



Australian Capital Territory

ACT Civil and Administrative Tribunal Act 2008

A2008-35

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Australian Capital Territory

ACT Civil and Administrative Tribunal Act 2008

A2008-35

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:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

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

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

- (2) If this Act has not commenced within 2 years beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

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

Part 2 Objects and important concepts

6 Objects of Act

The objects of this Act are—

- (a) to provide for a wide range of matters arising under legislation to be resolved by the ACT Civil and Administrative Tribunal; and
- (b) to ensure that access to the tribunal is simple and inexpensive, for all people who need to deal with the tribunal; and
- (c) to ensure that applications to the tribunal are resolved as quickly as is consistent with achieving justice; and
- (d) to ensure that decisions of the tribunal are fair; and
- (e) to enhance the quality of decision making under legislation; and
- (f) to encourage, and bring about, compliance in decision making under legislation; and
- (g) to encourage tribunal members to act in a way that promotes the collegiate nature of the tribunal; and

Note Unless otherwise provided by this Act, the tribunal for the exercise of functions, other than functions in relation to applications, is made up of the presidential members (see s 93).

- (h) to identify and bring to the Attorney-General's attention systemic problems in relation to the operation of authorising laws.

7 Principles applying to Act

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

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

8 Rules of evidence

To remove any doubt, the tribunal need not comply with the rules of evidence applying in the ACT.

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

Part 3 Applications to tribunal

9 Applications under authorising laws

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

10 Making an application

(1) An application to the tribunal must—

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

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

- (c) state the reasons for making the application; and
- (d) be lodged at the tribunal registry.

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

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

(2) An application to the tribunal for review of a decision must be made by a person within 28 days after the day the decision to be reviewed is made.

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

(3) However—

- (a) if notice of the decision is given to the person later than 5 days after the day the decision is made—the application may be made within 28 days after the day the notice is given; and

- (b) if notice of the decision is required to be given to the person under this Act or an authorising law, but is not given—the application may be made within 28 days after the day the person becomes aware of the decision; and
- (c) if the decision is taken to have been made under section 12 (When no action taken to be decision)—the application may be made within 28 days after the end of the period or reasonable period mentioned in the section.

11 Applications subject to authorising laws

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

12 When no action taken to be decision

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

13 Help with applications etc

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

Examples of help

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

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

14 Advising Attorney-General about systemic problems

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

Part 4 Civil disputes

15 Definitions—pt 4

In this part:

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

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

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

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

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

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

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

nuisance application means an application for relief for nuisance.

trespass application means an application for relief for trespass to land.

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

In this Act:

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

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

- (a) a contract application;
- (b) a damages application;
- (c) a debt application;
- (d) a goods application;
- (e) a nuisance application;
- (f) a trespass application;
- (g) an application for a debt declaration;
- (h) an application for a common boundaries determination;
- (i) an application stated to be a civil dispute application in an authorising law.

17 Civil dispute applications

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

18 \$10 000 limit on civil dispute applications

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

- (2) The tribunal's jurisdiction is limited to—
- (a) civil dispute applications claiming amounts of not more than \$10 000; or
 - (b) in relation to debt declarations—applications for declarations for debts of not more than \$10 000.

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

- (3) This section does not apply to—
- (a) an application for a common boundaries determination; or
 - (b) an application prescribed by regulation.

19 Working out amount of application for jurisdiction

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

20 Abandoning excess to come within jurisdiction

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

21 Jurisdiction by agreement—amounts over \$10 000

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

22 Tribunal jurisdiction and powers of Magistrates Court

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

Part 5 **Tribunal procedures**

Division 5.1 **Procedures generally**

23 **Tribunal decides own procedure**

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

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

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

24 **Rule-making power**

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

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

- (2) In making a rule, the tribunal must consider—
- (a) the requirement to ensure that applications to the tribunal are resolved as quickly as is consistent with achieving justice; and
 - (b) the requirement for procedures of the tribunal to be as simple, quick, inexpensive and informal as is consistent with achieving justice; and

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

25 Subject matter of rules

- (1) The rules the tribunal may make under section 24 include, but are not limited to, rules to do the following:
- (a) to allow the tribunal to make orders in a short form;
 - (b) to 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;
 - (c) to facilitate the early resolution of matters arising in applications;

Example

The tribunal may make rules about referring an application to an agency that the tribunal considers is more appropriate to handle the application.

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

- (d) to prescribe the functions, and limits on the functions, of the registrar;

(e) to 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—

(i) in relation to an application to the tribunal; but

(ii) not in relation to any thing to be done by the tribunal;

Example

a rule about the time for filing an application

(f) to allow the tribunal to make orders about costs for complying with subpoenas.

(2) If a rule of a kind mentioned in subsection (1) (e) prescribes a time for doing something that is longer than the time for doing the thing set out in this Act or an authorising law, the time for doing the thing is the longer time prescribed by rule.

26 Tribunal may inform itself

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

Examples

1 asking an assessor for expert advice on a matter

2 relying on previous experience in relation to the matter

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

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

27 Procedures in authorising laws

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

- (2) Any procedure under an authorising law for dealing with an application prevails over the procedures set out in this Act or the rules for dealing with the application, to the extent of any inconsistency.
- (3) To remove any doubt, this Act is not inconsistent with an authorising law only because 1 Act deals with a matter and the other does not.

28 Time and place of proceedings

- (1) The tribunal sits at the times and places the general president decides.
- (2) 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

29 Parties to applications

- (1) The parties to an application are the applicant and the respondent, unless this section or an authorising law otherwise provides.
- (2) The parties to an application for occupational discipline are the entity bringing the application and the person to whom the application relates.
- (3) The parties to an application for review of a decision are the applicant and the decision-maker.
- (4) The tribunal may, by written notice to the parties to an application, join a person as a new party to the application.

30 Representation

A person may, in relation to an application before the tribunal, appear in person or be represented by a lawyer or someone else (other than a person prescribed under the rules).

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

Division 5.3 Case management

31 Early resolution of applications

If the tribunal considers it appropriate, the tribunal may take all reasonably practicable steps to resolve matters arising in an application before the application is heard.

32 Frivolous and vexatious applications

- (1) This section applies if—
 - (a) the tribunal considers an application is frivolous or vexatious; or
 - (b) a person who has made an application to the tribunal has been dealt with as frivolous or vexatious by a court or tribunal in Australia.
- (2) The tribunal may, by order, do 1 or more of the following:
 - (a) refuse to hear the application;
 - (b) dismiss the application;
 - (c) direct that the person who made the application not make a subsequent application to the tribunal of the kind stated in the direction—
 - (i) within a stated period of time; or
 - (ii) without the leave of the tribunal.

- (3) The tribunal may make an order under subsection (2) on its own initiative or on application by a party.
- (4) The tribunal may vary or revoke a direction given under subsection (2) (c)—
 - (a) on its own initiative; or
 - (b) on application by the person who is the subject of the order.

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

33 Preliminary conferences

- (1) The tribunal may require the parties to an application to attend a preliminary conference.
- (2) The tribunal may make inquiries, or require further information from a party, for or during a preliminary conference.

Example

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

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

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

34 Admissibility of evidence given at preliminary conference

- (1) Evidence given by a person before the tribunal during a preliminary conference is not admissible in evidence against the person in a criminal proceeding, other than a proceeding for—
 - (a) an offence in relation to the falsity or misleading nature of the evidence; or
 - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

- (2) Also, any information obtained, directly or indirectly, because of the giving of further information by a person in accordance with a requirement under section 33 (2), or the giving of evidence by a person before the tribunal during a preliminary conference, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence in relation to the falsity or the misleading nature of the information or evidence; or
 - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).
- (3) Evidence of any words spoken at a preliminary conference must not be admitted in a proceeding under this Act.

35 Mediation for applications

- (1) This section applies if, before the hearing of an application, the tribunal considers that the matter (the *subject matter*) to which the application relates—
- (a) is suitable for mediation; and
 - (b) is reasonably likely to be resolved by mediation.
- (2) The tribunal may, by order—
- (a) refer the subject matter to a registered mediator for mediation; and
 - (b) require the parties to attend the mediation.
- (3) The tribunal may make the order on its own initiative or on application by a party.

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

- (4) In this section:

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

Division 5.4 Hearings

36 Applications to be heard

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

- (a) refuses to hear the application or dismisses it; or
- (b) decides not to hold a hearing.

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

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

37 Notice of hearing

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

38 Hearings usually in public

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

39 Hearings in private or partly in private

- (1) This section applies in relation to an application, or part of an application, if the tribunal is satisfied that the right to a public hearing is outweighed by competing interests.

Note See s (5) in relation to competing interests.

- (2) The tribunal may, by order, do 1 or more of the following:
- (a) direct that the hearing of the application, or part of the hearing, take place in private and give directions about the people who may be present;
 - (b) 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;
 - (c) give directions 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.
- (3) The tribunal may make an order under subsection (2) on application by a party or on its own initiative.
- (4) A person must not contravene an order under subsection (2) (b) or (c).
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (5) For this section, 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—
- (a) to protect morals, public order or national security in a democratic society; or
 - (b) because the interest of the private lives of the parties require the privacy; or
 - (c) to the extent privacy is strictly necessary, in special circumstances of the application, because publicity would otherwise prejudice the interests of justice.

40 Secrecy for private hearings etc

(1) In this section:

court includes any entity with power to require the production of documents or answering of questions.

divulge includes communicate.

produce includes allow access to.

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

- (a) the information is disclosed to the person because of the exercise of a function under this Act by the person or someone else; and
- (b) at disclosure, the function is being exercised in relation to—
 - (i) a hearing held in private; or
 - (ii) evidence, or a document, to which a direction under section 39 (2) (b) or (c) applies.

(2) This section applies to a person who is, or has been—

- (a) a tribunal member; or
- (b) a member of the staff of the tribunal; or
- (c) acting under the direction or authority of the tribunal.

(3) The person commits an offence if—

- (a) the person—
 - (i) makes a record of protected information; and
 - (ii) is reckless about whether the information is protected information; or
- (b) the person—
 - (i) does something that divulges protected information; and

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

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

- (4) This section does not apply if the record is made, or the information is divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (5) 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.

41 Powers in relation to witnesses etc

- (1) The tribunal may, by subpoena given to a person, require the person, at a stated time and place, to appear before the tribunal to do 1 or more of the following:
 - (a) produce a stated document or other thing relevant to the hearing;
 - (b) give evidence.

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

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

- (2) 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.

- (3) The tribunal may give a party leave to inspect, or make a copy of, a document produced under a subpoena.
- (4) The presiding member at the hearing of an application may require a person appearing before the tribunal to give evidence to do 1 or more of the following:
 - (a) take an oath;
 - (b) answer a question relevant to the hearing;
 - (c) produce a stated document or other thing relevant to the hearing.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (5) If a subpoena is issued to give evidence under subsection (1) (b), the subpoena must—
 - (a) state the time and place at which the person must appear before the tribunal; and
 - (b) include—
 - (i) a statement to the effect that the person may be represented before the tribunal by a lawyer or someone else; and
 - (ii) if the rules prescribe someone who may not represent the person—a statement that the other person may not represent the person; and
 - (iii) a statement to the effect that the person may wish to obtain legal advice in relation to the subpoena; and

- (c) contain a statement to the effect that the person may apply to the tribunal for a direction under section 45 (Taking part other than in person).

Note If a form is approved under s 117 for a subpoena, the form must be used.

- (6) On application by a party or someone else having a sufficient interest, the tribunal may set aside a subpoena completely or partly.

42 Arrest if people fail to appear

- (1) If a person who is subpoenaed to appear before the tribunal under section 41 does not 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.
- (2) However, the presidential member may only issue a warrant if satisfied that—
 - (a) the tribunal has taken reasonably practicable steps to contact the person; and
 - (b) the issue of a warrant is in the interests of justice.
- (3) In deciding whether it is in the interests of justice to issue a warrant, the tribunal must consider the following:
 - (a) the importance of the evidence that the tribunal expects the person to give;
 - (b) whether the evidence could be obtained by other means;
 - (c) the nature of the application;
 - (d) the degree of urgency to resolve the matter;
 - (e) the likelihood that issuing the warrant would secure the person's attendance at the hearing;

- (f) if the tribunal has contacted the person—
 - (i) the reason (if any) given by the person for not attending under the subpoena; and
 - (ii) the impact of using the warrant for the arrest of the person.

43 Executing a warrant

- (1) This section applies if a presidential member issues a warrant under section 42.
- (2) The warrant authorises a police officer to—
 - (a) arrest the person named in the warrant; and
 - (b) bring the person before the tribunal.
- (3) A police officer executing the warrant—
 - (a) may, with necessary assistance and force, enter any premises to arrest the person named in the warrant; and
 - (b) 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; and
 - (c) must, before removing the person, explain to the person the purpose of the warrant; and
 - (d) must bring the person immediately before a presidential member; and
 - (e) if a person is under a legal disability—must inform a parent or guardian of the person of the arrest.
- (4) If, after arresting the person, the police officer believes on reasonable grounds that the person cannot be brought immediately before a presidential member, the police officer must immediately release the person.

44 Procedure in absence of party

- (1) This section applies if, at the time set for the hearing of an application, a party fails to appear either personally or by a representative.
- (2) The tribunal may—
 - (a) order that the application be set down for hearing at another time; or
 - (b) order that stated other steps be taken before the hearing proceeds as the tribunal directs; or
 - (c) adjourn the hearing; or
 - (d) proceed with the hearing in the absence of the party either generally or in relation to any relief claimed in the application; or
 - (e) if the party is the applicant—dismiss the application; or
 - (f) if the party is not the applicant or respondent—remove the party from the application.

45 Taking part other than in person

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

Examples

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

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

Division 5.5 Other matters

46 Lodging documents

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

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

47 Amending documents

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

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

48 Costs of proceedings

- (1) The parties to an application must bear their own costs unless this Act otherwise provides or the tribunal otherwise orders.
- (2) However—
 - (a) if the tribunal decides an application in favour of the applicant—the tribunal may order the other party to pay the applicant the filing fee for the application; or
 - (b) if the tribunal considers that a party to an application caused unreasonable delay or obstruction before or while the tribunal was dealing with the application—the tribunal may order the party to pay the reasonable costs of the other party arising from the delay or obstruction; or

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

49 Costs for contravening an order

- (1) The tribunal may award costs against a party for contravening an order under section 48 (2) (c) only if satisfied that it is in the interests of justice to do so.
- (2) In deciding whether it is in the interests of justice to award costs, the tribunal must consider the following:
 - (a) whether the contravention was deliberate or could easily have been avoided;
 - (b) whether (and if so, the extent to which) the contravention has affected the tribunal’s ability to hear the application promptly;
 - (c) the importance to the community of people being able to afford to bring applications to the tribunal.
- (3) The tribunal may consider any other relevant matter.
- (4) Costs are payable in accordance with the scale of costs in the rules under the *Court Procedures Act 2004* applying in relation to the Supreme Court.

50 Disclosure of material interests by tribunal members

- (1) If a tribunal member (the *interested member*) has a material interest in a matter in an application, the interested member must, as soon as practicable after the relevant facts come to the interested member’s knowledge, disclose the nature of the interest to—
 - (a) the general president, the presiding member and the parties; or

- (b) if the interested member is the presiding member—the general president and the parties.

Note **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) The interested member must not, unless each party consents—
 - (a) take part, or continue to take part, in the tribunal dealing with the application; or
 - (b) exercise any function in relation to the application.
- (3) If the general president becomes aware that a tribunal member is, or will be, part of the tribunal dealing with an application and that the member has a material interest, the president must—
 - (a) disclose the conflicting interest to the parties; or
 - (b) if the president considers that the member should not take part, or should not continue to take part, in the tribunal dealing with the application—direct the member not to take part or continue to take part.
- (4) In this section:
 - associate**, of a person, includes—
 - (a) the person’s business partner; or
 - (b) a close friend of the person; or
 - (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an ***indirect interest*** in a matter if any of the following has an interest in the matter:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a tribunal member has a ***material interest*** in a matter if the member has—

- (a) a direct or indirect financial interest in the matter; or
- (b) a direct or indirect interest of any other kind if the interest could conflict, or reasonably be seen to conflict, with the proper exercise of the member's functions in relation to the tribunal's consideration of the matter.

51 Reporting of disclosed tribunal member interests to Minister

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

relevant committee means—

 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (2); or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for legal affairs.

Part 6 Powers and decisions of tribunal

Division 6.1 Powers and decisions generally

52 Decisions by majority or presiding member

- (1) This section applies to a tribunal constituted for an application with more than 1 tribunal member.
- (2) A question in the application is decided according to the decision of the majority of members (other than any assessor) of the tribunal for the application.
- (3) 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.

53 Interim orders

- (1) This section applies if, before the hearing of an application—
 - (a) a party to the application applies to the tribunal for an order under this section; and
 - (b) the tribunal is satisfied that, if an order under this section were not made before the hearing of the application, the party applying for the order would be disadvantaged or suffer harm.

- (2) The tribunal may make any order (an *interim order*) it considers appropriate to protect the position of the party that applied for the order.

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

- (3) An interim order remains in force until the earliest of the following happens:
 - (a) the end of 12 weeks after the day the order is made;

- (b) the tribunal orders otherwise;
 - (c) the tribunal makes an order at the end of the hearing to which the interim order relates.
- (4) The tribunal may, on application by a party while an interim order is in force—
- (a) vary the order; or
 - (b) revoke the order; or
 - (c) extend the order for a further 14 days.
- (5) If the person against whom an interim order is made is not 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.

54 Decisions without hearing

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

- (b) has taken into consideration any representations made by a party within the 21-day period or shorter period decided by the tribunal under subsection (1) (b); and
- (c) is satisfied that—
 - (i) it is in the public interest not to hold a hearing; and
 - (ii) the tribunal has sufficient information to make an informed decision on the application.

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

55 Powers of tribunal if parties reach agreement

- (1) This section applies if, at any stage in dealing with an application—
 - (a) the parties reach agreement—
 - (i) about the terms of a tribunal decision in relation to the application; or
 - (ii) about how to deal with a part of the application or a matter arising out of the application; and
 - (b) the terms (the *agreed terms*) of the agreement are reduced to writing, signed by the parties and lodged with the tribunal; and
 - (c) the tribunal is satisfied that an order or decision in, or consistent with, the agreed terms would be—
 - (i) within the powers of the tribunal; and
 - (ii) appropriate for the tribunal to make.
- (2) 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—
 - (a) without holding a hearing; or

- (b) if a hearing has begun—without completely dealing with the application at the hearing.
- (3) If the agreed terms are about dealing with part of the application or 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.

56 Other actions by tribunal

The tribunal may, by order—

- (a) hear an application jointly with another application that arises from the same or similar facts; or
- (b) make other orders with the consent of the parties to the application or as the tribunal considers necessary or convenient; or

Example

an order dismissing a proceeding with the consent of the parties to the proceeding

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

- (c) amend or set aside a tribunal order if—
 - (i) the order was made after hearing an application in the absence of a party; or
 - (ii) 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 error; or
 - (iii) extraordinary circumstances make it appropriate to amend or set aside the order; or

- (d) take any other action in relation to an application—
 - (i) that the tribunal considers appropriate; and
 - (ii) that is consistent with this Act or an authorising law.

Examples

- 1 an order dismissing a proceeding on the withdrawal of the applicant
- 2 an order dismissing a proceeding for want of prosecution

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

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

57 Powers and decisions in authorising laws

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

58 No limitation on other functions of tribunal

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

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

- (1) If the tribunal makes an order on an application, the tribunal must—
 - (a) make and keep a written record of the details of the order; and
 - (b) give each party a copy of the order within 7 days after the day the tribunal makes the order.
- (2) A party may ask the tribunal for a copy of the details of the order within 7 days after the day the tribunal makes the order.
- (3) The tribunal must give the party a copy of the details of the order within 7 days after the day the party asks for a copy.

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

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

60 Statement of reasons

- (1) This section applies if—
- (a) the tribunal makes an order on an application; and
 - (b) within 14 days after the day the order is made, a party asks for a statement of reasons for the making of the order.
- (2) The tribunal must give the party a written statement of reasons for the making of the order.
- (3) The statement of reasons must set out—
- (a) any principles of law relied on by the tribunal; and
 - (b) the way in which the tribunal applied the principles of law to the facts.

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

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

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

61 Making and effect of orders

- (1) An order of the tribunal is made by the order being—
- (a) pronounced in the tribunal by the tribunal for the application making the order; or
 - (b) recorded, in accordance with the tribunal's practice, as having been entered.

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

62 Reserving decisions

- (1) After the tribunal finishes dealing with an application, the tribunal for an application may reserve the decision on the application, and may deliver the decision on another date or a date to be set.
- (2) If the tribunal reserves a decision on an application, the tribunal may arrange for a written statement of reasons for the decision to be prepared setting out the proposed order.
- (3) If the tribunal arranges for a statement of reasons to be prepared, the tribunal may arrange for another tribunal member to deliver the statement, even if the tribunal member was not allocated to the tribunal for the application.
- (4) The other tribunal member must, at a convenient time, publish in the tribunal the statement of reasons for the decision.
- (5) 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.

63 Correction of errors

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

Division 6.2 Powers and decisions in applications for occupational discipline

64 Definitions—div 6.2

In this division:

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

subject person—see section 65.

65 Considerations before making orders on application for occupational discipline

- (1) This section applies if the tribunal is considering an application for occupational discipline against a person (the *subject person*).
- (2) The tribunal may make an order for occupational discipline in relation to the subject person if satisfied that a ground for occupational discipline exists against the person.
- (3) In considering what occupational discipline to use against the subject person, the tribunal must consider the following:
 - (a) whether the person took reasonable steps to avoid the action (the *contravention*) that is the ground for occupational discipline;
 - (b) whether occupational discipline has previously been used against the person for a similar act;
 - (c) whether the person has taken steps to mitigate the effect of the contravention;
 - (d) the impact of the contravention on any other person;

- (e) the likelihood that the person will act in a way that is a ground for occupational discipline in the future;
- (f) 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.

Example—par (c)

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

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

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

66 Orders for occupational discipline

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

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

- (2) The tribunal may make 1 or more of the following orders for occupational discipline in relation to the subject person:

- (a) reprimand the person;
- (b) require the person to give a written undertaking;
- (c) require the person to complete a stated course of training to the satisfaction of the regulatory body or another stated person;
- (d) give the person a direction;

Note For directions that may be given, see s 67.

- (e) cancel or suspend the person's licence or registration;
- (f) disqualify the person from applying for a licence, or registration, of a stated kind for a stated period or until a stated thing happens;

- (g) direct the regulatory body to—
 - (i) place a condition on the person’s licence or registration;
or
 - (ii) remove or amend a condition placed on the person’s licence or registration;
 - (h) require the person to pay to the Territory or someone else a stated amount (not more than any amount prescribed by regulation);
 - (i) if the person gained financial advantage from the action that is the ground for occupational discipline—require the person to pay to the Territory an amount assessed as the amount of financial advantage gained by the person.
- (3) This section does not limit the orders the tribunal may make.
- (4) In this section:

regulatory body means the 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.

67 Kinds of directions for licensed and registered people

- (1) The tribunal may give a direction under section 66 (2) (d) that the tribunal considers appropriate in a particular case.
- (2) The directions the tribunal may give include a direction to comply with a requirement under an Act, a licence or registration, or to place a condition on a licence or registration.
- (3) A direction must state the period within which the subject person must comply with the direction.
- (4) The tribunal may, on application, extend the period for compliance stated in a direction either before or after the end of the stated period.

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

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

Division 6.3 Powers and decisions in applications for administrative review

68 Review of decisions

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

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

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

69 Effect of orders for administrative review

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

Part 7 Enforcement and offences

70 Application of Criminal Code, ch 7

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

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

71 Enforcement of orders

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

- (2) In this section:

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

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

72 Faulty filed orders referred back to tribunal

- (1) This section applies if there is an error in an order (a *faulty order*) mentioned in section 71 (1) that prevents the Magistrates Court from enforcing the order.
- (2) The Magistrates Court may refer the faulty order back to the tribunal to allow the tribunal to take action to correct the order.
- (3) The tribunal takes action to correct a faulty order if—
 - (a) the tribunal amends the order under section 56 (c) (Other actions by tribunal) to correct the error; or

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

73 Fixed faulty orders

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

74 Failure to comply with order

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

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

75 Nonpayment of amounts ordered to be paid

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

- (2) The registrar must give the person written notice (a **warning notice**) 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.

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

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

76 Suspension or cancellation on warning notice

- (1) This section applies if—
- (a) the registrar has given a person who is licensed or registered a warning notice under section 75 relating to the licence or registration; and
 - (b) the person does not pay the amount required to be paid under the warning notice.
- (2) The tribunal may, after the period for payment of the amount has ended, suspend or cancel the person's licence or registration.
- (3) The tribunal may act under subsection (2) on application by the regulatory body or on its own initiative.
- (4) In this section:
- regulatory body** means the entity responsible for issuing licences of the kind held by the person or for registering people in the occupation or profession in which the person is registered.

Part 8 Referrals and appeals

Division 8.1 Tribunal referrals and appeals

77 Referral of questions of law within tribunal

- (1) This section applies if a tribunal (the *requesting tribunal*) is dealing with an application.
- (2) The requesting tribunal may, on its own initiative or on application by a party, ask the appeal president to allocate 1 or more tribunal members to a tribunal (the *ruling tribunal*) to give a ruling on a question of law.
- (3) If the ruling tribunal gives a ruling on a question of law, the requesting tribunal is bound by the ruling.

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

- (4) A ruling tribunal is made up of 1 or more of the following tribunal members allocated by the appeal president:
 - (a) a presidential member;
 - (b) a senior member who is a lawyer and has been a lawyer for 5 years or more.
- (5) However, a ruling tribunal must not contain a tribunal member allocated to the requesting tribunal.

78 Correction requests

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

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

79 Appeals within tribunal

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

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

80 Dismissing appeals

- (1) The appeal president may give an applicant for an appeal written notice that—
- (a) the subject matter of the appeal is substantively similar to other appeals rejected by the tribunal; and
 - (b) the appeal president proposes to dismiss the appeal; and
 - (c) 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.

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

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

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

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

81 Constitution of appeal tribunal

- (1) This section—
 - (a) applies if a party to the original application appeals a decision to the tribunal on a question of fact or law; but
 - (b) does not apply if the appeal president —
 - (i) dismisses an appeal under section 80; or
 - (ii) refers the appeal to the Supreme Court under section 85.
- (2) On appeal, the appeal president must allocate tribunal members to an appeal tribunal to review the decision on the original application.
- (3) An appeal tribunal is made up of—
 - (a) 1 or more presidential members; or
 - (b) 1 or more presidential members and 1 or more non-presidential members.
- (4) However, an appeal tribunal must not contain a tribunal member who was allocated to the tribunal that decided the original application.
- (5) In this section:
original application—see section 79.

82 Handling appeals

An appeal tribunal may, as the tribunal considers appropriate, deal with an appeal—

- (a) as a new application; or
- (b) 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

83 Removal of applications from tribunal to Supreme Court

- (1) 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.
- (2) On application by a party to an application or an appeal, the tribunal may order that the application be removed to the Supreme Court.

84 Referral of questions of law to Supreme Court

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

85 Referral of appeals to Supreme Court

- (1) This section applies if—
 - (a) a party to an application appeals the decision on the application to the tribunal under section 79; and
 - (b) the appeal president considers that the appeal could be dealt with more conveniently or effectively by the Supreme Court; and
 - (c) the appeal president considers it would be appropriate for the appeal to be referred to the Supreme Court; and
 - (d) the appeal president has obtained the Supreme Court's leave to refer the appeal.
- (2) The appeal president—
 - (a) may decide not to deal with the appeal; and

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

86 Appeals to Supreme Court

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

87 Sending documents and things to Supreme Court

- (1) For a Supreme Court proceeding—
 - (a) 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
 - (b) at the end of the Supreme Court proceeding, the court must return the document or thing to the tribunal.
- (2) In this section:
Supreme Court proceeding means—
 - (a) a removal of an application to the Supreme Court under section 83; or
 - (b) a question of law in relation to a proceeding referred to the court under section 84; or
 - (c) a referral of an appeal to the court under section 85; or
 - (d) an appeal of a decision of the tribunal to the court under section 86.

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

Division 9.1 **Establishment and constitution**

88 **Establishment of tribunal**

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

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

89 **Constitution of tribunal for applications**

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

Note The general president may allocate people to a tribunal for the hearing of an application or to provide an advisory opinion on an application (see *decision*, dict).
- (2) The general president may allocate to the tribunal for an application 1 or more of the following tribunal members:
 - (a) a presidential member;
 - (b) a non-presidential member.

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

90 Considerations before allocating tribunal members to application

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

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

91 President to nominate presiding member

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

92 Tribunal member for an application not available

- (1) This section applies if a person who is a tribunal member allocated to the tribunal for an application ceases to be a tribunal member, or ceases to be available, before the tribunal finishes dealing with the application.
- (2) The general president must—
 - (a) direct the remaining members allocated to the tribunal to continue dealing with the application; or
 - (b) allocate another tribunal member to the tribunal for the application to replace the person; or

(c) direct that a new tribunal be made up for the application.

- (3) The tribunal, however reconstituted under subsection (2), may deal with the application as it considers appropriate.

Example

deal with the application anew

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

93 Constitution of tribunal to exercise other functions

Unless otherwise provided under this Act, the tribunal for the exercise of a function other than in relation to an application is made up of the presidential members.

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

Division 9.2 Tribunal members

94 Appointment of presidential members

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

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

- (2) However, the Executive must not appoint a person under subsection (1) unless the person is a lawyer and has been a lawyer for 5 years or more.
- (3) The Executive may appoint 1 person to the positions of general president and appeal president.

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

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

95 Requirements of appointment—presidential members

- (1) The Executive must, in relation to the appointment of presidential members, determine—
- (a) the criteria that applies to the selection of a person for appointment; and
 - (b) the process for selecting the person.

- (2) A determination is a notifiable instrument.

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

96 Appointment of non-presidential members

- (1) The Attorney-General may appoint a person to the tribunal as a senior member or ordinary member.
- (2) However, the Attorney-General must not appoint a person under subsection (1) unless satisfied that the person has the experience or expertise to qualify the person to exercise the functions of a senior member or ordinary member.
- (3) A regulation may make provision in relation to the appointment of senior and ordinary members of the tribunal, including when the Attorney-General may or must be satisfied that a person has the experience or expertise to exercise the functions of a senior member or ordinary member.
- (4) The appointment of a non-presidential member is a notifiable instrument.

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

97 Appointment of assessors

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

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

98 Term of appointment

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

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

99 Ending appointments

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

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

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

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

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

100 Conditions of appointment generally

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

- (a) decided by the Executive; and
- (b) stated in the appointment.

101 Temporary members if tribunal members absent etc

(1) This section applies if—

- (a) a person who is a tribunal member (the *absent person*) is expected to be absent or otherwise unavailable; and
- (b) a person (the *temporary member*) is appointed as a tribunal member on a temporary basis to undertake the functions of the absent member; and
- (c) the Executive is of the opinion that the temporary member's appointment should continue after the absent member ceases to be absent or unavailable, because of an expected application or special circumstance.

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

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

102 Retirement

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

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

103 Tribunal members not to do other work

A presidential member must not, without the Attorney-General's written consent—

- (a) engage in remunerative employment otherwise than in connection with the member's functions as a tribunal member; or
- (b) accept appointment to another position under a territory law or a law of the Commonwealth, a State or another Territory.

104 Functions of presidential members generally

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

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

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

105 Functions of general president

- (1) The general president is responsible for ensuring—
- (a) that decisions are made according to law; and
 - (b) the orderly and prompt discharge of tribunal business.

Examples—par (a)

- 1 ensuring decisions are free from improper interference
- 2 ensuring the quality and consistency of decision making by tribunal members, including by maintaining skills and resources for that purpose

Example—par (b)

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

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

- (2) However, the general president must not exercise a function of the appeal president unless the function is delegated to the general president.
- (3) The general president may delegate the president's functions under this Act to the appeal president or another presidential member.

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

106 Functions of appeal president

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

Example

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

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

- (2) The appeal president may only exercise a function of the general president if the function is delegated to the appeal president.
- (3) The appeal president may delegate the president's functions under this Act to the general president or another presidential member.

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

107 Functions of non-presidential members

- (1) A non-presidential member may exercise a function of a presidential member unless—
 - (a) this Act or an authorising law provides otherwise; or
 - (b) the general president otherwise directs.
- (2) However, the general president must not give a direction about exercising the functions of the appeal president without the appeal president's agreement.
- (3) To remove any doubt, the exercise of a function by a non-presidential member does not affect the power of a presidential member to exercise the function.

108 Functions of assessors

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

109 Undertaking before exercising tribunal member functions

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

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

Division 9.3 Registrar and staff

110 Appointment of registrar

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

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

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

111 Functions of registrar—non-presidential functions

- (1) The registrar may exercise a function of a non-presidential member unless—
 - (a) this Act or an authorising law provides otherwise; or
 - (b) the general president otherwise directs.

Example

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

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

- (2) However, the general president must not give a direction about exercising the functions of the appeal president without the appeal president's agreement.
- (3) To remove any doubt, the exercise of a function by the registrar does not affect the power of a presidential member to exercise the function.

112 Functions of registrar—other

- (1) In addition to the functions given to the registrar under this Act or another territory law, the registrar has the following functions:
 - (a) to provide the public with information about the services provided by or through the tribunal;
 - (b) to provide the public with information about, and refer people to, other services provided by government or otherwise for resolving disputes;
 - (c) to maintain the records of the tribunal.

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

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

113 Delegation of functions of registrar

The registrar may delegate functions to a public servant.

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

114 Deputy registrars

- (1) The chief executive may appoint 1 or more public servants as deputy registrars of the tribunal.
- (2) A deputy registrar may exercise a function of the registrar, subject to any direction of the registrar.

115 Staff assisting registrar

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

Part 10 Miscellaneous

116 Protection of members etc from liability

- (1) A protected person is not personally liable for conduct done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any liability that would, apart from this section, attach to the protected person attaches instead to the Territory.
- (3) In this section:

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

protected person means a person who is or has been—

- (a) a tribunal member; or
- (b) acting under the direction or authority of the tribunal, including under the direction or authority of the registrar.

Example—par (b)

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

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

117 Approved forms

- (1) The tribunal may, in writing, approve forms for this Act.
- (2) If the tribunal approves a form for a particular purpose, the approved form must be used for that purpose.

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

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

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

118 Regulation-making power

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

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

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

- (a) an amount payable under an order on application for occupational discipline;
- (b) an amount payable for failure to comply with a tribunal order;
- (c) the appointment of non-presidential tribunal members.

119 Act repealed

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

Schedule 1 Undertaking for exercise of tribunal member functions

(see s 109)

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

Dictionary

(see s 3)

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

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

- appoint
- chief executive (see s 163)
- contravene
- Executive
- exercise
- function
- interest
- lawyer
- proceeding
- public servant.

appeal president means the appeal president appointed under section 94.

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

assessor means a person appointed under section 97.

authorising law means—

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

civil dispute—see section 16.

civil dispute application—see section 16.

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

contract application, for part 4 (Civil disputes)—see section 15.

damages application, for part 4 (Civil disputes)—see section 15.

debt application, for part 4 (Civil disputes)—see section 15.

debt declaration, for part 4 (Civil disputes)—see section 15.

decision, of the tribunal, means—

- (a) an original decision on a matter stated in an application; or
- (b) the review of another entity's decision stated in an application; or
- (c) an advisory opinion on a stated matter referred to the tribunal; or
- (d) for an appeal—a decision by the tribunal for the appeal.

general president means the general president appointed under section 94.

goods application, for part 4 (Civil disputes)—see section 15.

ground for occupational discipline, for division 6.2 (Powers and decisions in applications for occupational discipline)—see section 64.

non-presidential member means a senior member or ordinary member of the tribunal appointed under section 96.

nuisance application, for part 4 (Civil disputes)—see section 15.

occupational discipline, in relation to a person who is licensed, or registered, under an authorising law—

- (a) means any action the tribunal may take in relation to the person under the authorising law; and
- (b) includes action the tribunal may take under section 66 (Orders for occupational discipline).

party, to an application, means a party to the application under section 29.

presidential member means the general president, appeal president or another presidential member appointed under section 94.

question of law includes whether a question is a question of law.

registrar means the tribunal registrar appointed under section 110.

rules means the rules of the tribunal made under section 24.

subject person, for division 6.2 (Powers and decisions in applications for occupational discipline)—see section 65.

trespass application, for part 4 (Civil disputes)—see section 15.

tribunal means—

- (a) the ACT Civil and Administrative Tribunal established under section 88; and
- (b) for an application—means the tribunal made up under section 89 for the application; and
- (c) for an appeal—an appeal tribunal.

tribunal member means a presidential member, non-presidential member or assessor.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 May 2008.

2 Notification

Notified under the Legislation Act on 4 September 2008.

3 Republications of amended laws

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

I certify that the above is a true copy of the ACT Civil and Administrative Tribunal Bill 2008, which was passed by the Legislative Assembly on 20 August 2008.

Clerk of the Legislative Assembly

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