presidential members must not do other remunerative work or accept other appointment under law without the prior written agreement of the Attorney-General.

### **Clause 104 Functions of presidential members generally**

Provides that presidential members may exercise another power under law.

### **Clause 105 Functions of general president**

Provides for the functions of the general president. First, the general president is responsible for decisions of the tribunal to be made according to law – free from improper interference. Secondly, the general president is responsible for the orderly and prompt discharge of business of the tribunal.

### **Clause 106 Functions of the appeal president**

Provides for the functions of the appeal president, namely, the appeal president is responsible for the orderly and prompt discharge of business of

referrals and appeals of the tribunal. Note that the appeal president may be the same presidential member as the general president.

#### **Clause 107 Functions of non-presidential members**

Provides that non-presidential members may exercise a function of a presidential member, subject to the Act and directions from the general president.

#### **Clause 108 Functions of assessors**

Provides that an assessor may exercise any function given the assessor under the law.

#### **Clause 109 Undertaking before exercising tribunal member functions**

Provides for the form of the undertaking a tribunal member must give before exercising a function. The undertaking replaces older forms of oaths or affirmations.

Breach of the undertaking may constitute misbehaviour leading to the member's appointment being brought to an end (see section 99).

### **Division 9.3 – Registrar and staff**

#### **Clause 110 Appointment of registrar**

Provides that the chief executive may appoint the tribunal registrar, if satisfied that the person has the expertise to undertake the function.

#### **Clause 111 Functions of registrar – non-presidential functions**

Provides that the registrar may exercise a function of a non-presidential member, subject to the Act and directions from the general president.

#### **Clause 112 Functions of registrar – other**

Provides that the registrar has the function of providing public information about the tribunal and dispute resolution services and maintaining the records of the tribunal.

#### **Clause 113 Delegation of functions of registrar**

Provides that the registrar may delegate the registrar's functions to a public servant.

#### **Clause 114 Deputy registrars**

Provides that the chief executive may appoint deputy registrars.

**Clause 115 Staff assisting registrar**

Provides that staff assisting the registrar must be public servants.

**Part 10 – Miscellaneous**

**Clause 116 Protection of members etc from liability**

Provides that members and persons acting under the direction or authority of the tribunal are protected against liability for conduct done honestly and without recklessness. Instead, the liability attached to the Territory.

**Clause 117 Approved forms**

Provides for approved forms.

**Clause 118 Approved forms**

Provides for regulations.

**Clause 119 Repeals**

Provides for the repeal of the *Consumer and Trader Tribunal Act 2003*.