



Western Australia

State Administrative Tribunal Act 2004

Compare between:

[22 May 2009, 02-c0-03] and [25 Jun 2010, 02-d0-02]

Western Australia

State Administrative Tribunal Act 2004

An Act to establish a tribunal with jurisdiction under this and other Acts to review certain administrative decisions and deal with certain other matters, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *State Administrative Tribunal Act 2004* ¹.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation ¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —
appear at a hearing means to appear in person or participate in a way allowed under this Act;

applicant means —

- (a) in the context of the Tribunal's review jurisdiction, the person who —
 - (i) applies to the Tribunal for a review;
 - (ii) otherwise brings a matter before the Tribunal; or
 - (iii) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal;
- (b) in any other context, the person who —
 - (i) brings a matter before the Tribunal; or
 - (ii) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal,

except that it does not include a person who is required by an enabling Act or section 44(3) to refer a matter to the Tribunal, or otherwise bring a matter before the Tribunal, as sought by another person;

application means —

- (a) in the context of the Tribunal's review jurisdiction —
 - (i) an application by an applicant for a review; or
 - (ii) a referral or other means of bringing a matter before the Tribunal by, or as sought by, an applicant;
- (b) in any other context, a referral or other means of bringing a matter before the Tribunal by, or as sought by, an applicant;

chief executive officer means the chief executive officer under the *Public Sector Management Act 1994* of the Department;

decision of the Tribunal includes an order, direction, or determination of the Tribunal;

decision-maker means a person who makes a reviewable decision;

Department means the department principally assisting the Minister in the administration of this Act;

Deputy President means a Deputy President of the Tribunal;

enabling Act means another Act, or a portion of another Act, under which jurisdiction is conferred on the Tribunal and, if relevant, it includes subsidiary legislation under that other Act;

executive officer means the officer made available under section 148(1) to perform the functions under this Act of the executive officer of the Tribunal;

exempt document means a document that contains exempt matter;

exempt matter means matter that is exempt under Schedule 1 to the *Freedom of Information Act 1992*;

final decision means a decision of the Tribunal that disposes of the matter raised in an application;

hearing includes a compulsory conference or mediation;

judicial member means the President or a Deputy President;

s. 3

legal experience means —

- (a) standing and practice as a legal practitioner; or
- (b) judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
- (c) a combination of both kinds of legal experience mentioned in paragraphs (a) and (b);

legal practitioner means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

legally qualified member means —

- (a) a judicial member;
- (b) a magistrate performing functions as a member of the Tribunal; or
- (c) a non-judicial member who is a qualified person and has had not less than 5 years' legal experience;

member of staff of the Tribunal refers to the executive officer and other officers of the Department made available under section 148(2);

monetary order means an order of the Tribunal requiring the payment of money, and includes —

- (a) an order for the payment of a fine or other pecuniary penalty; and
- (b) an order under Part 4 Division 5;

non-judicial member means a member of the Tribunal who is not the President, a Deputy President or an ex officio member;

ordinary member means a member of the Tribunal who is not the President, a Deputy President, a senior member or an ex officio member;

original jurisdiction of the Tribunal means its jurisdiction other than its review jurisdiction;

party has the meaning given to that term in section 36;

President means the President of the Tribunal;

presiding member means the sitting member of the Tribunal who —

- (a) alone constitutes the Tribunal for dealing with the matter concerned; or
- (b) presides at a proceeding of the Tribunal for dealing with the matter concerned;

protected matter means —

- (a) any information or document to which a certificate under section 159(2) applies, except to the extent that an order of the Tribunal under section 159(4) that its disclosure would not be contrary to the public interest has effect; or
- (b) exempt matter or an exempt document;

public sector employee has the meaning given to the term **employee** in section 3(1) of the *Public Sector Management Act 1994*;

qualified person means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

review jurisdiction of the Tribunal means its jurisdiction described in section 17(1);

reviewable decision has the meaning given to that term in section 17(3);

Rules Committee has the meaning given to that term in section 172;

senior member means a non-judicial member appointed as a senior member of the Tribunal;

sitting member of the Tribunal means a person who constitutes, or is one of the persons constituting, the Tribunal for dealing with the matter concerned;

Tribunal means the State Administrative Tribunal established by this Act and constituted in accordance with this Act or an enabling Act;

s. 4

Tribunal member means a person who is appointed, or authorised to perform functions, as a member of the Tribunal under Part 6;

vexatiously, in the context of bringing or conducting a proceeding, has the meaning given in section 4;

vocational regulatory body means a body or person which or who, under an enabling Act prescribed by regulations for the purposes of this definition (a ***vocational Act***), exercises control over a person's capacity to lawfully pursue a vocation, but does not include the Tribunal;

witness means a person who appears before the Tribunal to give evidence, whether the person has been summoned to appear or appears without being summoned.

- (2) Where section 44(3) or (4) gives jurisdiction to the Tribunal to deal with a matter, references in this Act to the enabling Act are to be disregarded in relation to that matter.
- (3) If under an enabling Act a person's failure or omission to do something is reviewable under this Act as a decision —
 - (a) this Act applies as if that person had made that decision; and
 - (b) any provision of the enabling Act as to when the decision is taken to have been made has effect.
- (4) A reference in this Act to the making of an application to the Tribunal includes a reference to a matter being referred to or otherwise brought before the Tribunal.

[Section 3 amended by No. 21 of 2008 s. 706(2).]

4. What it means to bring or conduct proceeding vexatiously

A person brings or conducts a proceeding vexatiously if it would result in the proceeding being ***vexatious proceedings*** as defined in the *Vexatious Proceedings Restriction Act 2002* section 3.

5. Enabling Act prevails

If there is any inconsistency between this Act and an enabling Act, the enabling Act prevails.

6. Crown bound

This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

Part 2 — The State Administrative Tribunal

7. Tribunal established

A tribunal called the State Administrative Tribunal is established.

8. The Tribunal's jurisdiction

The Tribunal has the jurisdiction described in Part 3.

9. Main objectives of the Tribunal

The main objectives of the Tribunal in dealing with matters within its jurisdiction are —

- (a) to achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
- (b) to act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and
- (c) to make appropriate use of the knowledge and experience of Tribunal members.

10. Tribunal to operate throughout the State

The Tribunal is to facilitate access to its services throughout Western Australia and may sit at any place in Western Australia.

11. President specifies who constitutes the Tribunal

- (1) When exercising its jurisdiction, the Tribunal is to be constituted by a person who is a Tribunal member or persons who are Tribunal members, as specified by the President.
- (2) The Tribunal is not to be constituted by more than 3 members.

- (3) Despite subsections (2) and (4), the President can specify that the Tribunal is to be constituted by 4 members or 5 members if the President is satisfied that it is appropriate to do so in particular circumstances.
- (4) The President is to ensure that when dealing with a decision of a vocational regulatory body or a matter brought before the Tribunal by a vocational regulatory body or by another person under a vocational Act, the Tribunal is constituted by 3 persons, being —
 - (a) one person who is a legally qualified member;
 - (b) one person who has extensive or special experience in the same vocation as the person affected by or the subject of the decision or matter; and
 - (c) one person not engaged in that vocation who is familiar with the interests of persons dealing with persons engaged in that vocation or has knowledge or experience enabling the person to understand those interests.
- (5) Subsection (4) does not apply to —
 - (a) a hearing at which the Tribunal makes a decision other than a final decision; or
 - (aa) a hearing at which the Tribunal makes a final decision with the consent of the parties; or
 - (b) a compulsory conference; or
 - (c) the appointment of a Tribunal member as a mediator.
- (6) In specifying the persons by whom the Tribunal is to be constituted for dealing with a particular matter and the number of those persons, the President is to have regard to —
 - (a) the degrees of the public importance and the complexity of the matter;
 - (b) if the matter comes within the Tribunal's review jurisdiction, the nature and status of the office of the decision-maker who made the reviewable decision;

s. 12

- (c) the extent to which any sitting member of the Tribunal needs to have special knowledge or experience that is relevant to the matter;
 - (d) the need to ensure that a person who has had previous involvement with the matter, otherwise than as a Tribunal member, is not a sitting member of the Tribunal;
 - (e) any relevant provision of this Act or another written law; and
 - (f) anything else that the President considers relevant.
- (7) A person is not allowed to be a sitting member of the Tribunal, or perform any function as a Tribunal member, in relation to a matter in the Tribunal's review jurisdiction if the person was —
- (a) the decision-maker in relation to that matter; or
 - (b) a member of a body that was the decision-maker in relation to that matter.
- (8) The President may alter who is to constitute the Tribunal for the purpose of dealing with a matter, or anything relating to a matter, and the Tribunal as constituted after the alteration can have regard to any record of the proceeding of the Tribunal in relation to the matter before the alteration or any evidence taken in the proceeding before the alteration.

[Section 11 amended by No. 5 of 2008 s. 111.]

12. Contemporaneous exercise of Tribunal's jurisdiction

The Tribunal constituted in accordance with this Act or an enabling Act may sit and exercise the jurisdiction of the Tribunal even though the Tribunal differently constituted in accordance with this Act or an enabling Act is at the same time sitting and exercising the jurisdiction of the Tribunal.

Part 3 — Jurisdiction of the Tribunal

Division 1 — Preliminary matters

13. Source of jurisdiction

- (1) A provision of an enabling Act that enables an application to be made to the Tribunal gives the Tribunal jurisdiction to deal with the matter concerned.
- (2) In addition to the jurisdiction that an enabling Act gives to deal with a matter, the Tribunal has any jurisdiction that this Act gives in relation to that matter.
- (3) The Tribunal also has the jurisdiction given by section 44(3) and (4).

14. Kinds of jurisdiction

A matter in which the Tribunal has jurisdiction comes within either its original jurisdiction or its review jurisdiction.

Division 2 — Original jurisdiction

15. What comes within original jurisdiction

- (1) If the matter that an enabling Act gives the Tribunal jurisdiction to deal with does not involve a review of a decision, the matter comes within the Tribunal's original jurisdiction.
- (2) A matter referred to the Tribunal under section 44(4) comes within the Tribunal's original jurisdiction.

16. Exercising original jurisdiction

- (1) In exercising its original jurisdiction the Tribunal is to deal with a matter in accordance with this Act and the enabling Act.
- (2) The enabling Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's original jurisdiction.

Division 3 — Review jurisdiction

Subdivision 1 — General provisions

17. What comes within review jurisdiction

- (1) If the matter that an enabling Act gives the Tribunal jurisdiction to deal with is a matter that expressly or necessarily involves a review of a decision, the matter comes within the Tribunal's review jurisdiction.
- (2) A matter referred to the Tribunal under section 44(3) comes within the Tribunal's review jurisdiction.
- (3) Where subsection (1) or (2) applies the decision is a ***reviewable decision*** for the purposes of this Act.

18. Exercising review jurisdiction

- (1) In exercising its review jurisdiction the Tribunal is to deal with a matter in accordance with this Act and the enabling Act.
- (2) The enabling Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's review jurisdiction.

19. Relationship of statutory right of review to judicial review

- (1) In this section —
judicial review proceedings means proceedings in which any of the following is sought —
 - (a) a writ of certiorari, mandamus, or prohibition;
 - (b) another prerogative writ;
 - (c) a declaratory judgment.
- (2) The right given by an enabling Act or section 44(3) to have a decision reviewed by the Tribunal does not exclude any right to take judicial review proceedings in relation to the decision.

- (3) However —
 - (a) a Tribunal proceeding for the review of a reviewable decision cannot be commenced at the same time as judicial review proceedings are commenced in relation to the decision;
 - (b) if a Tribunal proceeding for the review of a reviewable decision has commenced, judicial review proceedings cannot subsequently be commenced in relation to the decision; and
 - (c) if judicial review proceedings have commenced in relation to a reviewable decision, a Tribunal proceeding for the review of the decision cannot subsequently be commenced.
- (4) Subsection (3)(b) applies both during the Tribunal proceeding and after the proceeding has ended but —
 - (a) it does not apply if the proceeding is struck out under section 50(1) because the Tribunal considers that judicial review proceedings would be more appropriate; and
 - (b) it does not affect judicial review proceedings in relation to the decision of the Tribunal.
- (5) Subsection (3)(c) applies both during the judicial review proceedings and after those proceedings have ended but it does not apply if they are dismissed or struck out —
 - (a) because of procedural defects and not on their substantive merits; or
 - (b) because the court considers them to be inappropriate or considers that a Tribunal proceeding would be more appropriate.
- (6) This section is intended to operate even if the enactment which gives a right to have a decision reviewed by the Tribunal was enacted after the commencement of this section.

Subdivision 2 — Information about reviewable decision

20. Advice of decision and right to have it reviewed

- (1) If this subsection applies to a reviewable decision, the decision-maker is to give any person who has a right under an enabling Act or section 44(3) to have the decision reviewed by the Tribunal written notice of —
 - (a) the decision; and
 - (b) that right.
- (2) Subsection (1) applies to any reviewable decision unless —
 - (a) the decision does not adversely affect the interests of the person who has that right and —
 - (i) it is a decision not to impose a liability, penalty, or any kind of limitation, on a person; or
 - (ii) it is made under an enabling Act that establishes several categories of entitlement to a monetary or other benefit, and it determines a person to be in the most favourable of those categories;
 - or
 - (b) the decision is prescribed by the regulations for the purposes of this paragraph.
- (3) If the persons who have to be given notice under subsection (1) are not readily identifiable, the decision-maker is to take steps that are reasonable in the circumstances to give the notice.
- (4) A contravention of this section does not affect the validity of the decision.
- (5) If subsection (1) applies in a case in which a person has failed to make a decision within the time limit for making the decision, the person may, if the enabling Act permits, make the decision instead of giving notice under subsection (1).

21. Statement of reasons for decision

- (1) If this subsection applies to a reviewable decision, a person who has a right under an enabling Act or section 44(3) to have the decision reviewed by the Tribunal may request the decision-maker to provide the person with a written statement of the reasons for the decision.
- (2) Subsection (1) applies to any reviewable decision unless —
 - (a) the decision-maker has already given the person a written statement containing the details described in subsection (5) (whether as part of the decision or separately); or
 - (b) the enabling Act contains other provisions under which the person has, will, could, or could have, become entitled to a written statement of the reasons for the decision containing the details described in subsection (5).
- (3) A request under subsection (1) has to be made in writing and can be made —
 - (a) at any time within the period of 28 days after the day on which the decision was made; or
 - (b) if section 20(1) applies, at any time before the expiration of the period of 28 days after the day on which notice is given as required under section 20(1).
- (4) Subject to section 23, a decision-maker receiving a request under subsection (1) is to comply with the request as soon as practicable, and in any case within the period of 28 days after the request is made.
- (5) Subject to section 23, the decision-maker's written statement has to contain —
 - (a) the reasons for the decision; and

- (b) any findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.

22. Tribunal may order decision-maker to provide reasons

- (1) If, under section 21(1), a person requests a decision-maker to provide the person with a written statement of the reasons for a reviewable decision and, contrary to section 21(4), the decision-maker fails to provide the statement, the person may apply to the Tribunal for an order that the decision-maker provide the statement to the person.
- (2) The person is to give notice of the application to the decision-maker within the time specified by the rules.
- (3) If the Tribunal is satisfied that the person is entitled to be provided with the statement, the Tribunal may order that the decision-maker provide the statement to the person within the time specified in the order.

23. Exceptions to what has to be provided

- (1) A statement required by section 21 cannot include any protected matter.
- (2) If the omission of protected matter under subsection (1) would make the statement false or misleading then, instead of providing the statement, the decision-maker is to inform the person who requested the statement that it is not being provided because it would be false or misleading for that reason.

24. Provision of documents and material by decision-maker

If a proceeding for the review of a decision is commenced, the decision-maker is to provide the following to the Tribunal in accordance with the rules —

- (a) a statement of the reasons for the decision;

- (b) other documents and other material in the decision-maker's possession or under the decision-maker's control and relevant to the Tribunal's review of the decision.

Subdivision 3 — The review

25. Effect of proceeding on reviewable decision

- (1) The commencement of a proceeding for the review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless —
 - (a) the enabling Act states otherwise; or
 - (b) the Tribunal makes an order under subsection (2).
- (2) The Tribunal, on the application of a party or on its own initiative, may make an order staying the operation of a decision that is the subject of a proceeding for review.
- (3) The Tribunal's power to make an order under subsection (2) is exercisable by —
 - (a) a legally qualified member; or
 - (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.
- (4) The Tribunal may make an order under subsection (2) only if it considers that it is desirable to do so after taking into account —
 - (a) the interests of any persons whose interests may be affected by the order;
 - (b) any submission made by or on behalf of the decision-maker; and
 - (c) the public interest.
- (5) Subsection (4)(a) does not require the Tribunal to give any person whose interests may be affected by the order an opportunity to be heard.

- (6) In making an order under subsection (2), the Tribunal —
 - (a) may require any undertaking as to costs or damages that it considers appropriate; and
 - (b) may make provision for the lifting of the order if specified conditions are met.
- (7) The Tribunal may assess any costs or damages referred to in subsection (6)(a) and any amount so assessed is a debt recoverable in a court of competent jurisdiction.

26. Restriction on powers of decision-maker after review commenced

After the commencement of a proceeding for the review of a decision the decision-maker cannot —

- (a) vary the decision; or
 - (b) set aside the decision and substitute its new decision,
- unless —
- (c) that is permitted by the enabling Act;
 - (d) the parties to the proceeding consent; or
 - (e) the decision-maker is invited under section 31 to reconsider the decision.

27. Nature of the hearing

- (1) The review of a reviewable decision is to be by way of a hearing de novo, and it is not confined to matters that were before the decision-maker but may involve the consideration of new material whether or not it existed at the time the decision was made.
- (2) The purpose of the review is to produce the correct and preferable decision at the time of the decision upon the review.
- (3) The reasons for decision provided by the decision-maker, or any grounds for review set out in the application, do not limit the

Tribunal in conducting a proceeding for the review of a decision.

28. Considering government policy

- (1) The Minister responsible for the administration of the enabling Act may certify in writing that there was, at the time of the reviewable decision, a statement of policy that had been published in the *Gazette* under a written law and applied to decisions of that kind.
- (2) If a certificate is given under subsection (1) and the decision-maker states in the material provided to the Tribunal under section 24 that the decision-maker had regard to the statement of policy in making the decision, the Tribunal in conducting the proceeding must have regard to the statement of policy as in effect at the time of the review.
- (3) Subsection (2) does not apply to the extent that the statement of policy is outside power.

29. Powers of Tribunal on review

- (1) The Tribunal has, when dealing with a matter in the exercise of its review jurisdiction, functions and discretions corresponding to those exercisable by the decision-maker in making the reviewable decision.
- (2) Subsection (1) does not limit the powers given by this Act or the enabling Act to the Tribunal.
- (3) The Tribunal may —
 - (a) affirm the decision that is being reviewed;
 - (b) vary the decision that is being reviewed; or
 - (c) set aside the decision that is being reviewed and —
 - (i) substitute its own decision; or
 - (ii) send the matter back to the decision-maker for reconsideration in accordance with any directions

or recommendations that the Tribunal considers appropriate,

and, in any case, may make any order the Tribunal considers appropriate.

- (4) The fact that a decision is made on reconsideration as required under subsection (3)(c)(ii), does not prevent the decision from being open to review by the Tribunal.
- (5) The decision-maker's decision as affirmed or varied by the Tribunal or a decision that the Tribunal substitutes for the decision-maker's decision —
 - (a) is to be regarded as, and given effect as, a decision of the decision-maker; and
 - (b) unless the enabling Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect, or having had effect, from the time when the decision reviewed would have, or would have had, effect.
- (6) Without limiting subsection (5)(a), the decision-maker has power to do anything necessary to implement the Tribunal's decision.
- (7) Despite subsection (5)(a), the decision as affirmed, varied, or substituted is not again open to review by the Tribunal as a decision of the decision-maker.
- (8) Subsection (5)(a) does not affect an appeal under Part 5 against the Tribunal's decision.
- (9) To avoid doubt it is declared that this section and section 27 do not extend to requiring or enabling the Tribunal to deal with a matter that is different in essence from the matter that was before the decision-maker.

30. Decision-maker to assist Tribunal

In a proceeding for the review of a reviewable decision, the best endeavours of the decision-maker are to be used to assist the Tribunal to make its decision on the review.

31. Tribunal may invite decision-maker to reconsider

- (1) At any stage of a proceeding for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may —
 - (a) affirm the decision;
 - (b) vary the decision; or
 - (c) set aside the decision and substitute its new decision.
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceeding for a review is withdrawn it is taken to be for the review of the decision as varied or the substituted decision.

Part 4 — Tribunal's procedures

Division 1 — Introduction

32. Practice and procedure, generally

- (1) The Tribunal is bound by the rules of natural justice except to the extent that this Act or the enabling Act authorises, whether expressly or by implication, a departure from those rules.
- (2) The *Evidence Act 1906* does not apply to the Tribunal's proceedings and the Tribunal —
 - (a) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that it adopts those rules, practices or procedures or the regulations or rules make them apply; and
 - (b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (3) Without limiting subsection (2), the Tribunal may admit into evidence the contents of any document despite non-compliance with any time limit or other requirement specified in the rules in relation to that document or service of it.
- (4) The Tribunal may inform itself on any matter as it sees fit.
- (5) To the extent that the practice or procedure of the Tribunal is not prescribed by or under this Act or the enabling Act, it is to be as the Tribunal determines.
- (6) The Tribunal is to take measures that are reasonably practicable —
 - (a) to ensure that the parties to the proceeding before it understand the nature of the assertions made in the proceeding and the legal implications of those assertions;

- (b) to explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal, that relates to the proceeding; and
 - (c) to ensure that the parties have the opportunity in the proceeding —
 - (i) to call or give evidence;
 - (ii) to examine, cross-examine or re-examine witnesses; and
 - (iii) to be heard or otherwise have their submissions considered.
- (7) The Tribunal —
 - (a) is to ensure that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in a proceeding;
 - (b) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument;
 - (c) may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases;
 - (d) may require a document to be served outside the State; and
 - (e) may adjourn a proceeding to any time and place (including for the purpose of enabling the parties to negotiate a settlement or for the purpose of reconsideration of a decision by the decision-maker under section 31).
- (8) The Tribunal's powers under subsection (7) are exercisable by —
 - (a) a legally qualified member; or

- (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.

33. Practice notes

- (1) The Rules Committee may issue practice notes about the practice and procedure of the Tribunal.
- (2) The Rules Committee is to give the Minister a copy of each practice note it issues as soon as practicable after issuing it.
- (3) A practice note is not a rule and does not form part of the rules.

34. Directions

- (1) The Tribunal may give directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.
- (2) The Tribunal's power to give directions is exercisable by —
 - (a) a legally qualified member; or
 - (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.
- (3) The Tribunal may give directions on its own initiative or at the request of a party.
- (4) A directions hearing conducted or presided over by a legally qualified member may be held for the purposes of this section before any other hearing in the proceeding.
- (5) The Tribunal may give a direction requiring a party to produce a document or other material, or provide information, to the Tribunal or another party despite any rule of law relating to privilege (other than legal professional privilege) or the public interest in relation to the production of documents.

- (6) However if the Tribunal considers that any document is or contains protected matter, the Tribunal cannot direct a party to produce it to another party.

35. Obtaining information from third parties

- (1) On the application of a party to a proceeding, the Tribunal may order that a person —
- (a) who is not a party to the proceeding; and
 - (b) who has, or is likely to have, in the person's possession or under the person's control a document or other material that is relevant to the proceeding,

produce the document or material to the Tribunal or the party within the time specified in the order.

- (2) The Tribunal may order a person to produce a document or other material despite any rule of law relating to privilege (other than legal professional privilege) or the public interest in relation to the production of documents.
- (3) However if the Tribunal considers that any document is or contains protected matter, the Tribunal cannot order a person to produce it to a party.

36. Parties

- (1) A person is a party to a proceeding before the Tribunal if the person is —
- (a) the applicant;
 - (b) a person joined under section 38 as a party to the proceeding;
 - (c) a person intervening in the proceeding; or
 - (d) specified by this Act or the enabling Act to be a party to the proceeding.

- (2) If the proceeding is in the Tribunal's original jurisdiction, anyone else in respect of whom a decision of the Tribunal is sought is also a party.
- (3) In a proceeding dealing with a decision of a vocational regulatory body or a matter brought before the Tribunal by a vocational regulatory body or by another person under a vocational Act, a person affected by or the subject of the decision or matter is also party.
- (4) If the proceeding is in the Tribunal's review jurisdiction, the decision-maker is also a party.
- (5) In a proceeding to which a decision-maker is a party, the official description rather than the personal name of the decision-maker is to be used so far as is practicable.

37. Intervening in proceeding

- (1) The Attorney General may, on behalf of the State, intervene in a proceeding of the Tribunal at any time.
- (2) The Commissioner referred to in section 15 of the *Consumer Affairs Act 1971* may, on behalf of the State, intervene at any time in a proceeding if the Minister responsible for the administration of that Act is responsible for the administration of the enabling Act.
- (3) The Tribunal may give leave at any time for a person to intervene in a proceeding on conditions, if any, that the Tribunal thinks fit.

38. Joining as a party

- (1) The Tribunal may order that a person be joined as a party to a proceeding if the Tribunal considers that —
 - (a) the person ought to be bound by, or have the benefit of, a decision of the Tribunal in the proceeding;
 - (b) the person's interests are affected by the proceeding; or

- (c) for any other reason it is desirable that the person be joined as a party.
- (2) The Tribunal may make an order under subsection (1) on the application of any person or on its own initiative.

39. Representation

- (1) At a hearing in a proceeding before the Tribunal a party to the proceeding may appear in person or may be represented by another person, but a party cannot be represented by a person other than a legal practitioner unless —
 - (a) the party is a body corporate and the person is a director, secretary, or other officer of the body corporate;
 - (b) the party is a public sector body as defined in section 3(1) of the *Public Sector Management Act 1994* and the person is a public sector employee authorised by the party to represent it;
 - (c) the party is a party in the course of or because of the performance, or purported performance, of his or her duties as a public sector employee and the person is another public sector employee authorised by the party to represent him or her;
 - (d) the person has particular knowledge or experience relevant to the matter that is being dealt with (other than experience obtained as or representing a party in another Tribunal proceeding);
 - (e) the Tribunal agrees to that person representing the party, and any conditions imposed by the Tribunal are satisfied; or
 - (f) the regulations or the rules authorise it.
- (2) This section does not authorise a person who could not otherwise lawfully demand or receive any fee or reward for representing a party to demand or receive any fee or reward.

- (3) A person who has been struck off the roll of practitioners of the Supreme Court or who is suspended from practice as a legal practitioner cannot represent a party.
- (4) The regulations or the rules may prevent specified persons, or persons of a specified class, from representing a party.

40. Tribunal may appoint representative or guardian

- (1) If a party is unrepresented, the Tribunal may appoint a person to represent the party.
- (2) If a person who is not of full legal capacity is a party or potential party to a proceeding or proposed proceeding, the Tribunal may appoint a litigation guardian in accordance with the rules to conduct the proceeding on the person's behalf.

41. Interpreters

Unless the Tribunal directs otherwise, a party or a party's representative may be assisted in the course of a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party.

Division 2 — Preliminary procedures

42. Commencing proceeding

- (1) A person applying to the Tribunal for review, or otherwise bringing a matter before the Tribunal by referral or other means, has to do so in accordance with this Act except to the extent that the enabling Act states otherwise.
- (2) The executive officer is to ensure that a person wishing to commence a proceeding before the Tribunal is given reasonable assistance that the person seeks.
- (3) A proceeding before the Tribunal commences when the application is accepted by the executive officer.

- (4) Proceedings before the Tribunal cannot be commenced by 2 or more persons jointly unless the facts or circumstances relating to each person's interests are the same or related.

[Section 42 amended by No. 5 of 2008 s. 112.]

43. Fee for commencing proceeding

The regulations or rules may require the payment of a fee for the commencement of a proceeding and may provide for the stay of the proceeding until the fee is paid or payment is waived or postponed under the regulations or rules.

44. Rejecting an application or accepting an application conditionally

- (1) Unless otherwise stated in the rules, the executive officer may reject an application on the ground that —
- (a) it is made by a person not entitled to make it;
 - (b) it is made after the time limit before which the application is required by the rules or the enabling Act to be made; or
 - (c) it does not otherwise comply with this Act or the enabling Act.
- (2) If the executive officer accepts an application, the executive officer may impose conditions of a kind specified by the rules on the acceptance.
- (3) If, under subsection (1) or (2), the executive officer rejects an application or accepts an application on conditions —
- (a) the applicant may request the executive officer to refer to the Tribunal for a review of the decision to reject the application or accept the application on conditions or a review of any condition imposed; and
 - (b) the executive officer is to refer the decision or condition to the Tribunal for a review if requested under paragraph (a) to do so.

- (4) If the executive officer believes that an application could be rejected under subsection (1), the executive officer may, instead of deciding whether or not to reject the application, refer the question to the Tribunal.
- (5) An appeal cannot be made under Part 5 from a decision of the Tribunal on a matter referred to it under subsection (3) or (4).
- (6) No fee is payable for requesting a matter to be referred under subsection (3).
- (7) The rules may prescribe to whom, and provide for the manner in which, notice of the acceptance or rejection of an application is to be given.

45. Who has to be given a copy of an application

- (1) When an application is accepted by the executive officer the applicant is to give a copy of the application to —
 - (a) each other party;
 - (b) any other person entitled under this Act or the enabling Act to a copy of, or notice of, the application; and
 - (c) any person to whom the applicant is directed by the Tribunal to give a copy of the application.
- (2) Subsection (1) does not require the applicant to give a copy of the application to a person mentioned in subsection (1) (*a notifiable person*) if —
 - (a) the executive officer has given or undertaken to give a copy of the application to the notifiable person;
 - (b) under subsection (3) the Tribunal dispenses with the requirement to give a copy of the application to the notifiable person; or
 - (c) the rules exempt the person from the requirement to give a copy of the application to the notifiable person.

- (3) The Tribunal may make an order dispensing with the requirement to give a copy of an application to a notifiable person specified in the order if satisfied —
 - (a) that the applicant has made all reasonable attempts to give a copy of the application to the notifiable person but has been unsuccessful; or
 - (b) that the making and hearing of the application without notice to the notifiable person would not cause injustice.
- (4) The Tribunal's power under subsection (3) is exercisable only by a legally qualified member.
- (5) The Tribunal may make an order under subsection (3) on the application of the applicant or on its own initiative.
- (6) The rules may provide for the manner in which and time within which subsection (1) is to be complied with.
- (7) To enable subsection (1) to be complied with where the matter that is the subject of the application was brought before the Tribunal by a person other than the applicant, the applicant is to be given a copy of the application in accordance with the rules.

46. Dismissing proceeding on withdrawal or for want of prosecution

- (1) If the Tribunal gives leave, the applicant may withdraw or agree to the withdrawal of a proceeding or a part of a proceeding.
- (2) The Tribunal may make an order dismissing or striking out all, or any part, of a proceeding before it if the applicant withdraws or agrees to the withdrawal of the proceeding or that part of it.
- (3) At any time, the Tribunal may make an order dismissing or striking out all, or any part, of a proceeding before it for want of prosecution.
- (4) The Tribunal's power to make an order under subsection (3) is exercisable only by a legally qualified member.

- (5) The Tribunal may make an order under this section on the application of a party or on its own initiative.

47. Unjustified proceedings

- (1) This section applies if the Tribunal believes that a proceeding —
 - (a) is frivolous, vexatious, misconceived or lacking in substance;
 - (b) is being used for an improper purpose; or
 - (c) is otherwise an abuse of process.
- (2) If this section applies, the Tribunal may order that the proceeding be dismissed or struck out and make any appropriate orders.
- (3) The Tribunal's powers to act under subsection (2) are exercisable only by a legally qualified member.
- (4) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.

48. Conduct of proceeding causing disadvantage

- (1) This section applies if the Tribunal believes that a party to a proceeding is conducting the proceeding in a way that unnecessarily disadvantages another party to the proceeding by conduct such as —
 - (a) failing to comply with an order or direction of the Tribunal without reasonable excuse;
 - (b) failing to comply with this Act or the enabling Act;
 - (c) asking for an adjournment the need for which is attributable to a failure described in paragraph (a) or (b);
 - (d) attempting to deceive another party or the Tribunal;
 - (e) vexatiously conducting the proceeding; or
 - (f) failing to attend any hearing in the proceeding.

- (2) If this section applies, the Tribunal may —
 - (a) if the party causing the disadvantage is the applicant, order that the proceeding be dismissed or struck out;
 - (b) if the party causing the disadvantage is not the applicant —
 - (i) determine the proceeding in favour of the applicant and make any appropriate orders; or
 - (ii) order that the party causing the disadvantage be struck out of the proceeding.
- (3) The Tribunal's powers to act under subsection (2) are exercisable only by a legally qualified member.
- (4) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.

49. Restriction on new application

If a proceeding is dismissed or struck out under section 46, 47 or 48, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a judicial member.

50. More appropriate forum

- (1) The Tribunal may, at any time, make an order striking out all, or any part, of a proceeding if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court, or any other person.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable only by a judicial member.
- (3) If the Tribunal makes an order under subsection (1), it may refer the matter, or any aspect of it, to the relevant tribunal, court, or person if it considers it appropriate to do so.
- (4) The Tribunal may make an order under subsection (1) on the application of a party or on its own initiative.

51. Consolidation of proceedings

- (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts and circumstances —
 - (a) be consolidated into the one proceeding; or
 - (b) remain as separate proceedings but be heard and determined together.
- (2) The Tribunal's power to give a direction under subsection (1) is exercisable by a sitting member for either of the proceedings who is a legally qualified member.
- (3) If proceedings are consolidated, evidence given in the consolidated proceeding is admissible in relation to matters involved in either of the proceedings that were consolidated.

51A. Splitting proceedings

- (1) The Tribunal may direct —
 - (a) that any aspect of any proceedings be heard and determined separately;
 - (b) that proceedings commenced by 2 or more persons jointly be split into separate proceedings.
- (2) The Tribunal's power to give a direction under subsection (1) is exercisable by a sitting member for the proceedings who is a legally qualified member.

[Section 51A inserted by No. 5 of 2008 s. 113.]

52. Compulsory conference

- (1) At an initial directions hearing or at any other time before any other hearing in a proceeding, the Tribunal may require parties to the proceeding to attend a compulsory conference.
- (2) The President is to allocate a member of the Tribunal to preside at a compulsory conference.

- (3) The purpose of a compulsory conference is to identify and clarify the issues in the proceeding and promote the resolution of the matters by a settlement between the parties.
- (4) Unless the Tribunal member presiding at a compulsory conference directs otherwise, it is to be held in private.
- (5) Except to the extent that the rules may specify the procedure for a compulsory conference, the Tribunal member presiding at a compulsory conference may determine the procedure for the conference.
- (6) If a settlement appears to be reached at a compulsory conference, the Tribunal member presiding may reduce the terms of settlement to writing and make any orders necessary to give effect to the settlement.
- (7) The Tribunal member who presided at a compulsory conference is not eligible to constitute, or be one of the members constituting, the Tribunal for the purpose of otherwise dealing with the proceeding.

53. Failure to attend compulsory conference

If a party does not attend a properly convened compulsory conference —

- (a) the conference may proceed at the appointed time in the party's absence; and
- (b) if a member of the Tribunal is presiding and all the parties present agree, the Tribunal, constituted by that member, may —
 - (i) determine the proceeding adversely to the absent party and make any appropriate orders; or
 - (ii) direct that the absent party be struck out of the proceeding.

54. Mediation

- (1) At an initial directions hearing or at any other stage of a proceeding, the Tribunal may refer the matter, or any aspect of it, for mediation by a person specified as a mediator by the Tribunal.
- (2) The person specified as a mediator has to be a person who has been approved by the President as a person who may act as a mediator.
- (3) The referral may be made with or without the consent of the parties.
- (4) The purpose of a mediation is to achieve the resolution of the matters by a settlement between the parties.
- (5) The rules may specify how notice of the mediation is to be given, how the mediation is to be conducted, and the fees to be paid by a party for the mediation.
- (6) Unless the mediator directs otherwise, the mediation is to be held in private.
- (7) Except to the extent that the rules may specify the procedure for a mediation, the mediator may determine the procedure for the mediation.
- (8) If the mediator is a Tribunal member and a settlement appears to be reached at the mediation, the mediator may reduce the terms of settlement to writing and make any orders necessary to give effect to the settlement.
- (9) If a settlement is not reached at the mediation or the mediator is not a Tribunal member, the mediator is to report on the outcome of the mediation to the Tribunal as constituted when it made the referral.
- (10) If the mediator is a Tribunal member, the member cannot take any further part in dealing with the proceeding after the mediation unless all parties agree to him or her doing so.

55. Evidence of certain things inadmissible

Evidence of anything said or done in the course of a compulsory conference or mediation is not admissible at any later stage of the proceeding unless —

- (a) all parties agree to the admission of the evidence;
- (b) it is evidence of directions given or orders made at a compulsory conference or mediation or the reasons for those directions or orders; or
- (c) it is relevant to —
 - (i) a proceeding for an offence in relation to the giving of false or misleading information;
 - (ii) a proceeding under section 100; or
 - (iii) a proceeding in relation to an order made under section 53(b)(i).

56. Settlement

- (1) If the parties agree in writing to settle a proceeding that is before the Tribunal, the Tribunal may make any orders necessary to give effect to the settlement.
- (2) The Tribunal cannot make an order under subsection (1) unless it is satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms that are consistent with the terms of the agreed settlement.
- (3) The Tribunal may, with the consent of the parties, vary the terms of an order under subsection (1) if to do so would reflect the intention of the agreement.
- (4) Subsections (2) and (3) also apply to an order under section 52(6) or 54(8).

Division 3 — Proceedings and hearings

57. Presiding member

- (1) If, for dealing with a particular matter, the Tribunal is constituted by 2 or more members, the most senior of them is to preside at a proceeding of the Tribunal.
- (2) The seniority of members of the Tribunal depends on which of the offices held takes precedence and, if that does not determine a member's seniority, the matter is to be resolved by the President.
- (3) The order of precedence of offices is —
 - (a) President;
 - (b) Deputy President;
 - (c) senior member;
 - (d) ordinary member.

58. Decision of Tribunal if 2 or more sitting members

If the Tribunal is constituted by 2 or more sitting members, a question they are required to decide is resolved, unless section 59 applies, according to the opinion of the majority of them but, if their opinions on the question are equally divided, the question is to be resolved according to the opinion of the presiding member.

59. Deciding questions of law

- (1) In this section —

question of law means a question of law arising in a proceeding for decision by the Tribunal and includes a question of mixed law and fact.
- (2) Subject to subsection (10), a question of law is decided by the Tribunal according to the opinion of the presiding member if that member is a legally qualified member.

- (3) If the presiding member is not a legally qualified member but there is at least one sitting member who is a legally qualified member, a question of law is decided by the Tribunal according to the opinion of that legally qualified member, or according to the unanimous opinion of those legally qualified members if there are 2 or more of them.
- (4) The presiding member may choose to refer a question of law to the President whether or not the question has been decided under subsection (2) or (3).
- (5) If subsection (3) applies to a question of law, the presiding member is to refer the question to the President if —
 - (a) the presiding member is requested to do so by a sitting member who is a legally qualified member (whether or not the question has been decided under subsection (3)); or
 - (b) for any reason the question has not been decided under subsection (3).
- (6) Subsection (2) no longer applies to a question of law if the question is referred to the President under subsection (4).
- (7) Subsection (3) no longer applies to a question of law if the question is referred to the President under subsection (4) or (5).
- (8) If no sitting member is a legally qualified member, the presiding member is to refer a question of law to the President.
- (9) Subsection (10) applies to the resolution of a question of law if the presiding member is the President or the question is referred to the President under subsection (4), (5) or (8).
- (10) If this subsection applies to a question of law —
 - (a) the question is decided by the Tribunal according to the opinion of the President or, if the President gives the question to another legally qualified member of the Tribunal for resolution, according to the opinion of that other member; or

- (b) the President may refer the question to the Supreme Court for decision by the Supreme Court as long as it is not a question of mixed law and fact.

60. Electronic hearings and proceedings without hearings

- (1) If the Tribunal thinks it appropriate, it may allow the parties and their representatives and any witnesses (or one or more of them) to participate in a hearing in a proceeding by means of telephones, video links, or any other system or method of communication.
- (2) If the Tribunal thinks it appropriate, it may conduct all or part of a proceeding entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing.
- (3) If the Tribunal conducts a proceeding in accordance with this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the Tribunal with the attendance in person of all persons involved in the proceeding.
- (4) Provisions of this Act applying in relation to hearings (other than section 61 or 63) apply with any necessary modifications in relation to a proceeding conducted in accordance with subsection (2).

61. Public hearings

- (1) Unless another provision of this Act provides otherwise, hearings of the Tribunal are to be held in public.
- (2) On the application of a party or on its own initiative the Tribunal may, in the circumstances described in subsection (4), order that a hearing or any part of it be held in private and that only specified persons may be present.

- (3) The Tribunal's power to make an order under subsection (2) is exercisable by —
 - (a) a legally qualified member; or
 - (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.
- (4) The Tribunal may make an order under subsection (2) if the Tribunal considers it is necessary to do so —
 - (a) to avoid endangering the national or international security of Western Australia or Australia;
 - (b) to avoid damaging inter-governmental relations;
 - (c) to avoid prejudicing the administration of justice;
 - (d) to avoid endangering the physical or mental health or safety of any person;
 - (e) to avoid offending public decency or morality;
 - (f) to avoid endangering property;
 - (g) to avoid the publication of confidential information or information the publication of which would be contrary to the public interest; or
 - (h) for any other reason in the interests of justice.

62. Publication of information from or about a proceeding

- (1) This section applies to —
 - (a) any evidence given before the Tribunal;
 - (b) the contents of any documents produced to the Tribunal; and
 - (c) any information that might enable a person who has appeared before the Tribunal to be identified.
- (2) Anything to which this section applies that is protected matter is not to be published.

- (3) On the application of a party or on its own initiative the Tribunal may, in the circumstances described in section 61(4), order that anything, or any particular thing, to which this section applies is not to be published except in the manner and to the persons, if any, specified by the Tribunal.
- (4) The Tribunal's power to make an order under subsection (3) is exercisable by —
 - (a) a legally qualified member; or
 - (b) the presiding member if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member.

63. Notice of hearings

- (1) The executive officer is to give notice, in accordance with the rules, of the time and place for a hearing in a proceeding to —
 - (a) each party to the proceeding;
 - (b) each other person entitled to notice of the proceeding or hearing under this Act or the enabling Act; and
 - (c) any other person that the Tribunal directs be given notice of the hearing.
- (2) If a person, including a party, to whom notice has been given in accordance with the rules fails to attend, the hearing may be held in the absence of that person.

64. Tribunal may call on expert or professional assistance

- (1) The Tribunal may appoint a legal practitioner, or any other person with relevant knowledge or experience, to assist the Tribunal in relation to a proceeding or proceedings before the Tribunal whether by providing advice or professional services or by giving evidence.
- (2) The Tribunal may order a party to pay or contribute to the Tribunal's costs of obtaining the assistance of a person appointed under subsection (1).

- (3) Subsection (2) does not apply in relation to a party unless, before obtaining the assistance, the Tribunal advised the party of —
- (a) its intention to obtain the assistance;
 - (b) the likely costs of obtaining the assistance; and
 - (c) the likely amount of the party's payment or contribution,
- and gave the party an opportunity to be heard on the matter.

65. Special referees

- (1) The Tribunal may refer any question arising in a proceeding to a special referee for the special referee —
- (a) to decide the question; or
 - (b) to give his or her opinion with respect to it.
- (2) The Tribunal may either adopt a special referee's decision or opinion, in whole or in part, or reject it.

66. Summoning witness

- (1) The Tribunal may, by summons signed on behalf of the Tribunal by the executive officer, require —
- (a) the attendance before the Tribunal of any person;
 - (b) the production before the Tribunal of any document or other material.
- (2) A summons under subsection (1) may be issued on the Tribunal's initiative or at the request of a party.
- [(3) deleted]*
- (4) A summons under subsection (1)(b) may require a person to produce a document or other material despite any rule of law relating to privilege (other than legal professional privilege) or the public interest in relation to the production of documents.

- (5) A person who attends in answer to, or to comply with, a summons is entitled to be paid the fees and allowances prescribed in the rules or, if no fees and allowances are prescribed, the fees and allowances (if any) determined by the Tribunal.
- (6) The Tribunal may determine —
 - (a) by which party; or
 - (b) by which parties and in which proportions,the fees and allowances are to be paid.

[Section 66 amended by No. 5 of 2008 s. 114.]

67. Powers relating to witnesses

- (1) In any proceeding before the Tribunal, the Tribunal may —
 - (a) on its own initiative, call any person to give evidence;
 - (b) examine any witness on oath or affirmation, or by use of a statutory declaration;
 - (c) examine or cross-examine any witness to such extent as the Tribunal thinks proper in order to elicit information relevant to the exercise of the functions of the Tribunal in the proceeding; and
 - (d) compel any witness including a witness whose conduct is subject to an inquiry (whether or not the witness has been summoned to appear) to answer questions which the Tribunal considers to be relevant in the proceeding.
- (2) Nothing in subsection (1) enables the Tribunal to compel a witness to answer a question if the witness —
 - (a) is excused by section 69(1) from answering the question; or
 - (b) has a reasonable excuse (other than on the ground mentioned in section 68(1)) for refusing to answer the question.

68. Privilege against self-incrimination

- (1) A person is not excused from complying with a requirement under this Act to answer a question or produce a document or other material in a proceeding on the ground that the answer or the production of the document or other material might incriminate the person or render the person liable to a penalty.
- (2) However neither —
 - (a) an answer given by the person that was given to comply with the requirement; nor
 - (b) the fact that a document or other material produced by the person to comply with the requirement was produced,

is admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or for an offence against this Act arising out of the false or misleading nature of an answer.

69. Other claims of privilege

- (1) Unless it would be contrary to section 68 or a direction under section 34(5), a person is excused from answering a question or producing a document or other material in a proceeding if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
- (2) The Tribunal may require a person to produce a document or other material to it for the purpose of determining whether or not it is a document or material that the Tribunal has power to compel the person to produce.

70. Oaths and affirmations

A member of the Tribunal may administer an oath or take an affirmation for the purposes of this Act.

71. Authorising person to take evidence

- (1) The Tribunal may authorise, in writing, a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal for the purposes of any proceeding.
- (2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by a judicial member.
- (3) The Tribunal may authorise evidence to be taken under this section outside Western Australia.
- (4) The Tribunal may give directions as to the taking of evidence under this section.
- (5) If a person other than a member of the Tribunal is authorised to take evidence the person has all the powers of a member of the Tribunal in relation to the taking of evidence.
- (6) Evidence taken under this section —
 - (a) is to be regarded as having been given to the Tribunal; and
 - (b) if taken outside Western Australia, is to be regarded as having been given in Western Australia.

72. Dealing with things produced

The Tribunal may inspect any document or other material produced before it, and retain it for as long as it reasonably thinks fit, and make copies of any document or any of its contents.

Division 4 — Decisions made by Tribunal

73. Conditional and ancillary orders and directions

- (1) A power of the Tribunal to make an order or give a direction (the *primary power*) includes the power to make the order subject to conditions and the power to make any ancillary order

or direction the Tribunal considers appropriate for achieving the purpose for which it may exercise the primary power.

- (2) An ancillary order may provide for a decision of the Tribunal in relation to a reviewable decision to be implemented by a person who is not the original decision-maker whether or not that person is a party to the proceeding.

74. Form of decision

A decision of the Tribunal has to be given in writing and authenticated in accordance with the rules if —

- (a) the decision is a final decision;
- (b) the Tribunal reserved the decision;
- (c) the rules state that the decision has to be given in writing; or
- (d) a party requests that the decision be given in writing.

75. To whom copy of written decision has to be given

- (1) The Tribunal is to give a copy of any written decision it gives in a proceeding to —
- (a) each party;
 - (b) each other person who is, under this Act or the enabling Act, entitled to notice of the proceeding or the relevant hearing, or of the decision; and
 - (c) any person prescribed by the rules.
- (2) The Tribunal's obligation under subsection (1) to give a person a copy of a written decision is satisfied if the Tribunal orders a party to give the person a copy of the written decision.

76. Time limit for reserved decision

If the Tribunal reserves its decision in any proceeding, whether or not it is a final decision, it is to give its decision and the reasons for the decision within the period of 90 days after the

day on which it reserved its decision or within an extension of that period given by the President.

77. Reasons for final decision

- (1) The Tribunal is to give its reasons for a final decision.
- (2) Reasons that the Tribunal gives for a final decision have to include the Tribunal's findings on material questions of fact, referring to the evidence or other material on which those findings are based.

78. Written reasons may be requested

- (1) If the Tribunal makes a decision, whether or not a final decision, without having reserved its decision and does not give its reasons for the decision in writing, a party may, within the period of 28 days after the day on which the decision is given, request that the Tribunal give its reasons in writing.
- (2) The Tribunal is to give written reasons that a party requests under subsection (1) within the period of 90 days after the day on which it receives the request or within an extension of that period given by the President.

79. Written decision or reasons using transcript

A written transcript of the part of the proceeding in which a decision is given orally or reasons are given orally is sufficient for a provision of this Act that requires the decision or reasons to be in writing.

80. Confidentiality in relation to reasons for decision

Where relevant, the Tribunal must comply with sections 77 and 78 in a way that is consistent with any order made under section 61(2) and gives effect to any obligation under section 160.

81. Validity of decision

A failure of the Tribunal to comply with a requirement of this Division does not affect the validity of a decision.

82. When decision has effect

- (1) A decision of the Tribunal comes into effect immediately after it is given, or at such later time as is specified in it, except as otherwise provided in section 29(5).
- (2) Subsection (1) does not prevent a stay of the effect of the decision from being given under section 106.

83. Correcting mistakes

- (1) The Tribunal may correct a decision it gives or a statement of the reasons it has given for its decision to the extent necessary to rectify —
 - (a) a clerical mistake;
 - (b) an error arising from an accidental slip or omission;
 - (c) a material miscalculation of figures or a material mistake in the description of any person, thing, or matter referred to in the decision; or
 - (d) a defect of form.
- (2) The correction may be made —
 - (a) on a party's application made in accordance with the rules; or
 - (b) on the Tribunal's own initiative.

84. Tribunal may review its decision if person was absent

- (1) In this section —
relevant hearing, in relation to a decision of the Tribunal, means a hearing at which the decision was made or which preceded the making of the decision but does not include a compulsory conference or mediation.

- (2) A person in respect of whom the Tribunal makes a decision may apply to the Tribunal for a review of the decision if the person did not appear and was not represented at a relevant hearing.
- (3) The application has to be made within the time limits specified by, and otherwise in accordance with, the rules.
- (4) The rules may limit the number of applications that can be made under this section in respect of the same matter without the leave of the Tribunal being obtained.
- (5) If on hearing the application the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented at the relevant hearing, the Tribunal is to review the decision and may revoke or vary it if the Tribunal considers it appropriate to do so.
- (6) For the hearing of the application the Tribunal is to be constituted under section 11 by the members by whom it was constituted when it made the decision, if that is practicable.
- (7) A review under this section —
 - (a) is part of the original proceeding and not a new proceeding; and
 - (b) is not a review of a decision for the purposes of section 17.

85. Enforcement of monetary order

- (1) A person to whom payment is to be made under a monetary order may enforce the order by filing in a court of competent jurisdiction —
 - (a) a copy of the order that the executive officer has certified to be a true copy; and
 - (b) the person's affidavit as to the amount not paid under the order and, if the order is to take effect upon any default, as to the making of that default.

- (2) No charge is to be made for filing a copy of an order or an affidavit under this section.
- (3) On filing, the order is taken to be an order of the court, and may be enforced accordingly.

[Section 85 amended by No. 59 of 2004 s. 141.]

86. Enforcement of decision other than monetary order

- (1) If, or to the extent that, a decision of the Tribunal is not a monetary order, it may be enforced under this section.
- (2) A person seeking to enforce a decision under this section may file in the Supreme Court —
 - (a) a copy of the decision that a judicial member or the executive officer has certified to be a true copy;
 - (b) the person's affidavit as to the non-compliance with the decision; and
 - (c) a certificate from a judicial member stating that the decision is appropriate for filing in the Supreme Court.
- (3) No charge is to be made for filing a copy of a decision, an affidavit, or a certificate under this section.
- (4) On filing, the decision is taken to be a decision of the Supreme Court, and may be enforced accordingly.

Division 5 — Costs

87. Costs of parties and others

- (1) Unless otherwise specified in this Act, the enabling Act, or an order of the Tribunal under this section, parties bear their own costs in a proceeding of the Tribunal.
- (2) Unless otherwise specified in the enabling Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party or of a person required to produce a

document or other material on the application of the party under section 35.

- (3) The power of the Tribunal to make an order for the payment by a party of the costs of another party includes the power to make an order for the payment of an amount to compensate the other party for any expenses, loss, inconvenience, or embarrassment resulting from the proceeding or the matter because of which the proceeding was brought.
- (4) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party where the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal is to have regard to —
 - (a) whether the party (in bringing or conducting the proceeding before the decision-maker in which the decision under review was made) genuinely attempted to enable and assist the decision-maker to make a decision on its merits;
 - (b) whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.
- (5) The rules may deal with the effect of certain offers to settle, and responses, if any, to the offer, on the making of an order for the payment by a party of the costs of another party.
- (6) The Tribunal may order that the representative of a party, rather than the party, in the representative's own capacity compensate that or any other party for costs incurred because the representative acted in, or delayed, the proceeding in a way that resulted in unnecessary costs.

88. Costs of proceeding

- (1) In this section —
costs of a proceeding means costs of, or incidental to, a proceeding of the Tribunal, other than costs of a party.

- (2) The Tribunal may order that all or any of the costs of a proceeding be paid by a party.
- (3) If the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal cannot make an order under this section against a party unless —
 - (a) the party brought or conducted the proceeding frivolously or vexatiously;
 - (b) section 87(4) applies to the party; or
 - (c) circumstances have arisen in which the Tribunal could make an order under section 46, 47 or 48.

89. Amount of costs

If the Tribunal makes an order under this Division for the payment of costs and does not fix the amount of costs, that amount is to be assessed or settled in accordance with the rules.

Division 6 — Other procedural provisions

90. Injunction

- (1) The Tribunal may by order grant an interim injunction in any proceeding if it is just and convenient to do so.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by a judicial member.
- (3) The Tribunal may make the order on the application of a party or on its own initiative.
- (4) An interim injunction may be granted whether or not a person whose interests may be affected —
 - (a) is a party; or
 - (b) has been given an opportunity to be heard.
- (5) An interim injunction may be granted —
 - (a) in any case — for a specified period; and

- (b) if granted on the application of a party — for the period up to the final determination of that application.
- (6) In granting an interim injunction, the Tribunal —
 - (a) may require an undertaking as to costs or damages as it considers appropriate; and
 - (b) may provide for the lifting of the injunction if specified conditions are met.
- (7) The Tribunal may assess any costs or damages referred to in subsection (6)(a) and any amount so assessed is a debt recoverable in a court of competent jurisdiction.
- (8) The rules may place conditions on the Tribunal's power to grant an interim injunction.
- (9) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under the enabling Act to make an order in the nature of an injunction.

91. Declaration

- (1) The Tribunal may make a declaration concerning any matter in a proceeding instead of any orders it could make, or in addition to any orders it makes, in the proceeding.
- (2) The Tribunal's power to make a declaration under subsection (1) is exercisable only by a judicial member.
- (3) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under the enabling Act to make a declaration.
- (4) The Tribunal may at any time make any order necessary or desirable to give effect to a declaration made under subsection (1).
- (5) A declaration made under subsection (1) is binding, according to its terms, on —
 - (a) the parties to the proceeding; or

(b) such of them as are specified in the declaration,
and not otherwise.

92. Relief from procedural requirements

- (1) The rules may provide for the Tribunal to —
 - (a) extend or abridge a time limit for doing anything in connection with a proceeding, or the commencement of a proceeding, even though the limit is imposed under this Act or the enabling Act; or
 - (b) waive compliance with any other procedural requirement in connection with a proceeding or the commencement of a proceeding.
- (2) The extension or waiver may be authorised even though the time for complying has passed.
- (3) This section has effect despite section 5 except to the extent, if any, that this section is expressly excluded by the enabling Act.
- (4) The Tribunal cannot extend or abridge time or waive compliance if to do so would cause any prejudice or detriment to a party or potential party that cannot be remedied by an appropriate order for costs or damages.

93. Minor matters procedure

- (1) In this section —

legally qualified person means —

 - (a) an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3) or a person entitled to engage in legal practice in any other place; or
 - (b) any other person who, in the opinion of the Tribunal, has such qualifications or experience in law (whether acquired in Western Australia or in any other place in or outside Australia) as would be likely to afford an advantage in the proceeding;

minor proceeding means —

- (a) a proceeding in which a monetary value can be ascribed to the matter in issue other than —
 - (i) a proceeding in which that monetary value exceeds the specified amount;
 - (ii) a proceeding dealing with a decision of a vocational regulatory body or a matter brought before the Tribunal by a vocational regulatory body or by another person under a vocational Act; or
 - (iii) a proceeding of a kind that an enabling Act excludes from the operation of this section;
- (b) proceeding of a kind that the regulations include in the operation of this section; or
- (c) a proceeding of a kind that an enabling Act includes in the operation of this section;

specified amount means \$7 500 and, on and after 1 January 2009, means \$10 000.

- (2) At or before an initial directions hearing in a minor proceeding the applicant may make one or more of the following elections in relation to the proceeding —
 - (a) a no legal representation election;
 - (b) a no hearings election;
 - (c) a no appeals election.
- (3) If the applicant makes a no legal representation election, a party —
 - (a) cannot be represented by a legally qualified person; and
 - (b) cannot be represented by any other person except as authorised by section 39(1)(a) to (f).

- (4) If the applicant makes a no hearings election, the Tribunal is to conduct the proceeding in accordance with section 60(2).
- (5) If the applicant makes a no appeals election, any decision in the proceeding is final and is not subject to appeal or review whether under Part 5 or otherwise.
- (6) Without limiting section 170, the rules may provide for the practice and procedure to be followed in a proceeding in relation to which an election is made under subsection (2) and, for that purpose, may include provisions that modify the operation of this Act.

[Section 93 amended by No. 21 of 2008 s. 706(3).]

94. Tribunal to give Supreme Court documents and things

- (1) This section applies if —
 - (a) a party appeals under section 105 from a decision of the Tribunal; or
 - (b) a question is referred under section 59(10)(b) to the Supreme Court for decision.
- (2) In this section —
party means a party in the proceeding of the Tribunal in respect of which the appeal was instituted or the reference was made.
- (3) The executive officer is to give the Supreme Court —
 - (a) all documents and other material that were before the Tribunal in connection with the proceeding to which the appeal or reference relates; and
 - (b) any other documents and other material in the Tribunal's possession that the Tribunal is required by rules of the Supreme Court to send to the Court.
- (4) The Supreme Court is to return the documents and material to the Tribunal at the conclusion of the proceeding before the Supreme Court in relation to the appeal or reference.

- (5) If the Supreme Court considers that any of the documents is protected matter or contains protected matter, the Supreme Court is to ensure that the protected matter is not disclosed in any way other than to —
 - (a) a member of the Court as constituted for the purposes of the proceeding; or
 - (b) a person to whom disclosure is allowed under subsection (6).
- (6) The Supreme Court may permit a party, or a representative of a party, to inspect a document to which a certificate under section 159(2) applies, other than a document that the Supreme Court considers to be an exempt document, to the extent necessary to disclose anything it contains if —
 - (a) the certificate does not specify as a reason for non-disclosure a reason mentioned in section 159(3)(a), (b) or (d); and
 - (b) a question for decision by the Supreme Court is whether that thing should be disclosed to some or all of the parties.
- (7) This section does not prevent a disclosure to an officer of the Supreme Court for the purpose of the performance of duties as an officer of the Court.

Division 7 — Offences

95. Failing to comply with decision

- (1) A person who fails to comply with a decision of the Tribunal commits an offence.
Penalty: \$10 000.
- (2) Subsection (1) does not apply if, or to the extent that, the decision is a monetary order.
- (3) Subsection (1) does not apply in relation to a decision unless —

- (a) the Tribunal, in the decision, declares that subsection (1) applies; or
 - (b) after a person fails to comply with the decision, the Tribunal makes an order declaring that subsection (1) applies and the failure continues after notice of that order is served on the person.
- (4) If the Tribunal made the decision without giving a person an opportunity to be heard, subsection (1) only applies to that person on the person being given personally or in accordance with subsection (5) —
 - (a) a copy of the decision that a judicial member or the executive officer has certified to be a true copy; and
 - (b) a copy of this section.
- (5) If the Tribunal is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (4), the Tribunal may specify another method for service of the documents on the person under that subsection.

96. Failing to comply with summons

A person who, without reasonable excuse, fails to comply with a summons under section 66(1) commits an offence.

Penalty: \$5 000.

97. Failing to give evidence as required

A person appearing before the Tribunal commits an offence if, without reasonable excuse, the person —

- (a) refuses to swear an oath or make an affirmation or statutory declaration when required by the Tribunal to do so; or
- (b) refuses to answer a question that the person is required by the Tribunal to answer.

Penalty: \$5 000.

98. Giving false or misleading information

A person who gives to the Tribunal information knowing it to be false or misleading in a material particular commits an offence.

Penalty: \$10 000.

99. Misbehaviour and other conduct

A person who —

- (a) insults, obstructs or hinders a Tribunal member while that member is performing functions as a member;
- (b) insults, obstructs or hinders a person attending a hearing before the Tribunal;
- (c) misbehaves at a hearing before the Tribunal;
- (d) interrupts a hearing before the Tribunal; or
- (e) obstructs or hinders a person from complying with an order of the Tribunal or a summons to attend the Tribunal,

commits an offence.

Penalty: \$10 000.

100. Contempt

- (1) If the President is satisfied that an act or omission of a person would constitute a contempt of the Court if a proceeding of the Tribunal were a proceeding in the Supreme Court, the President may report that act or omission to the Supreme Court and the Court has jurisdiction to deal with the matter as if it were a contempt of the Court.
- (2) If subsection (1) applies to an act or omission by a person and that act or omission is also an offence under this Act, the person is not liable to be punished twice.

Division 8 — Arrest warrants

101. Exercise of powers under this Division

The Tribunal's powers under this Division are exercisable only by a judicial member.

102. Arrest

- (1) If a person fails to attend as required by a summons under section 66(1), the Tribunal may, on proof by a statement verified by statutory declaration that the summons was served, issue a warrant for the apprehension of that person.
- (2) A warrant issued under this section authorises any person to whom it is addressed —
 - (a) to apprehend the person named in the warrant at any time and bring the person before the Tribunal; and
 - (b) for that purpose, to detain the person named in the warrant in custody until released by order of the Tribunal or, on review, by order of the Supreme Court.
- (3) The person executing the warrant may —
 - (a) break and enter any place, building, vehicle, vessel or other thing for the purpose of executing the warrant; and
 - (b) use reasonable force and assistance to apprehend the person named in the warrant.
- (4) The apprehension of a person under this section does not prevent the person from being dealt with under section 100 for contempt.

103. Conditional release from custody

- (1) The release of a person by order of the Tribunal under section 102(2)(b) may be made subject to one or more of the following conditions —

- (a) a condition that the person appear and report before the Tribunal in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Tribunal;
 - (b) conditions for the purpose of ensuring the further attendance of the person before the Tribunal (for example, the provision of sureties by the person, the surrender of any passport held by the person, a requirement as to where the person is to live and regular reporting by the person to the Tribunal);
 - (c) any other condition that the Tribunal thinks appropriate.
- (2) The Tribunal may by order amend, revoke or add to those conditions.
- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 102(2)(b) is subject is guilty of an offence.
Penalty: \$5 000.

104. Review by Supreme Court

- (1) A person who has not been released by the Tribunal under section 102(2)(b) or whose release under that provision is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release the person or of the terms of one or more of those conditions.
- (2) The Supreme Court may do either or both of the following —
 - (a) affirm or set aside a decision by the Tribunal not to release the person or any condition imposed by the Tribunal on the release of the person;
 - (b) make any order that the Tribunal may make in relation to the detention or release of the person.
- (3) The Supreme Court may also exercise its powers under subsection (2) where the Tribunal has not made a decision within a reasonable time on the release of the person.

- (4) An order under subsection (2) is taken to be an order of the Tribunal.

Part 5 — Appeals from Tribunal's decisions

105. Appeal from Tribunal's decision

- (1) A party to a proceeding may appeal from a decision of the Tribunal in the proceeding, but only if the court to which the appeal lies gives leave to appeal.
- (2) The appeal can only be brought on a question of law.
- (3) The appeal lies to —
 - (a) the Court of Appeal, if the decision was made by —
 - (i) a judicial member; or
 - (ii) the Tribunal constituted by members who include a judicial member;
 - (b) the Supreme Court exercising its other jurisdiction, in any other case.
- [(4) deleted]*
- (5) An application for leave to appeal has to be made in accordance with the rules of the Supreme Court and within the period of 28 days after —
 - (a) the day on which the Tribunal's decision is given; or
 - (b) if the Tribunal gives its decision without giving written reasons for its decision and the party then requests it to give written reasons under section 78, the day on which the written reasons are given to the party.
- (6) If leave is granted, the appeal has to be instituted in accordance with the rules of the Supreme Court and within the period of 21 days after the day on which leave is granted.
- (7) The court to which the appeal lies may extend a time limit fixed by this section, and the extension may be given even though the time limit has passed.

- (8) A party instituting an appeal is to notify the executive officer but the Tribunal is not a party to the appeal and nor is any Tribunal member.
- (9) The court dealing with the appeal may —
 - (a) affirm, vary, or set aside the decision of the Tribunal;
 - (b) make any decision that the Tribunal could have made in the proceeding; or
 - (c) send the matter back to the Tribunal for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that the court considers appropriate,and, in any case, may make any order the court considers appropriate.
- (10) If the court sends the matter back to the Tribunal under subsection (9)(c), it is to give directions as to whether or not the Tribunal reconsidering the matter is to be constituted by the member or members who made the original decision.
- (11) If the Tribunal's decision is made in a proceeding prescribed by the regulations, a party cannot apply for leave to appeal under this section unless the party agrees to indemnify each other party to the proceeding against that other party's reasonable legal costs of the appeal.
- (12) In the case of a decision in a proceeding coming within the Tribunal's review jurisdiction, any leave to appeal granted to the decision-maker is to be granted on the condition that the costs of each other party are to be met by the decision-maker, unless the court considers that it would be unjust or unreasonable to impose that condition, whether generally or in respect of the costs of a particular party.
- (13) Despite subsection (2), if the Tribunal's decision —
 - (a) is made under a relevant Act or in a proceeding for the review of a decision made under a relevant Act; and

s. 106

- (b) has the effect of depriving a person of the person's capacity to lawfully pursue a vocation,

an appeal under this section may be brought on any ground whether it involves a question of law, a question of fact or a question of mixed law and fact.

- (14) In subsection (13) —

relevant Act means —

- (a) an Act specified in Schedule 1, if it is an enabling Act; or
- (b) an enabling Act prescribed by the regulations for the purposes of subsection (13).

[Section 105 amended by No. 45 of 2004 s. 37.]

106. Effect of decision against which appeal made

- (1) The Supreme Court may, by order, stay the operation of a decision of the Tribunal pending the determination of an application for leave to appeal from the decision and of any appeal.
- (2) Subject to any order made by the Supreme Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement the decision.

Part 6 — Tribunal's membership and other provisions

Division 1 — Members of the Tribunal

Subdivision 1 — Kinds of members

107. Tribunal members

The Tribunal is to have —

- (a) judicial members, being —
 - (i) the President; and
 - (ii) at least one Deputy President;
- (b) ex officio members under Subdivision 4; and
- (c) other members, each of whom is either a senior member or an ordinary member.

Subdivision 2 — President

108. Appointment of President

- (1) A person is appointed as the President of the Tribunal by the Governor on the recommendation of the Minister.
- (2) The appointment is to be by means of a commission under the Public Seal of the State.
- (3) A person cannot be the President unless the person is a judge of the Supreme Court.
- (4) Before recommending a person for appointment as the President, the Minister is to consult the Chief Justice of Western Australia.

109. Tenure of President's office

- (1) The term for which a person is appointed as the President is to be fixed in the commission and is to be not longer than 5 years.

- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

110. Vacating office prematurely

- (1) A person may resign from office as the President by giving the Governor a signed letter of resignation.
- (2) A resignation is not effective until the Governor has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from office as the President is not precluded from again being appointed to the office.
- (5) The person who holds office as the President does so during good behaviour but the Governor may, on the address of both Houses of Parliament, terminate the person's term of office.
- (6) If the person who holds office as the President becomes ineligible, because of section 108(3), to hold the office, the person's term of office terminates.

111. President's status as Supreme Court judge

- (1) The appointment of a person as the President does not affect the person's tenure of office as, or status as, a judge of the Supreme Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) A person's service in the office of President is to be taken for all purposes to be service in the person's office of judge of the Supreme Court.
- (3) Nothing in this Act prevents a person who holds office as the President from doing anything in the person's capacity as a judge of the Supreme Court.

- (4) A person's resignation from office as the President or the termination of a person's term of office as the President does not affect the person's office as a judge of the Supreme Court.

Subdivision 3 — Deputy President

112. Appointment of Deputy President

- (1) A person is appointed as a Deputy President of the Tribunal by the Governor on the recommendation of the Minister.
- (2) The appointment is to be by means of a commission under the Public Seal of the State.
- (3) A person cannot be a Deputy President unless the person is a judge of the District Court.
- (4) Before recommending a person for appointment as a Deputy President, the Minister is to consult the Chief Justice of Western Australia and the Chief Judge of the District Court.

113. Tenure of Deputy President's office

- (1) The term for which a person is appointed as a Deputy President is to be fixed in the commission and is to be not longer than 5 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

114. Vacating office prematurely

- (1) A person may resign from office as a Deputy President by giving the Governor a signed letter of resignation.
- (2) A resignation is not effective until the Governor has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.

- (4) A person who has resigned from office as a Deputy President is not precluded from again being appointed to the office.
- (5) A person who holds office as a Deputy President does so during good behaviour but the Governor may, on the address of both Houses of Parliament, terminate the person's term of office.
- (6) If a person who holds office as a Deputy President becomes ineligible, because of section 112(3), to hold the office, the person's term of office terminates.

115. Deputy President's status as District Court judge

- (1) The appointment of a person as a Deputy President does not affect the person's tenure of office as, or status as, a judge of the District Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) A person's service in an office of Deputy President is to be taken for all purposes to be service in the person's office of judge of the District Court.
- (3) Nothing in this Act prevents a person who holds office as a Deputy President from doing anything in the person's capacity as a judge of the District Court.
- (4) A person's resignation from office as a Deputy President or the termination of a person's term of office as a Deputy President does not affect the person's office as a judge of the District Court.

Subdivision 4 — Ex officio members

116. Magistrates to be ex officio members

- (1) A magistrate is ex officio a member of the Tribunal.
- (2) The President and the Chief Stipendiary Magistrate may enter into arrangements regarding the performance by magistrates of functions as members of the Tribunal.

- (3) A magistrate is not authorised to perform any function as a member of the Tribunal except —
 - (a) when performing functions as a magistrate, as directed by the Chief Stipendiary Magistrate, in a place that is prescribed by the regulations for the purposes of this section; and
 - (b) as authorised by, and in conformity with, any relevant arrangements entered into under subsection (2).

Subdivision 5 — Other members

117. Appointment of non-judicial members

- (1) A person is appointed as a member of the Tribunal, other than the President, a Deputy President or an ex officio member, by the Governor on the recommendation of the Minister.
- (2) The appointment is to be in writing.
- (3) A person cannot be a non-judicial member unless the person —
 - (a) is a qualified person and has had not less than 5 years' legal experience; or
 - (b) has, in the opinion of the Minister, extensive or special knowledge of, or experience with, any class of matter involved in the exercise of the Tribunal's jurisdiction.
- (4) A person's appointment may be as a senior member of the Tribunal if the person —
 - (a) is a qualified person and has had not less than 8 years' legal experience; or
 - (b) has, in the opinion of the Minister, extensive knowledge of, or experience with, any class of matter involved in the exercise of the Tribunal's jurisdiction.
- (5) A person who is a public sector employee may be appointed to be a non-judicial member in respect of matters in the Tribunal's original jurisdiction that are —

- (a) of a class prescribed by the regulations; and
- (b) specified in the instrument of appointment,

and a person so appointed is not allowed to be a sitting member of the Tribunal, or perform any function as a Tribunal member, in relation to any other matter.

- (6) Before recommending a person for appointment as a non-judicial member, the Minister is to consult the President and may also consult any appropriate Minister, person or body.

118. Tenure of non-judicial office

- (1) The office of a non-judicial member is to be held on a full-time basis, part-time basis or sessional basis.
- (2) The term for which a person is appointed as a non-judicial member is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (3) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

119. Conditions of service as non-judicial member

- (1) A non-judicial member is entitled to the emoluments and benefits determined by the Governor unless the *Salaries and Allowances Act 1975* applies to the member's office.
- (2) The cost of emoluments and benefits under subsection (1) is to be charged to the Consolidated Account and this subsection appropriates the Consolidated Account accordingly.
- (3) The emoluments and benefits to which a non-judicial member is entitled cannot, during the member's term of office, be changed to be less favourable without the member's consent.
- (4) The Governor may determine the leave of absence to which a non-judicial member is entitled and any other terms and conditions of service as a non-judicial member.

- (5) A determination cannot be made under this section in respect of a person appointed under section 117(5) unless the Minister for Public Sector Management approves of it being made.

[Section 119 amended by No. 77 of 2006 s. 4.]

120. Outside employment prohibited

- (1) A non-judicial member who is appointed on a full-time basis is not allowed to engage in the practice of any profession or in any paid employment (whether or not within Western Australia) outside the duties of office as a member of the Tribunal except with the consent of the President and in accordance with any conditions attached to that consent.
- (2) A non-judicial member who is appointed on a part-time basis is allowed to engage in the practice of any profession or in any paid employment (whether or not within Western Australia) outside the duties of office as a member of the Tribunal only if —
- (a) the member has first advised the President in writing; and
 - (b) the President has not advised the member that, in the President's opinion, to do so would or may conflict with the proper performance of the member's duties of office.
- (3) Despite anything in this section a non-judicial member (other than a person appointed under section 117(5)) is not allowed to engage in any paid employment as a public sector employee.
- (4) A non-judicial member who is appointed on a part-time basis is not allowed to represent another person in a matter that is before the Tribunal.

121. Code of conduct

- (1) The President is to make and maintain a written code of conduct applying to each person performing functions as a non-judicial member.

- (2) To the extent that the President considers appropriate, the President is to consult with Tribunal members, members of staff of the Tribunal, the Commissioner for Public Sector Standards under the *Public Sector Management Act 1994* and other persons about what the code of conduct should contain.
- (3) Each person performing functions as a non-judicial member is to comply with the code of conduct.

122. Suspension of non-judicial member

- (1) The President, with the approval of the Minister, may suspend a person who is a non-judicial member from office if the President believes —
 - (a) that there may be a reason under section 123 to terminate the person's term of office; or
 - (b) that the person is the subject of a matter before the Tribunal otherwise than as a Tribunal member.
- (2) A person who is suspended from office under this section (called the *person suspended* in sections 124 to 126) remains entitled to the emoluments of the office while suspended.

123. Why termination may be recommended

The reasons for which the term of office of a person may be terminated are that the person —

- (a) has been convicted of an indictable offence or an offence that, if committed in Western Australia, would be an indictable offence;
- (b) has become incapable of performing, or has neglected to perform, the duties of office; or
- (c) is unfit to hold office because of misconduct.

124. Investigation of non-judicial member

- (1) As soon as practicable after the President suspends a person from office under section 122(1)(a), the President is to appoint a

person nominated by the President to undertake an investigation into the conduct or circumstances that led to the suspension.

- (2) The person appointed under subsection (1) (called the *investigator* in subsection (3) and sections 125 and 126) is to —
 - (a) investigate the conduct of the person suspended;
 - (b) report to the Minister on the investigation; and
 - (c) give a copy of the report to the person suspended and the President.
- (3) The investigator's report may include a recommendation that the term of office of the person suspended be terminated.

125. Action on investigator's report

- (1) After considering the report and consulting the President, the Minister may recommend that the Governor terminate the term of office of the person suspended.
- (2) If the Minister decides not to recommend that the term of office of the person suspended be terminated —
 - (a) the Minister is to inform the President as soon as practicable after receiving the investigator's report; and
 - (b) the President is to terminate the suspension.

126. Deciding whether to recommend termination

- (1) Neither the investigator nor the Minister can recommend that the term of office of the person suspended be terminated unless satisfied that there is a reason under section 123 to terminate it.
- (2) The Minister cannot recommend that the term of office of the person suspended be terminated unless the person has been given a reasonable opportunity to make written and oral submissions to the investigator and the President.
- (3) The Minister may, in deciding whether or not to recommend that the term of office of the person suspended be terminated, rely on the investigator's report.

127. Vacating office prematurely

- (1) A non-judicial member may resign from office by giving the Minister a signed letter of resignation addressed to the Governor.
- (2) A resignation is not effective until the Governor has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from office as a non-judicial member is not precluded from again being appointed as a non-judicial member.
- (5) The period for which a person who is a non-judicial member was appointed may at any time be terminated by the Governor on the grounds of —
 - (a) the person having been convicted of an indictable offence or an offence that, if committed in Western Australia, would be an indictable offence;
 - (b) the person being an insolvent under administration according to the meaning of that term in the *Corporations Act 2001* of the Commonwealth; or
 - (c) the Minister having recommended under section 125(1) that the Governor terminate the person's term of office.

Division 2 — Acting and supplementary members

Subdivision 1 — Acting President

128. Appointment to act as President

- (1) If there is, or is expected to be, a vacancy in the office of President or the President is, or is expected to be, absent or, for any other reason, unable to perform the duties of office, a person may be appointed in accordance with this section to act in the office of President.

- (2) The appointment is to be for a term not exceeding 6 months specified in the instrument of appointment and it may be made —
 - (a) by the Governor; or
 - (b) if the appointment is for a term not exceeding 3 months and the Minister has not previously appointed the person under this section, by the Minister.
- (3) A person cannot be appointed to act in the office of President unless the person is a judge of the Supreme Court.
- (4) Before appointing a person, or recommending that the Governor appoint a person, to act in the office of President, the Minister is to consult the Chief Justice of Western Australia.
- (5) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

129. Terminating acting prematurely

- (1) A person appointed to act in the office of President may resign from acting in the office by giving the Minister a signed letter of resignation.
- (2) A resignation is not effective until the Minister has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from acting in the office of President is not precluded from again being appointed to act in the office.
- (5) The period for which a person was appointed to act in the office of President may at any time be terminated by the Governor.
- (6) If a person appointed to act in the office of President ceases to be a judge of the Supreme Court, the person's term of office terminates.

130. Acting President's status as Supreme Court judge

- (1) The appointment of a person to act in the office of President does not affect the person's tenure of office as, or status as, a judge of the Supreme Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) A person's service acting in the office of President is to be taken for all purposes to be service in the person's office of judge of the Supreme Court.
- (3) Nothing in this Act prevents a person who acts in the office of President from doing anything in the person's capacity as a judge of the Supreme Court.
- (4) A person's resignation from acting in the office of President or the termination of a person's term of acting in the office of President does not of itself affect the person's office as a judge of the Supreme Court.

131. Deputy President may sometimes act as President

- (1) If there is a vacancy in the office of President or the President is absent or, for any other reason, unable to perform the duties of office, the person holding office as Deputy President, or the senior of them if there is more than one, may act in the office of President unless a person has been appointed under section 128 to act.
- (2) If there is more than one person holding office as Deputy President the Minister may resolve any question as to which of them is the senior.

132. Deputy President's allowance for acting as President

A person holding office as Deputy President who acts in the office of President is entitled to be paid an allowance representing the difference between the emoluments and benefits for the office of President and the emoluments and

benefits to which the person is entitled for holding office as Deputy President.

133. Consequences of acting

A person acting in the office of President as authorised by an appointment under section 128 or by section 131 is to be regarded as the President for the purposes of this Act and enabling Acts.

Subdivision 2 — Acting Deputy President

134. Appointment to act as Deputy President

- (1) If there is, or is expected to be, a vacancy in an office of Deputy President or a Deputy President is, or is expected to be, absent or, for any other reason, unable to perform the duties of office, a person may be appointed in accordance with this section to act in the office of Deputy President.
- (2) The appointment is to be for a term not exceeding 6 months specified in the instrument of appointment and it may be made —
 - (a) by the Governor; or
 - (b) if the appointment is for a term not exceeding 3 months and the Minister has not previously appointed the person under this section, by the Minister.
- (3) A person cannot be appointed to act in an office of Deputy President unless the person is a judge of the District Court.
- (4) Before appointing a person, or recommending that the Governor appoint a person, to act in an office of Deputy President, the Minister is to consult the Chief Justice of Western Australia and the Chief Judge of the District Court.
- (5) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

135. Terminating acting prematurely

- (1) A person appointed to act in an office of Deputy President may resign from acting in the office by giving the Minister a signed letter of resignation.
- (2) A resignation is not effective until the Minister has accepted it.
- (3) If a resignation is accepted it takes effect when it is accepted or at any later date stated in the letter.
- (4) A person who has resigned from acting in an office of Deputy President is not precluded from again being appointed to act in the office.
- (5) The period for which a person was appointed to act in an office of Deputy President may at any time be terminated by the Governor.
- (6) If a person appointed to act in an office of Deputy President ceases to be a judge of the District Court, the person's term of office terminates.

136. Acting Deputy President's status as District Court judge

- (1) The appointment of a person to act in an office of Deputy President does not affect the person's tenure of office as, or status as, a judge of the District Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) A person's service acting in an office of Deputy President is to be taken for all purposes to be service in the person's office of judge of the District Court.
- (3) Nothing in this Act prevents a person who acts in an office of Deputy President from doing anything in the person's capacity as a judge of the District Court.
- (4) A person's resignation from acting in an office of Deputy President or the termination of a person's term of acting in an

office of Deputy President does not of itself affect the person's office as a judge of the District Court.

137. Consequences of acting

A person acting in an office of Deputy President as authorised by an appointment under section 134 is to be regarded as a Deputy President for the purposes of this Act and enabling Acts.

Subdivision 3 — Supplementary judicial members

138. Supplementary President

- (1) Even though there is no vacancy in the office of President and the holder of that office is performing duties of the office, the Minister, on the request of the President, may temporarily appoint a person as a supplementary President to act as the President in relation to a particular matter or matters or for a specified period.
- (2) A person cannot be appointed as a supplementary President unless the person is a judge, acting judge, auxiliary judge or retired judge of the Supreme Court and, except in the case of a retired judge, can only be appointed with the consent of the Chief Justice of Western Australia.
- (3) The appointment is to be in writing.
- (4) The person appointed may act as the President in relation to a matter, or for the period, for which the person is appointed, and when acting under the appointment the person is to be regarded as the President for the purposes of this Act and enabling Acts.
- (5) Subsection (4) does not authorise the person appointed to perform functions of the kind set out in section 11, 52(2), 54(2), 117(6) or 121, Division 1 Subdivision 5, section 144(2), Part 7 or section 152, 167(12) or 172(2).
- (6) Section 129(1) to (5) apply with any necessary modifications to an appointment under this section.

139. Supplementary President's status as Supreme Court judge

- (1) The appointment of a judge of the Supreme Court as a supplementary President to act as the President does not affect the person's tenure of office as, or status as, a judge of the Supreme Court nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) Service of a judge of the Supreme Court as a supplementary President acting as the President is to be taken for all purposes to be service in the person's office of judge of the Supreme Court.
- (3) Nothing in this Act prevents a judge of the Supreme Court who acts as the President under this Subdivision from doing anything in the person's capacity as a judge of the Supreme Court.

140. Supplementary Deputy Presidents

- (1) Even though there is no vacancy in an office of Deputy President and each holder of an office of Deputy President is performing duties of the office, the Minister, on the request of the President, may temporarily appoint a person as a supplementary Deputy President to act as a Deputy President in relation to a particular matter or matters or for a specified period.
- (2) A person cannot be appointed as a supplementary Deputy President unless the person is a judge, acting judge, auxiliary judge or retired judge of the District Court and, except in the case of a retired judge, can only be appointed with the consent of the Chief Judge of the District Court.
- (3) The appointment is to be in writing.
- (4) The person appointed may act as a Deputy President in relation to a matter, or for the period, for which the person is appointed, and when acting under the appointment the person is to be

regarded as a Deputy President for the purposes of this Act and enabling Acts.

- (5) Section 135(1) to (5) apply with any necessary modifications to an appointment under this section.

141. Supplementary Deputy President's status as District Court judge

- (1) The appointment of a judge of the District Court as a supplementary Deputy President to act as a Deputy President does not affect the person's tenure of office as, or status as, a judge nor the payment of the person's salary or allowances as a judge nor any other rights or privileges of the person as a judge.
- (2) Service of a judge of the District Court as a supplementary Deputy President acting as a Deputy President is to be taken for all purposes to be service in the person's office of judge of the District Court.
- (3) Nothing in this Act prevents a judge of the District Court who acts as a Deputy President under this Subdivision from doing anything in the person's capacity as a judge of the District Court.

Division 3 — Other matters about Tribunal members

142. Fixing the period of appointment

In fixing the periods for which judicial members and non-judicial members are appointed regard shall be had to the security of tenure of Tribunal members and the development and retention of a membership that has experience and expertise in the exercise of the Tribunal's jurisdiction.

142A. Oath of office

Before a person who is appointed under this Part to any of the following offices performs any function of the office, he or she must take before the Governor, or some person authorised for

the purpose by the Governor, an oath or affirmation in the form set out in Schedule 2.

Offices

President
Acting President
Supplementary President
Deputy President
Acting Deputy President
Supplementary Deputy President

[Section 142A inserted by No. 24 of 2005 s. 38.]

143. Training

- (1) The judicial members are responsible for directing the education, training, and professional development of the Tribunal members.
- (2) The Rules Committee is to assist the judicial members in carrying out the functions given by subsection (1) so far as they are functions that relate to the rules, the practice notes and practice and procedure generally.
- (3) The Minister is to ensure that appropriate provision is made for the education, training, and professional development of the Tribunal members.

144. Disclosure of interests

- (1) This section applies to a person who constitutes, or is to constitute, the Tribunal for the purposes of a particular matter, whether with or without others, and who has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of the person's functions as a member in relation to that matter.

- (2) The person is to disclose the nature of the person's interest to the President or, if the person is the President, to the Chief Justice of Western Australia.
- (3) The person is not allowed to be a sitting member of the Tribunal, or perform any function as a Tribunal member, in relation to the matter unless each of the parties involved agrees.

145. Completion of matters

- (1) A former Tribunal member may, despite the expiration of the member's term of appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Tribunal that have been heard or partly heard by the member before the expiration of that term.
- (2) While completing or otherwise dealing with matters under subsection (1), a former Tribunal member is taken to have all the powers and immunities as a Tribunal member that the former member had immediately before the expiration of his or her term of appointment.

Part 7 — Administration

146. Responsibility for administration of Act

- (1) The President is responsible to the Minister for the administration of this Act.
- (2) Without limiting subsection (1), the President is responsible for organising the business of the Tribunal, including where and when it will conduct hearings.

147. President to advise Minister

It is a function of the President to advise the Minister of any action that the President considers would lead to —

- (a) the more convenient, economic, and efficient disposal of the business of the Tribunal;
- (b) the avoidance of delay in the conduct of proceedings; or
- (c) this Act or an enabling Act being rendered more effective.

148. Executive officer and other staff of Tribunal

- (1) The chief executive officer is to make an officer of the Department available to perform, under the control of the President, the functions under this Act of the executive officer of the Tribunal and assist in the administration of this Act and the exercise of the Tribunal's jurisdiction.
- (2) In addition, the chief executive officer is to make other officers of the Department available to assist, under the control of the executive officer, in the administration of this Act and the exercise of the Tribunal's jurisdiction.
- (3) Otherwise, the services and facilities of the Department may be used for the purposes of this Act on such terms as are agreed to by the President and the chief executive officer.

149. Delegation by judicial member

- (1) A judicial member may delegate to another person a power or duty given by this Act that is of an administrative nature.
- (2) The President cannot delegate a power or duty under section 11 to a person other than —
 - (a) a Deputy President; or
 - (b) a magistrate performing functions as a member of the Tribunal.
- (3) The person making the delegation is to make it in writing and sign it.
- (4) A person to whom a power or duty is delegated in accordance with this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits an ability to perform a function through an officer or agent.

150. Annual reports of the Tribunal

- (1) The President is required, on or before 30 September in each year, to submit to the Minister an annual report on the activities of the Tribunal during the year ending on the preceding 30 June.
- (2) The annual report is to include details of —
 - (a) the number, nature, and outcome, of matters that have come before the Tribunal;
 - (b) the number and nature of matters that are outstanding;
 - (c) any trends or special problems that may have emerged;

s. 151

- (d) the level of compliance by decision-makers with requirements to —
 - (i) notify persons of reviewable decisions and their rights to seek review; and
 - (ii) provide written reasons for reviewable decisions when requested to do so;
 - (e) forecasts of the workload of the Tribunal in the year after the year to which the report relates; and
 - (f) any proposals for improving the operation of the Tribunal.
- (3) The Minister is to cause a copy of each report submitted under subsection (1) to be laid before each House of Parliament within 28 days after submission of the report.
- (4) The President, if requested to do so by the Minister, is to report to the Minister about the jurisdiction and functions of the Tribunal or any matter connected with the exercise of that jurisdiction or the carrying out of those functions.
- (5) The President may, from time to time, report to the Minister about anything referred to in subsection (4) whether or not the President has been requested to do so.

151. Laying before House of Parliament that is not sitting

- (1) If —
 - (a) at the commencement of the period within which section 150(3) requires a copy of a report to be laid before a House of Parliament, the House is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister is to transmit a copy of the report to the Clerk of the House.

- (2) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a report that, under subsection (2), is to be regarded as having occurred is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

Part 8 — Other matters

152. Official seal

The Tribunal is to have a seal or as many seals as the President considers appropriate.

153. Judicial notice

- (1) All courts and persons acting judicially are required to take judicial notice of —
 - (a) the signature of a person who is, or was, a member of the Tribunal or the executive officer;
 - (b) the fact that a person referred to in paragraph (a) is or was a member or the executive officer, as the case requires; and
 - (c) an official seal of the Tribunal affixed to a document.
- (2) If an official seal of the Tribunal is affixed to a document, a court or person acting judicially is to presume that it was properly affixed unless the contrary is proved.

154. Validity of decisions

A decision of the Tribunal is not invalid only because —

- (a) there was a defect or irregularity in, or in connection with, a person's appointment to an office or to act in an office;
- (b) a person holding office as Deputy President acted in the office of President when the person was not the senior person holding office as Deputy President;
- (c) a person acted in the office of President or an office of Deputy President when the occasion for the person to act in the office had not arisen or had ceased;
- (d) a person represents another person in a matter that is before the Tribunal contrary to section 120; or

- (e) a person acted or performed a function contrary to section 11(7) or 144(3).

155. Register of proceedings

- (1) The executive officer is to keep a register of proceedings containing the details specified in the regulations.
- (2) The executive officer is to ensure that the register is available for inspection at any time that the Tribunal's office is open to the public for business.
- (3) A person may —
 - (a) inspect the register; and
 - (b) obtain a copy of any part of the register.
- (4) The regulations —
 - (a) may require a person who exercises or wishes to exercise a right under subsection (3) to pay a fee specified in the regulations; and
 - (b) may require that the fee be paid before the right can be exercised,

except that there is to be no fee for a party to a proceeding inspecting that part of the register that relates to the proceeding.
- (5) A right under subsection (3) does not apply to the extent, if any, that it is inconsistent with —
 - (a) any condition specified in the rules;
 - (b) any order of the Tribunal under section 61; or
 - (c) the duty that this Act or an enabling Act places on the Tribunal to ensure that certain things are not disclosed or are not made available.

156. Publication of Tribunal's decisions

- (1) The Tribunal may publish its decisions, or any of them.

s. 157

- (2) A decision may be published under subsection (1) with or without the reasons for it.
- (3) However section 62 applies to the publication of reasons.

157. Secrecy

- (1) This section applies to any person who is or has been —
 - (a) a member of the Tribunal;
 - (b) the executive officer or any other member of staff of the Tribunal; or
 - (c) a person acting under the authority of the Tribunal.
- (2) Except as permitted by this section, a person to whom this section applies commits an offence if the person directly or indirectly makes a record of, or discloses to any person, any information about the affairs of a person acquired in the performance of functions under or in connection with this Act or an enabling Act.
Penalty: \$5 000.
- (3) A person to whom this section applies may record or disclose information referred to in subsection (2) —
 - (a) with the written consent of the person to whom the information relates; or
 - (b) in connection with the performance of functions under this Act or an enabling Act.
- (4) A person to whom this section applies may disclose any information referred to in subsection (2) to a member of the Police Force for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence.
- (5) A person to whom this section applies may disclose any information referred to in subsection (2) for statistical purposes to a person approved by the Minister provided that the information does not identify any person to whom it relates.

158. Protection from disclosure by others

- (1) A person to whom information referred to in section 157(2) is disclosed, and any employee of that person, is subject to the same obligations and liabilities with respect to the recording or disclosure of the information as they would be if they were a person to whom section 157 applied who had acquired the information in the performance of functions under this Act or an enabling Act.
- (2) Subsection (1) does not apply to a member of the Police Force to whom information is disclosed under section 157(4).

159. Whether disclosure contrary to public interest

- (1) In this section —
certificate means a certificate under subsection (2);
document includes a part of a document.
- (2) The Attorney General may certify in writing that the disclosure of information about a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest for a reason described in subsection (3) that is specified in the certificate.
- (3) The certificate may specify that the disclosure would be contrary to the public interest —
 - (a) because the disclosure would reveal deliberations or decisions of —
 - (i) Cabinet;
 - (ii) a committee of Cabinet;
 - (iii) a subcommittee of a committee of Cabinet; or
 - (iv) Executive Council;
 - (b) because the disclosure would reveal something that parliamentary privilege protects from disclosure;

s. 160

- (c) because the disclosure would endanger the national or international security of Western Australia or Australia;
 - (d) because the disclosure would damage inter-governmental relations; or
 - (e) for any other reason that could form the basis for a claim by the State in a proceeding in the Supreme Court that the information or matter should not be disclosed.
- (4) The Tribunal constituted by the President sitting alone may order that the disclosure of any particular information or document to which a certificate applies would not be contrary to the public interest and, subject to subsection (7), the order has effect despite the certificate.
- (5) Any information or document to which a certificate applies is required, if requested, to be disclosed to the Tribunal constituted by the President sitting alone for the purpose of deciding whether to make an order under subsection (4).
- (6) For the purposes of section 105 the question of whether or not the disclosure of any particular information or document would be contrary to the public interest is a question of law.
- (7) If the Attorney General appeals under section 105 from a decision of the Tribunal to make an order under subsection (4), the Attorney General may notify the Tribunal in writing that the certificate is confirmed and in that case the certificate continues to have effect and the order ceases to have effect —
 - (a) pending the determination of the application for leave to appeal; and
 - (b) if leave is granted, pending the determination of the appeal.

160. How Tribunal is to deal with protected matter

- (1) The Tribunal is to ensure that matter provided to the Tribunal that the Tribunal considers to be protected matter is returned to

the person by whom it was provided when no longer required by the Tribunal.

- (2) The Tribunal is to ensure that matter provided to the Tribunal that the Tribunal considers to be protected matter is not disclosed in any way other than to —
 - (a) a sitting member of the Tribunal; or
 - (b) a person to whom disclosure is allowed under subsection (3).
- (3) The Tribunal, with the consent of the President, may allow a party, or a representative of a party, to have access to information, or inspect a document, to which a certificate under section 159(2) applies on any conditions the Tribunal thinks fit except that a person cannot be given access to matter that the Tribunal considers to be exempt matter, or allowed to inspect a document that the Tribunal considers to be an exempt document.

161. Application of the *Freedom of Information Act 1992*

This Act does not affect the application of the *Freedom of Information Act 1992* to the disclosure of an exempt document to a person or body other than the Tribunal but that Act does not prevent the disclosure of a document to the Tribunal as required or authorised by this Act.

162. Parliamentary privilege not affected

Nothing in this Act limits or otherwise affects the operation of the *Parliamentary Privileges Act 1891*.

163. Immunity

- (1) To the extent that this section is inconsistent with anything expressly stated in another provision of this Act, this section does not apply.

s. 164

- (2) A member of the Tribunal has, in the performance of his or her functions as member, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.
- (3) A person representing a party in a proceeding has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.
- (4) A party to a proceeding has the same protection and immunity as a party to proceedings in the Supreme Court.
- (5) A person appearing as a witness before the Tribunal has the same protection and immunity as a witness has in proceedings in the Supreme Court.
- (6) A person taking evidence on behalf of the Tribunal under section 71 has, in the performance of his or her functions under that section, the same protection and immunity as a member of the Tribunal.
- (7) A person has, in the performance of his or her functions as a mediator under section 54 or a special referee under section 65, the same protection and immunity as a member of the Tribunal.
- (8) A legal practitioner appointed under section 64 to assist the Tribunal has, in providing professional services under the appointment, the same protection and immunity as a legal practitioner has in acting in proceedings in the Supreme Court.
- (9) Otherwise a person appointed under section 64 to assist the Tribunal has, in the performance of his or her functions under the appointment, the same protection and immunity as a witness has in proceedings in the Supreme Court.

164. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or

purported performance of a function under this Act as a Tribunal member or a member of staff of the Tribunal.

- (2) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

165. Protection for compliance with this Act

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

166. Proceedings for defamation not to lie

No action or proceeding, civil or criminal, lies against the State, against a Minister or against a person employed or engaged by the State, in respect of the printing or publishing of a transcript of a proceeding before the Tribunal or a decision, or reasons for a decision, of the Tribunal.

167. Transfer of jurisdiction

- (1) Regulations or rules may prescribe any matter that is necessary or convenient to be prescribed in relation to issues arising when a written law confers on the Tribunal jurisdiction to deal with a matter (a *devolved matter*) that —

s. 167

- (a) is of a kind that is substantially similar to a kind of matter that could, before that jurisdiction was conferred, be dealt with by another tribunal, court, body, or person (the *former adjudicator*); and
 - (b) after that jurisdiction is conferred on the Tribunal, no longer comes within the jurisdiction of the former adjudicator except under this section.
- (2) Regulations or rules under subsection (1) may include provisions that modify the operation of this Act or another written law or otherwise have effect despite this Act or another written law.
- (3) Without limiting subsection (1) —
 - (a) subsections (2) to (17), which set out general principles governing how to deal with issues mentioned in subsection (1), have effect; and
 - (b) regulations or rules under subsection (1) may make any provision that is necessary or convenient to apply those general principles.
- (4) On the day on which jurisdiction is conferred on the Tribunal (the *transfer day*) —
 - (a) any devolved matter the hearing, consideration or determination of which has been sought or initiated in any way but not commenced before the former adjudicator is transferred to, and takes place before, the Tribunal;
 - (b) unless otherwise provided in the regulations, if the former adjudicator does not continue to exist any devolved matter that has been partly or fully heard before, but not determined by, the former adjudicator is transferred to, and continues before, the Tribunal;
 - (c) if the former adjudicator continues to exist, any devolved matter that has been partly or fully heard before, but not determined by, the former adjudicator is

to continue to be dealt with and determined by the former adjudicator unless it is transferred to the Tribunal under subsection (5) in which case it continues before the Tribunal;

- (d) any devolved matter that has been determined by the former adjudicator but —
 - (i) would have been appealable had the law in force immediately before the transfer day continued to apply; or
 - (ii) was the subject of an appeal that was not determined before the transfer day,

is to continue to be dealt with as if the law in force immediately before the transfer day had continued to apply; and

- (e) anything ordered, decided, or otherwise done by a former adjudicator in respect of a devolved matter before the transfer day becomes of the same effect as if, and enforceable as if, it were ordered, decided, or done by the Tribunal under the provisions authorising the Tribunal to order, decide, or do corresponding things after the transfer day.

- (5) In the circumstances described in subsection (4)(c) —

- (a) the former adjudicator may, if it would be practicable for the devolved matter to continue before the Tribunal, transfer the matter to the Tribunal; and
- (b) the former adjudicator is required to transfer the matter to the Tribunal if —
 - (i) the matter cannot be, or is unlikely to be, determined within the period of 6 months after the transfer day;
 - (ii) the President directs that the matter be transferred; or

s. 167

- (iii) as at the transfer day, the matter is the subject of a case that has been stated to a court.
- (6) Subsection (5)(a) or (b) does not apply in the case of —
 - (a) a matter of a prescribed kind; or
 - (b) a prescribed former adjudicator.
- (7) If —
 - (a) any matter is determined by the former adjudicator under subsection (4)(c); and
 - (b) the determination would have been appealable had the law in force immediately before the transfer day continued to apply,

an appeal against that determination may be made and dealt with as if that law had continued to apply.
- (8) The law in force before the transfer day continues to apply to enable a former adjudicator to continue to deal with and determine a matter under subsection (4)(c) and to enable an appeal to be made, or continued, and dealt with according to subsection (4)(d) or (7) and implemented.
- (9) In subsections (4)(d), (7) and (8) —
appeal includes a review and a case stated to a court.
- (10) Anything ordered, decided, or otherwise done by a former adjudicator under this section is to be given effect and enforced as if it were ordered, decided, or done by the Tribunal under the provisions authorising the Tribunal to order, decide, or do corresponding things after the transfer day.
- (11) A former adjudicator is to cause the executive officer to be sent—
 - (a) a record of anything referred to in subsection (10) that the former adjudicator orders, decides, or otherwise does; and
 - (b) all records or other things relating to a matter that —

- (i) the former adjudicator finishes dealing with under this section; or
 - (ii) is transferred under this section to the Tribunal,and the law in force before the transfer day continues to apply to enable this subsection to be complied with.
- (12) A former adjudicator who has not completed dealing with any matter under this section within the period of 6 months after the transfer day is required, within 7 days after that period expires, to give to the President a written report about the matter, including details of why it has neither been completed nor referred to the Tribunal.
- (13) Where a matter is transferred to the Tribunal under subsection (4)(b) or (5) —
 - (a) the practice and procedure, and any hearing or other fees, applicable to the matter when it was being dealt with by the former adjudicator continue to apply to the matter when it is being dealt with by the Tribunal; and
 - (b) the Tribunal has the powers that the former adjudicator had in dealing with the matter,if and to the extent that the regulations or rules so provide.
- (14) Provisions of the regulations or rules that relate to payment, waiver or reduction of fees apply to any fees that are applicable under subsection (13).
- (15) When constituting the Tribunal to deal with a matter transferred to the Tribunal under subsection (4)(b) or (5), the President may, include a person who was, or was a member of, the former adjudicator even though that person is not a Tribunal member, and that person may act as a sitting member for that matter as if he or she were a non-judicial member.
- (16) The Minister may determine the terms and conditions of service of a person who acts as a sitting member under subsection (15).

s. 168

- (17) A reference in this section to a thing done by a former adjudicator or the Tribunal includes a reference to a thing done for or in relation to the former adjudicator or the Tribunal.

168. Arrangements with Parliamentary Commissioner

- (1) In this section —
Parliamentary Commissioner means the Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*.
- (2) The President and the Parliamentary Commissioner may enter into arrangements regarding the following —
- (a) the co-operative exercise of the respective functions of the Tribunal and the Parliamentary Commissioner;
 - (b) measures to be taken by the Tribunal and the Parliamentary Commissioner to increase public awareness of the functions of the other.
- (3) The Tribunal and the Parliamentary Commissioner are authorised to perform their functions in conformity with any relevant arrangements entered into under subsection (2).

169. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

170. Tribunal's rules

- (1) The Rules Committee may make rules of the Tribunal prescribing all matters that are required or permitted by this Act to be prescribed by the rules, or are necessary or convenient to be prescribed by the rules for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), rules may be made about —

- (a) the organisation and management of the business of the Tribunal;
 - (b) the practice and procedure governing the business of the Tribunal; and
 - (c) records of the Tribunal.
- (3) Rules are to be laid before each House of Parliament within 6 sitting days of that House next following publication of the rules in the *Gazette*.

171. Provisions as to fees

- (1) Without limiting section 43, the regulations or rules may require the payment of fees relating to proceedings and hearings.
- (2) Regulations or rules relating to fees may provide for different fees for proceedings or hearings of different kinds and may authorise the waiver or reduction of a fee that would otherwise be payable.
- (3) If a question arises as to the fee payable or applicable in a particular case, the question is to be decided by the executive officer.
- (4) A person affected by a decision of the executive officer made under subsection (3) may have it reviewed by the President in a summary way.

[Section 171 amended by No. 5 of 2008 s. 115.]

172. Rules Committee

- (1) A committee (the **Rules Committee**) is established consisting of each judicial member, the non-judicial members for the time being specified under subsection (2) by the President and 2 persons appointed by the Minister who are not Tribunal members but have knowledge and experience that is relevant to matters that may be decided by the Tribunal.

s. 173

- (2) The President is to specify from time to time which non-judicial members are members of the Rules Committee.
- (3) The membership of the Rules Committee is to include senior members and ordinary members and is to be structured so as to draw on experience in both the original jurisdiction and the review jurisdiction of the Tribunal.

173. Legislative Council inquiry

As soon as practicable after the end of the period of 2 years after the day on which section 7 comes into operation an inquiry into the jurisdiction and operation of the Tribunal is to be conducted by —

- (a) a committee of the Legislative Council established to conduct that inquiry; or
- (b) an existing committee of the Legislative Council upon which the function of conducting that inquiry is conferred by that House.

[Part 9 omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 — Relevant Acts for section 105

[s. 105]

Architects Act 2004
Builders' Registration Act 1939
Chiropractors Act 2005
Dental Act 1939
Dental Prosthetists Act 1985
Employment Agents Act 1976
Finance Brokers Control Act 1975
Fish Resources Management Act 1994
Hairdressers Registration Act 1946
Land Valuers Licensing Act 1978
Legal Profession Act 2008
Licensed Surveyors Act 1909
Medical Practitioners Act 2008
Medical Radiation Technologists Act 2006
Motor Vehicle Dealers Act 1973
Nurses and Midwives Act 2006
Occupational Therapists Act 2005
*Optical Dispensers Act 1966*³
Optometrists Act 2005
Osteopaths Act 2005
Painters' Registration Act 1961
Pearling Act 1990
Pharmacy Act 1964
Physiotherapists Act 2005
Podiatrists Act 2005

Psychologists Act 2005

Real Estate and Business Agents Act 1978

Settlement Agents Act 1981

Taxi Act 1994

Travel Agents Act 1985

Valuation of Land Act 1978

Veterinary Surgeons Act 1960

*[Schedule 1 amended by No. 28 of 2005 s. 108; No. 29 of 2005 s. 109;
No. 30 of 2005 s. 109; No. 31 of 2005 s. 109; No. 32 of 2005 s. 109;
No. 33 of 2005 s. 108; No. 42 of 2005 s. 109; No. 21 of 2006 s. 105;
No. 50 of 2006 s. 114; No. 22 of 2008 s. 162; No. 21 of 2008
s. 706(4); No. 8 of 2009 s. 120.]*

Schedule 2 — Oath and affirmation of office

[s. 142A]

[Heading inserted by No. 24 of 2005 s. 39.]

I, [name], *[insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005]* that I will faithfully serve the people and the State of Western Australia in the office of [title of office] of the State Administrative Tribunal and I will do right to all manner of people, according to law, without fear or favour, affection or ill will.

[Schedule 2 inserted by No. 24 of 2005 s. 39.]

Notes

- ¹ This is a compilation of the *State Administrative Tribunal Act 2004* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal Act 2004</i>	54 of 2004	23 Nov 2004	s. 1 and 2: 23 Nov 2004; Act other than s. 1 and 2: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> Pt. 10	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Psychologists Act 2005</i> s. 108	28 of 2005	12 Dec 2005	4 May 2007 (see s. 2 and <i>Gazette</i> 4 May 2007 p. 1963)
<i>Optometrists Act 2005</i> s. 109	29 of 2005	12 Dec 2005	20 Apr 2007 (see s. 2 and <i>Gazette</i> 30 Mar 2007 p. 1451)
<i>Podiatrists Act 2005</i> s. 109	30 of 2005	12 Dec 2005	30 May 2007 (see s. 2 and <i>Gazette</i> 29 May 2007 p. 2486)
<i>Chiropractors Act 2005</i> s. 109	31 of 2005	12 Dec 2005	1 Aug 2007 (see s. 2 and <i>Gazette</i> 31 Jul 2007 p. 3789)
<i>Physiotherapists Act 2005</i> s. 109	32 of 2005	12 Dec 2005	23 Feb 2007 (see s. 2 and <i>Gazette</i> 20 Feb 2007 p. 505)
<i>Osteopaths Act 2005</i> s. 108	33 of 2005	12 Dec 2005	30 May 2007 (see s. 2 and <i>Gazette</i> 29 May 2007 p. 2486)
<i>Occupational Therapists Act 2005</i> s. 109	42 of 2005	19 Dec 2005	1 Aug 2007 (see s. 2 and <i>Gazette</i> 31 Jul 2007 p. 3789)

Reprint 1: The State Administrative Tribunal Act 2004 as at 7 Apr 2006 (includes amendments listed above except those in the *Psychologists Act 2005*, *Optometrists Act 2005*, *Osteopaths Act 2005*, *Physiotherapists Act 2005*, *Podiatrists Act 2005*, *Chiropractors Act 2005* and *Occupational Therapists Act 2005*)

Short title	Number and year	Assent	Commencement
<i>Medical Radiation Technologists Act 2006</i> s. 105	21 of 2006	9 Jun 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 26 Jun 2007 p. 3013)
<i>Nurses and Midwives Act 2006</i> s. 114	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Acts Amendment (Justice) Act 2008</i> Pt. 22	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Legal Profession Act 2008</i> s. 706	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
Reprint 2: The State Administrative Tribunal Act 2004 as at 16 Jan 2009 (includes amendments listed above except those in the <i>Legal Profession Act 2008</i>)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 120	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))

^{1a} [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

Provisions that have not come into operation

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<i>Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010</i> s. 82⁴	14 of 2010	25 Jun 2010	To be proclaimed (see s. 2(b))

² Footnote no longer applicable.

³ Repealed by the *Optical Dispensers Repeal Act 2006*.

⁴ On the date as at which this compilation was prepared, the *Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010* s. 82 had not come into operation. It reads as follows:

82. *State Administrative Tribunal Act 2004* amended

- (1) This section amends the *State Administrative Tribunal Act 2004*.
- (2) In Schedule 1 delete “*Finance Brokers Control Act 1975*”.