

Serial 77
Northern Territory Civil and Administrative Tribunal Bill 2014
Mr Elferink

A Bill for an Act to establish the Northern Territory Civil and Administrative
Tribunal, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE TRIBUNAL ACT

Act No. [] of 2014

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
3	Definitions.....	1
4	Act binds Crown	2
5	Relationship with other Acts	3
6	Application of Criminal Code	3
Part 2	Northern Territory Civil and Administrative Tribunal	
Division 1	Establishment of Tribunal	
7	Tribunal established	3
8	Jurisdiction.....	3
9	Tribunal to operate throughout Territory	3
10	Objectives of Tribunal.....	3
11	Independence of Tribunal.....	4
Division 2	Membership of Tribunal	
12	Membership.....	4
13	President	4
14	Functions of President.....	5
15	Deputy President.....	6
16	Ordinary members.....	7
17	Duration of appointment	7
18	Vacation of office	7
19	Termination of appointment of member	7
20	Validity of acts	8
21	Delegation	8
Division 3	Administration of Tribunal	
22	Constitution of Tribunal for proceeding.....	8
23	Tribunal may hear different proceedings at same time.....	8

24	Alteration of members constituting Tribunal.....	9
25	Different aspects of same matter may be dealt with by different members.....	9
26	Who presides at proceedings of Tribunal	9
27	Decision if 2 or more members constitute Tribunal.....	9
28	Determination of questions of law.....	10
29	Questions of law referred to Supreme Court	10

Part 3 Jurisdiction

Division 1 General matters

30	Sources of jurisdiction	10
31	Kinds of jurisdiction.....	11

Division 2 Original jurisdiction

32	Original jurisdiction	11
----	-----------------------------	----

Division 3 Review jurisdiction

Subdivision 1 General matters

33	Review jurisdiction.....	11
----	--------------------------	----

Subdivision 2 Information about reviewable decision

34	Notice of decision and right to have it reviewed to be given by decision maker	11
35	Statement of reasons for decision	12
36	Tribunal may order decision maker to provide reasons	13
37	Exceptions to what must be provided	13
38	Non-disclosure of document or information if disclosure contrary to public interest.....	14
39	Tribunal may revoke certificate.....	14
40	Minister may appeal Tribunal's order.....	15
41	Decision maker to give Tribunal reasons for decision	15
42	No decision made by decision maker	15

Subdivision 3 Effect of commencement of review proceedings

43	Decision maker's powers restricted after proceeding commenced.....	16
44	Effect of review proceeding on decision	16

Subdivision 4 Review of reviewable decision

45	Rehearing.....	17
----	----------------	----

46	Proceeding for review of reviewable decision.....	17
47	Decision maker to assist Tribunal.....	17
48	Relevant Minister to identify government policy.....	17
49	Tribunal may invite decision maker to reconsider decision.....	17

Subdivision 5 Decision on review

50	Determination after proceeding	18
51	Effect of determination.....	18

Part 4 Proceedings

Division 1 General matters

52	Tribunal may determine own procedures	19
53	Principles for conducting proceedings	19
54	Tribunal to ensure parties are informed	19
55	Tribunal to fully inform itself for proceeding	20
56	How matter to be presented	20
57	Power to adjourn proceedings	20
58	President may establish divisions.....	20
59	Sittings.....	20
60	Proceedings to be heard in public	21
61	Interpreters	21
62	Tribunal may make orders for proceedings for private hearing, non-publication	21
63	Preserving subject matter of proceedings	22
64	Tribunal may grant alternative orders or relief	22
65	Interlocutory orders.....	22
66	Security as to costs	22
67	Conditional and ancillary orders	23
68	Relief from time limits	23
69	Electronic hearings and proceedings on documents	23
70	Completion of part-heard proceedings	24
71	Privilege against self-incrimination	24
72	Other claims of privilege	24
73	Appointment of assessors	24
74	Functions of assessors.....	24
75	Costs for assessor.....	25
76	Disclosure of interests for assessors	26
77	Disclosure of interests for members	26
78	Power to disregard requirements.....	26
79	Power to correct mistakes	26
80	Tribunal may reopen proceeding if person was absent	27
81	Tribunal may authorise person to take evidence	28
82	Process and service	28
83	Proof of decisions and orders of Tribunal	28
84	Enforcement of decisions and orders of Tribunal	28
85	Accessibility of evidence.....	29

86	Contempt.....	30
87	Conduct constituting contempt of the Tribunal.....	30
88	Remove person engaging in contempt.....	31

Division 2 Evidence

89	Power to require person to give evidence or produce evidentiary material	31
90	Person fails to comply with summons.....	32
91	Dealing with evidentiary material	32
92	Witnesses	32
93	Entry and inspection of property	33

Division 3 Procedures

94	Commencing proceeding.....	33
95	Registrar may accept or refuse application	34
96	Directions for conduct of proceeding	35
97	Consolidating proceedings	35
98	Splitting proceedings	35
99	More appropriate forum	35
100	Withdrawing proceeding	36
101	Dismissing proceeding for want of prosecution	36
102	Frivolous, vexatious or improper proceedings	36
103	Proceeding conducted to cause disadvantage	36
104	Tribunal may appoint guardian	37
105	Decisions and reasons for decisions	37
106	Publication	37

Division 4 Alternative dispute resolution and settlement

Subdivision 1 Compulsory conference

107	Tribunal may require parties to attend compulsory conference	38
108	Purpose of compulsory conference	38
109	Question of law may be referred to President.....	38
110	Conduct of compulsory conference	38
111	Evidence in compulsory conference inadmissible in proceeding.....	39
112	Settlement at compulsory conference	39
113	Advise Tribunal of outcome	39
114	Another member may preside over compulsory conference.....	39
115	Member who presided over compulsory conference may not constitute Tribunal	40
116	Rules may set out circumstances for compulsory conference details to be made public.....	40

Subdivision 2 Mediation

117	Approved mediators	40
118	Tribunal may require parties to attend mediation.....	40
119	Purpose of mediation.....	40
120	Conduct of mediation.....	40
121	Evidence in mediation inadmissible in proceeding	41
122	Settlement at mediation if mediator is member.....	41
123	Settlement at mediation if mediator is not a member.....	41
124	Advise Tribunal of outcome	42
125	Member who presided over mediation may not constitute Tribunal.....	42

Subdivision 3 Settlement by Tribunal

126	Settling a proceeding.....	42
-----	----------------------------	----

Division 5 Parties and representation

127	Parties	43
128	Person may be joined as party	43
129	Minister or other person may intervene in proceeding.....	44
130	Representation	44

Division 6 Costs

131	Parties bear own costs	44
132	Tribunal may make costs orders.....	44
133	Additional considerations for costs in review jurisdiction	45
134	Costs order against a representative.....	45

Division 7 Arrest

135	Arrest of person for not complying with summons	45
136	Conditional release of arrested person	46
137	Review by Supreme Court.....	46

Division 8 Directions and rules

138	Rules	47
139	Practice directions	48

Part 5 Internal review and appeals

Division 1 Internal review

140	Review of original decision	48
-----	-----------------------------------	----

Division 2	Appeals	
141	Appeal to Supreme Court	48
142	Effect of appeal on decision appealed against	48
Part 6	Registrar	
143	Appointment of Registrar	49
144	Functions and powers of Registrar	49
145	Registrar may delegate powers and functions.....	49
146	Termination of appointment.....	49
Part 7	Miscellaneous matters	
147	Protection from liability for acts.....	49
148	Protection from liability for disclosure	50
149	Confidentiality of information	50
150	False or misleading information.....	51
151	Annual report.....	52
152	Additional reports.....	52
153	Proceedings for offences.....	53
154	Seal	53
155	Regulations.....	53



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to establish the Northern Territory Civil and Administrative Tribunal,
and for related purposes

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Northern Territory Civil and Administrative Tribunal Act 2014*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

compulsory conference means a conference conducted under Part 4, Division 4, Subdivision 1.

costs order means an order requiring a party to a proceeding to pay for all or part of the costs of:

- (a) another party; or

- (b) a person who is required to appear before the Tribunal or to produce material; or
- (c) for the compensation of another party for any reasonable expenses or loss resulting from any proceedings or matter.

decision maker is a person who makes a reviewable decision.

Deputy President means a Deputy President appointed under section 15.

member means a member of the Tribunal mentioned in section 12.

President means the President appointed under section 13.

presiding member means:

- (a) if the Tribunal is constituted by one member – that member; or
- (b) otherwise – the presiding member determined under section 26.

original jurisdiction means the jurisdiction of the Tribunal mentioned in section 32.

proceeding means the hearing of a matter by the Tribunal.

Registrar means the Registrar appointed under section 143.

relevant Act means an Act or subordinate legislation that confers jurisdiction on the Tribunal.

reviewable decision means a decision made by a decision maker that may be reviewed by the Tribunal.

review jurisdiction means the jurisdiction of the Tribunal mentioned in section 33.

rules means rules made by the rules committee mentioned in section 138.

Tribunal means the Northern Territory Civil and Administrative Tribunal established by section 7.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Relationship with other Acts

- (1) If there is an inconsistency between this Act and a relevant Act, the relevant Act prevails to the extent of the inconsistency.
- (2) A relevant Act may modify the operation of this Act in relation to an exercise of jurisdiction conferred by that Act.
- (3) This section does not apply to section 45.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Northern Territory Civil and Administrative Tribunal

Division 1 Establishment of Tribunal

7 Tribunal established

The Northern Territory Civil and Administrative Tribunal is established.

8 Jurisdiction

The Tribunal has the jurisdiction mentioned in Part 3.

9 Tribunal to operate throughout Territory

- (1) The Tribunal must facilitate access to its services throughout the Territory.
- (2) The Tribunal may sit at any place in the Territory.
- (3) The Tribunal must maintain registries at the places determined by the Minister after consultation with the President.

10 Objectives of Tribunal

The Tribunal must:

- (a) promote the best principles of public administration; and

- (b) be accessible to the public by being easy to find and easy to access; and
- (c) be responsive to parties, especially to people with special needs; and
- (d) ensure that proceedings are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures when appropriate; and
- (e) keep costs to parties involved in a proceeding to a minimum insofar as is just and appropriate; and
- (f) use straightforward language and procedures; and
- (g) act with as little formality and technicality as possible; and
- (h) be flexible in the way in which it conducts its business and adjust its procedures to best fit the circumstances of a particular proceeding or a particular jurisdiction.

11 Independence of Tribunal

- (1) The Tribunal is not subject to the direction or control of the Minister in exercising its jurisdiction.
- (2) A member is not subject to the direction or control of the Minister in the exercise of the member's powers or the performance of the member's functions.

Division 2 Membership of Tribunal

12 Membership

The Tribunal consists of:

- (a) the President; and
- (b) the Deputy Presidents; and
- (c) the ordinary members.

13 President

- (1) The Administrator may, by *Gazette* notice, appoint one of the following to be the President of the Tribunal:
 - (a) a magistrate;

- (b) a person who is eligible for appointment as a magistrate.
- (2) A person must not be appointed unless:
 - (a) the person has agreed to the appointment; and
 - (b) if the person is a magistrate – the Minister has consulted with the Chief Magistrate about the person's appointment.
- (3) The appointment of a magistrate as the President does not affect:
 - (a) the magistrate's tenure of office or status as a magistrate; or
 - (b) the payment of the magistrate's entitlements and allowances as a magistrate.
- (4) If the President is a magistrate, service as President is taken to constitute service as a magistrate.
- (5) If the President is a magistrate, the Chief Magistrate cannot exercise the Chief Magistrate's powers under section 13A of the *Magistrates Act* in a way that would interfere with the member's ability to exercise powers or perform functions under this Act.

14 Functions of President

The President has the following administrative functions:

- (a) to be primarily responsible for the administration of the Tribunal;
- (b) to manage the business of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions;
- (c) to provide leadership and guidance to, and engender cohesiveness and collaboration amongst, the members and staff of the Tribunal;
- (d) to manage the members of the Tribunal, including by developing codes of conduct for members;
- (d) to issue practice directions for the Tribunal;
- (e) to develop and implement performance standards and benchmarks for the Tribunal and the members and staff of the Tribunal;
- (f) to promote the training, education and professional development of members;

- (g) to oversee the proper use of the resources of the Tribunal;
- (h) any other functions conferred on the President by this or any other Act.

15 Deputy President

- (1) There must be at least one Deputy President of the Tribunal.
- (2) The Administrator may, by *Gazette* notice, appoint one of the following to be a Deputy President:
 - (a) a magistrate;
 - (b) a person who is eligible for appointment as a magistrate.
- (3) A person must not be appointed unless:
 - (a) the person has agreed to the appointment; and
 - (b) if the person is a magistrate – the Minister has consulted with the Chief Magistrate about the person's appointment; and
 - (c) the Minister has taken into account any recommendation made by the President.
- (4) The appointment of a magistrate as a Deputy President does not affect:
 - (a) the magistrate's tenure of office or status as a magistrate; or
 - (b) the payment of the magistrate's entitlements and allowances as a magistrate.
- (5) If a Deputy President is a magistrate, service as the Deputy President is taken to constitute service as a magistrate.
- (6) If a Deputy President is a magistrate, the Chief Magistrate cannot exercise the Chief Magistrate's powers under section 13A of the *Magistrates Act* in a way that would interfere with the member's ability to exercise powers or perform functions under this Act.
- (7) A Deputy President has the following administrative functions:
 - (a) to assist the President in the day-to-day operations of the Tribunal;
 - (b) any other functions conferred on a Deputy President by this or any other Act.

16 Ordinary members

- (1) The Administrator may, by *Gazette* notice, appoint a person to be an ordinary member of the Tribunal.
- (2) A person must not be appointed to be an ordinary member unless:
 - (a) the person is a lawyer with at least 5 years' experience as a legal practitioner; or
 - (b) the person holds suitable qualifications, or has suitable knowledge or experience, relating to the jurisdiction of the Tribunal.
- (3) A person must not be appointed unless:
 - (a) the person has agreed to the appointment; and
 - (b) the Minister has taken into account any recommendation made by the President.

17 Duration of appointment

A member holds office for 5 years or any shorter period specified in the appointment and is eligible for reappointment.

18 Vacation of office

A person ceases to be a member if:

- (a) the person resigns by giving written notice to the Minister; or
- (b) the person's term of office expires and the person is not reappointed; or
- (c) the person's appointment is terminated under section 19.

19 Termination of appointment of member

- (1) The appointment of a member cannot be terminated other than under this section.
- (2) The Administrator may, in writing, terminate the appointment of a member.
- (3) However, the Administrator may do so only on the address of the Legislative Assembly seeking the removal of the member on the grounds of incapacity or misbehaviour.

20 Validity of acts

The Tribunal's exercise of its jurisdiction is not affected only by reason of a vacancy in the membership of the Tribunal or a defect in the appointment of a person as a member.

21 Delegation

The President may delegate his or her administrative functions under this Act to:

- (a) a member; or
- (b) the Registrar.

Division 3 Administration of Tribunal

22 Constitution of Tribunal for proceeding

- (1) When a proceeding is commenced, the President must nominate not more than 3 members to constitute the Tribunal for the proceeding.
- (2) Of the persons nominated under subsection (1), a person cannot be nominated to constitute, or be one of the persons constituting, the Tribunal in relation to a matter in the review jurisdiction of the Tribunal if the member 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.
- (3) The President may provide for the Registrar to constitute the Tribunal for a proceeding in respect of a matter or class of matters, as specified by the rules.
- (4) If the Tribunal is constituted by the Registrar for a proceeding, the Registrar may refer the matter to the Tribunal differently constituted for determination by the Tribunal on the Registrar's own initiative or on the President's direction.

23 Tribunal may hear different proceedings at same time

The President may nominate more than one series of members under section 22 at any one time and the members nominated may constitute the Tribunal in respect of different proceedings at the same time.

24 Alteration of members constituting Tribunal

- (1) The President may alter the member or members who constitute the Tribunal for a proceeding.
- (2) An alteration does not affect the continuity of a proceeding.

25 Different aspects of same matter may be dealt with by different members

- (1) The President may provide that different aspects of the same matter may be dealt with by the Tribunal constituted by different members.
- (2) The Tribunal may have regard to any evidence taken by the Tribunal differently constituted.

26 Who presides at proceedings of Tribunal

- (1) If the Tribunal is constituted by 2 or more members, the presiding member is:
 - (a) the most senior member determined by order of precedence;
or
 - (b) if the President nominates a different member – that member.
- (2) The order of precedence is as follows:
 - (a) President;
 - (b) Deputy President (in order of date of appointment if 2 or more Deputy Presidents);
 - (c) ordinary member (in order of date of appointment if 2 or more ordinary members).

27 Decision if 2 or more members constitute Tribunal

- (1) This section applies if the Tribunal is constituted by 2 or more members.
- (2) If the Tribunal is constituted by 2 members, the decision of the Tribunal is:
 - (a) the unanimous decision of both members; or
 - (b) if they cannot agree – the decision of the presiding member.

- (3) If the Tribunal is constituted by more than 2 members, the decision of the Tribunal is:
 - (a) the decision of a majority of members; or
 - (b) if the members are equally divided – the decision of the presiding member.

28 Determination of questions of law

- (1) The Tribunal may refer a question of law to the President.
- (2) The President may:
 - (a) decide the question of law; or
 - (b) refer the question of law to the Supreme Court.
- (3) If the determination of a matter requires the determination of a question of law, the President may also decide the matter in addition to deciding the question of law.
- (4) A decision made under subsection (2)(a) or a determination made under subsection (3) is taken to be the decision or determination of the Tribunal.

29 Questions of law referred to Supreme Court

- (1) If the President refers a question of law to the Supreme Court, the Supreme Court may:
 - (a) decide the question; and
 - (b) make any consequential orders it considers appropriate.
- (2) The decision and any consequential orders are taken to be a decision or order of the Tribunal.
- (3) The Supreme Court may adjourn the proceeding before the Tribunal until the determination of the question of law.

Part 3 Jurisdiction

Division 1 General matters

30 Sources of jurisdiction

The Tribunal has the jurisdiction conferred on it by this or any other Act.

31 Kinds of jurisdiction

The Tribunal has 2 kinds of jurisdiction in relation to matters:

- (a) original jurisdiction; and
- (b) review jurisdiction.

Division 2 Original jurisdiction

32 Original jurisdiction

- (1) If the matter that a relevant Act gives the Tribunal jurisdiction to deal with does not involve review of a decision, the matter comes within the Tribunal's original jurisdiction.
- (2) The Tribunal must exercise its original jurisdiction in accordance with this Act and the relevant Act.

Division 3 Review jurisdiction

Subdivision 1 General matters

33 Review jurisdiction

- (1) If the matter that a relevant Act gives the Tribunal jurisdiction to deal with involves a review of a decision, the matter comes within the Tribunal's review jurisdiction.
- (2) The Tribunal must exercise its review jurisdiction in accordance with this Act and the relevant Act.

Subdivision 2 Information about reviewable decision

34 Notice of decision and right to have it reviewed to be given by decision maker

- (1) This section applies if a decision maker makes a reviewable decision under a relevant Act.
- (2) On making a reviewable decision, the decision maker must give each person who has a right under the relevant Act to have the decision reviewed by the Tribunal written notice of:
 - (a) the decision; and
 - (b) the fact that the person has a right to have the decision reviewed by the Tribunal; and

- (c) the fact that the person has a right to request a statement of reasons for the decision.
- (3) Subsection (2) does not apply in relation to a decision that is prescribed by the Regulations.
- (4) If a person to whom notice is required to be given is not readily identifiable or cannot be readily located, the decision maker complies with subsection (2) if the decision maker takes reasonable steps to give the notice.
- (5) A decision maker's failure to comply with this section does not affect the validity of the decision.
- (6) If this Act and the relevant Act require the decision maker to give notice of a decision, the decision maker is only required to give the notice once.

35 Statement of reasons for decision

- (1) A person who has a right under a relevant Act to have a decision reviewed by the Tribunal may request the decision maker give the person a written statement of reasons for the decision.
- (2) Subsection (1) does not apply if:
 - (a) the decision maker has already given the person a written statement containing the details mentioned in subsection (5);
or
 - (b) the relevant Act contains provisions under which the person is entitled to a written statement containing the details mentioned in subsection (5) and the decision maker has already given a statement in accordance with the relevant Act.
- (3) A request under subsection (1):
 - (a) must be in writing; and
 - (b) must be made:
 - (i) if the person making the request was given a notice under section 34(2) – within 28 days after notice of the decision was given; or
 - (ii) otherwise – within 28 days after the decision.
- (4) The decision maker must comply with a request as soon as practicable, and in any case, within 28 days after receiving the request.

- (5) Subject to section 37, the decision maker's written statement must contain the following:
- (a) the reasons for the decision;
 - (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.
- (6) If this Act and the relevant Act require the decision maker to give a statement of reasons, the decision maker is only required to give the statement once.

36 Tribunal may order decision maker to provide reasons

- (1) If a decision maker fails to comply with a request under section 35(1), the person who made the request may apply to the Tribunal for an order that the decision maker give the statement to the person.
- (2) The person must 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 given the statement, the Tribunal may order that the decision maker give the statement to the person within the time specified in the order.
- (4) The Tribunal may order a decision maker give the statement even if a request is not lodged within the time period specified in section 35(3) if the Tribunal considers there were reasonable grounds for the applicant not making the request in time.

37 Exceptions to what must be provided

- (1) A written statement must not include any protected matter.
- (2) If the omission of protected matter would make the statement false or misleading then, instead of providing the statement, the decision maker must inform the person who requested the statement that it is not being provided because it would be false or misleading for that reason.
- (3) In this section:

protected matter means any information or document in relation to which there is in force a certificate under section 38.

**38 Non-disclosure of document or information if disclosure
contrary to public interest**

- (1) The Minister may certify in writing that the disclosure of specified information or of a specified document would be contrary to the public interest.
- (2) The Minister may do so only on one or more of the following grounds:
 - (a) the disclosure would reveal deliberations or decisions of:
 - (i) Cabinet; or
 - (ii) Executive Council;
 - (b) the disclosure would reveal something that parliamentary privilege protects from disclosure;
 - (c) the disclosure would endanger the national or international security of the Territory or Australia;
 - (d) the disclosure would damage inter-governmental relations;
 - (e) any other reason that could form the basis for a claim by the Territory or the Minister in a proceeding in the Supreme Court that the information or matter should not be disclosed.
- (3) The certificate remains in force until revoked by the Minister or the Tribunal.
- (4) If the Tribunal revokes a certificate, the Minister cannot issue another certificate for the same information or document.

39 Tribunal may revoke certificate

- (1) The Tribunal may revoke a certificate under section 38 if it considers the disclosure of the information or document would not be contrary to the public interest.
- (2) For this section, the Tribunal is to be constituted by the President.
- (3) A person in possession of the information or document to which a certificate applies must produce it to the Tribunal on request.
- (4) A question of whether or not the disclosure of information or a document would be contrary to the public interest is a question of law.

40 Minister may appeal Tribunal's order

If the Minister appeals under section 141 against a decision of the Tribunal to revoke a certificate under section 39, the decision of the Tribunal is stayed until:

- (a) the application for leave to appeal is dismissed; or
- (b) if leave is granted – pending the determination of the appeal.

41 Decision maker to give Tribunal reasons for decision

If a proceeding in the Tribunal's review jurisdiction is commenced, the decision maker must provide the following to the Tribunal:

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

42 No decision made by decision maker

(1) This section applies if:

- (a) a person (*decision maker*) is required under a relevant Act to make a decision; and
- (b) the decision, if made, would be a reviewable decision; and
- (c) the decision maker has not made a decision by the expiry of:
 - (i) if the relevant Act specifies a period within which the decision must be made – that period; or
 - (ii) otherwise – 60 days after the date on which the obligation to make the decision arose.

Example for subsection (1)(c)(ii)

If a person must lodge an application for a decision and there is no specified period within which the decision must be made, the decision maker has not made a decision 60 days after the date the application was lodged.

(2) The decision maker is taken to have made the decision (the *first decision*):

- (a) at the expiry of the period mentioned in subsection (1)(c); and
- (b) in a way that is adverse to all persons who would have had a right to seek a review of the decision had it in fact been made.

- (3) If a person applies for a review of the first decision and, before the review is determined, the decision maker in fact makes a decision (the *second decision*):
- (a) subsection (2) ceases to apply; and
 - (b) the Tribunal may:
 - (i) if the second decision is adverse to the applicant and the applicant wishes to continue the review – continue to deal with and determine the review as a review of the second decision; or
 - (ii) otherwise dismiss the proceedings.

Subdivision 3 Effect of commencement of review proceedings

43 Decision maker's powers restricted after proceeding commenced

- (1) After the commencement of a proceeding in the Tribunal's review jurisdiction about a decision, the decision maker must not:
- (a) vary the decision; or
 - (b) set aside the decision and substitute a different decision.
- (2) However, the decision maker may do so if:
- (a) the relevant Act permits; or
 - (b) the parties to the proceeding consent to the variation or setting aside and substitution; or
 - (c) the decision maker is invited to reconsider the decision under section 49.

44 Effect of review proceeding on decision

- (1) The commencement of a proceeding in the Tribunal's review jurisdiction does not affect the operation of the original decision unless an order is made under subsection (2).
- (2) The Tribunal or decision maker may make an order staying the operation of the decision:
- (a) until the Tribunal makes its decision on the proceeding; or
 - (b) until another time specified in the order.

- (3) The Tribunal or decision maker may do so:
 - (a) at any time after the commencement of the proceeding; and
 - (b) on application or on its own initiative.

Subdivision 4 Review of reviewable decision

45 Rehearing

The Tribunal must review a reviewable decision by way of rehearing.

46 Proceeding for review of reviewable decision

- (1) The objective of the Tribunal exercising its review jurisdiction is to produce the correct or preferable decision.
- (2) A proceeding in the Tribunal's review jurisdiction will include:
 - (a) an examination of the evidence or the material before the decision maker; and
 - (b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for a rehearing.
- (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 in the Tribunal's review jurisdiction.

47 Decision maker to assist Tribunal

The decision maker must, at the request of the Tribunal, assist the Tribunal so that it can make its decision.

48 Relevant Minister to identify government policy

A Minister responsible for the administration of a relevant Act may certify that there was, at the time of a reviewable decision, a statement of policy that was publicly available at the time the decision was made.

49 Tribunal may invite decision maker to reconsider decision

- (1) The Tribunal may, at any time during a proceeding, invite the decision maker to reconsider the decision by a time specified.

- (2) The decision maker must reconsider the decision and do one of the following:
 - (a) confirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision and substitute a different decision.
- (3) The Tribunal may make any orders it considers appropriate after the decision maker has reconsidered the decision.

Subdivision 5 Decision on review

50 Determination after proceeding

- (1) After reviewing a decision, the Tribunal must, after a proceeding in its review jurisdiction:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and:
 - (i) substitute its own decision; or
 - (ii) send the matter back to the decision maker for reconsideration in accordance with any recommendations the Tribunal considers appropriate; or
 - (d) make a different decision if permitted by the relevant Act.
- (2) The Tribunal may make any consequential orders the Tribunal considers appropriate.
- (3) The fact that a decision is made on reconsideration under subsection (1)(c)(ii) (the *reconsidered decision*) does not prevent the reconsidered decision from being a reviewable decision.

51 Effect of determination

- (1) If the Tribunal confirms the decision, no further review of the decision can be sought by the same person or any other person.
- (2) If the Tribunal varies or substitutes the decision, the decision:
 - (a) is taken to be the decision of the decision maker; and
 - (b) unless the Tribunal orders otherwise – has effect from the time when the original decision would have had effect.

- (3) Despite subsection (2)(a), the varied or substituted decision is not a reviewable decision.

Part 4 Proceedings

Division 1 General matters

52 Tribunal may determine own procedures

Subject to this Act or a relevant Act, the Tribunal may determine its own procedures.

53 Principles for conducting proceedings

- (1) In conducting a proceeding, the Tribunal must act fairly and according to the substantial merits of the matter that is the subject of the proceeding.
- (2) The Tribunal:
- (a) must comply with the rules of natural justice; and
 - (b) may inform itself in any way it considers appropriate; and
 - (c) must act with as little formality and technicality, and with as much speed as the requirements of this Act, a relevant Act and a proper consideration of the matter permit; and
 - (d) must ensure, so far as is practicable, that all relevant material is disclosed to the Tribunal to enable it to decide the proceeding with all relevant facts.
- (3) The Tribunal may accept any document into evidence despite any non-compliance with a time limit or other requirement under this Act or the relevant Act relating to the document or the service of the document.

54 Tribunal to ensure parties are informed

The Tribunal must take the following measures:

- (a) take reasonable steps to ensure that the parties to a proceeding have a reasonable opportunity to understand the nature of the matter under consideration;
- (b) take reasonable steps to ensure that the parties to a proceeding understand the nature of any assertions made in the proceedings and the legal implications of those assertions;

- (c) explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or direction made by the Tribunal.

55 Tribunal to fully inform itself for proceeding

The Tribunal must take all reasonable steps to ensure:

- (a) that the parties have had the opportunity in a proceeding to be heard or otherwise have their submissions received; and
- (b) that all relevant material is disclosed to the Tribunal so as to enable it to decide all the relevant facts in issue in a proceeding.

56 How matter to be presented

The Tribunal may:

- (a) require evidence or argument to be presented in writing and decide which aspects it will hear oral evidence or argument; and
- (b) limit the time available for presenting the respective cases of parties before it during a proceeding to an extent that it considers would not impede the fair and adequate presentation of the cases.

57 Power to adjourn proceedings

The Tribunal may adjourn a proceeding at any time and to any place (including for the purpose of enabling the parties to negotiate a settlement or the reconsideration of a decision by the decision maker).

58 President may establish divisions

- (1) The President may establish various divisions for matters that reflect the areas of jurisdiction of the Tribunal.
- (2) The President may assign members to one or more divisions and may vary the assignment at any time.

59 Sittings

The Tribunal may sit at the times and in the places in the Territory determined by the President, including at different places at the same time.

60 Proceedings to be heard in public

The hearing of a proceeding is to be open to the public unless the Tribunal orders otherwise under section 62.

61 Interpreters

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

62 Tribunal may make orders for proceedings for private hearing, non-publication

- (1) The Tribunal may make orders for a proceeding in the following terms:
 - (a) a hearing, or part of a hearing, be held in private;
 - (b) prohibit or restrict the publication of the name and address of a witness appearing before the Tribunal;
 - (c) prohibit or restrict the publication of evidence given before the Tribunal;
 - (d) prohibit or restrict the disclosure of some or all of the evidence given before the Tribunal to the parties to a proceeding;
 - (e) exclude any person from a proceeding or any part of a proceeding.
- (2) The Tribunal must not do so unless the Tribunal considers that the order is necessary:
 - (a) in the interest of justice; or
 - (b) by reason of the confidential nature of the evidence to be given before the Tribunal; or
 - (c) in order to expedite proceedings of the Tribunal; or
 - (d) for any other reason.

Note for section 62

Non-compliance with an order of the Tribunal may constitute contempt under section 86.

63 Preserving subject matter of proceedings

- (1) The Tribunal may make any order that may be necessary to preserve the subject matter of a proceeding, or to protect the interests of a party, until questions arising in a proceeding have been determined.
- (2) The Tribunal may make the order on the application of a party or on its own initiative.
- (3) The order may be made whether or not a person whose interests may be affected:
 - (a) is a party; or
 - (b) has been given an opportunity to be heard.
- (4) The order may be made:
 - (a) for a specified period; or
 - (b) until a specified event or stage in a proceeding.
- (5) Before making the order, the Tribunal may require an undertaking from a party as to costs or compensation as it considers appropriate.
- (6) The Tribunal may assess any costs or compensation referred to in subsection (5) and the amount assessed is recoverable as a debt in the appropriate court.
- (7) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under a relevant Act to make an order for an injunction or interim injunction.

64 Tribunal may grant alternative orders or relief

Despite the fact that a specific order is sought by an applicant in a proceeding, the Tribunal may make any other order it considers appropriate.

65 Interlocutory orders

The Tribunal may make interlocutory orders.

66 Security as to costs

- (1) The Tribunal may order a party to a proceeding give security for the payment of costs or to give an undertaking as to the payment of other monetary amounts that may be awarded against the party.

- (2) The Tribunal may vary the order at any time.
- (3) If a person fails to comply with the order the Tribunal may make any orders it considers appropriate, including:
 - (a) to dismiss the proceeding; or
 - (b) costs orders.
- (4) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under a relevant Act in relation to the giving of security or an undertaking or the imposition of costs.

67 Conditional and ancillary orders

The Tribunal's power to make a decision in a proceeding (the *primary power*) includes a power:

- (a) to impose conditions on the decision; and
- (b) to make an ancillary order or direction the Tribunal considers appropriate for achieving the purpose for which the Tribunal may exercise the primary power.

Examples of ancillary orders

An order adjourning the proceeding or an order or direction that a person give an undertaking to the Tribunal.

68 Relief from time limits

- (1) If this Act or the relevant Act imposes a time limit for doing something in relation to a proceeding, the Tribunal may extend or shorten the time limit, if permitted to do so by the rules.
- (2) The Tribunal may do so even if the time for complying has expired.

69 Electronic hearings and proceedings on documents

- (1) The Tribunal may allow the parties or their representatives or any witnesses to participate in a proceeding by means of telephone, video link, or any other system or method of communication.
- (2) The Tribunal may conduct all or part of a proceeding on the basis of documents without the parties or their representatives or any witnesses attending or participating in a proceeding.
- (3) The Tribunal must take steps to ensure that the public has access to matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.

70 Completion of part-heard proceedings

- (1) This section applies if:
 - (a) a person ceases to be a member other than by having the person's appointment terminated or death; and
 - (b) the person constitutes, or is one of the persons constituting, the Tribunal for proceedings that are part-heard.
- (2) The person may continue to act as a member for the purpose of enabling the Tribunal to complete the proceeding and decide the proceeding.

71 Privilege against self-incrimination

Section 128 (except subsections (9) and (10)) of the *Evidence (National Uniform Legislation) Act* applies to a witness for a proceeding as if the Tribunal were a Territory court.

72 Other claims of privilege

- (1) Subject to section 71, 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 the Tribunal 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.

73 Appointment of assessors

- (1) The President may, in writing, appoint a person to be an assessor for a proceeding.
- (2) The President may appoint a person to be an assessor only if the President is satisfied the person holds suitable qualifications, or has suitable knowledge or experience for the proceeding.
- (3) The President may determine the terms and conditions of appointment (including the remuneration) of an assessor.

74 Functions of assessors

- (1) The Tribunal may ask an assessor to:
 - (a) give expert evidence in a proceeding; or

- (b) give advice about the matter that is the subject of a proceeding; or
 - (c) decide a question of fact arising in a proceeding.
- (2) In asking an assessor to give advice under subsection (1)(b), the Tribunal may ask the assessor to conduct an inquiry or investigation into a specified matter and give a written report of the assessor's findings to the Tribunal.
- (3) If an assessor gives the Tribunal a written report under subsection (1)(b) or (2), the Tribunal must:
- (a) give a copy of the report:
 - (i) to each party to the proceeding; and
 - (ii) to any other person to whom a copy of the report is required to be given under a relevant Act or the rules; and
 - (b) give each party to the proceeding an opportunity to make written submissions about the report; and
 - (c) after considering any submissions made under paragraph (b), either:
 - (i) adopt the assessor's decision or findings, in whole or in part; or
 - (ii) reject the decision or findings.

75 Costs for assessor

- (1) The Tribunal may make an order requiring a party to a proceeding to pay or contribute to the Tribunal's costs of obtaining an assessor's assistance.
- (2) The Tribunal may only make an order under subsection (1) if:
- (a) before obtaining the assistance of the assessor the Tribunal advised the party of:
 - (i) the Tribunal's intention of obtaining the assistance; and
 - (ii) the estimated costs of obtaining the assistance; and
 - (iii) the estimated amount of the party's payment or contribution; and

- (b) the Tribunal gave the party an opportunity to be heard on the matter of obtaining the assistance.

76 Disclosure of interests for assessors

- (1) This section applies to an assessor who assists the Tribunal under section 74 and who has or acquires an interest that may conflict with the performance of the person's functions as an assessor in relation to a proceeding.
- (2) The assessor must disclose the nature of the assessor's interest to the President.
- (3) The assessor must not perform any function as an assessor in relation to the proceeding except with the consent of all parties to the proceeding.

77 Disclosure of interests for members

- (1) This section applies to a member who constitutes, or is one of the persons constituting, the Tribunal for a proceeding and who has or acquires an interest that may conflict with the performance of the person's functions as a member in relation to the proceeding.
- (2) The member must disclose the nature of the member's interest to the President, or if the member is the President, the Chief Justice of the Supreme Court.
- (3) The member must not constitute, or be one of the persons constituting, the Tribunal for a proceeding except with the consent of all parties to the proceeding.

78 Power to disregard requirements

- (1) If a failure by a person to comply with a requirement of an Act is material to a proceeding, the Tribunal may disregard the non-compliance if satisfied that it would result in an expeditious resolution of the proceeding.
- (2) An order under this section is not relevant for any purpose other than resolving the proceeding before the Tribunal.

79 Power to correct mistakes

- (1) The Tribunal may correct a decision it makes or a statement of the reasons it has given for a decision to rectify:
 - (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or

- (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; or
 - (b) on the Tribunal's own initiative.

80 Tribunal may reopen proceeding if person was absent

- (1) A person in respect of whom the Tribunal makes a decision may apply to the Tribunal to reopen a proceeding if:
- (a) the person did not appear at a relevant proceeding; and
 - (b) the person was not represented at a relevant proceeding.
- (2) The application must be made within the time specified by, and otherwise in accordance with, the rules.
- (3) The rules may limit the number of applications that can be made under this section in respect of the same matter without leave of the Tribunal.
- (4) If the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented at the relevant proceeding, the Tribunal may reopen the proceeding and may set aside or vary its decision for the matter, if the Tribunal considers it appropriate.
- (5) For the hearing of the application, the Tribunal must be constituted by the same members that constituted the Tribunal when it made the decision, if practicable.
- (6) A review under this section
- (a) is part of the original proceedings; and
 - (b) does not constitute a review of a decision.
- (7) In this section:

relevant proceeding, in relation to a decision of the Tribunal, means a proceeding at which a decision was made or which preceded the making of the decision but does not include a compulsory conference or mediation.

81 Tribunal may authorise person to take evidence

- (1) The Tribunal may authorise a person (whether or not a member) to take evidence on behalf of the Tribunal for a proceeding.
- (2) The Tribunal may authorise evidence to be taken under this section outside the Territory.
- (3) The Tribunal may give directions as to the taking of evidence under this section.
- (4) For the purpose of taking evidence under this section, the authorised person is taken to constitute the Tribunal.
- (5) Any evidence taken outside the Territory under this section is taken to have been given in the Territory.

82 Process and service

- (1) If it is not practicable for a party to serve a document in relation to a proceeding in accordance with this Act or a relevant Act, the Tribunal may:
 - (a) order that service may be effected in another way; and
 - (b) make any other order necessary for service.
- (2) Any document served in accordance with an order under subsection (1) is taken to have been served in accordance with the requirement mentioned in subsection (1).

83 Proof of decisions and orders of Tribunal

A document that is certified by the Registrar to be a copy of a decision or order of the Tribunal must be accepted in any legal proceedings as a true copy of the decision or order of the Tribunal, in the absence of proof to the contrary.

84 Enforcement of decisions and orders of Tribunal

- (1) If the Tribunal makes a costs order, the person to whom the costs order is payable may recover it in an appropriate court as if it were a debt.
- (2) A person commits an offence if:
 - (a) the person is the subject of an order of the Tribunal (other than a costs order); and

(b) the person fails to comply with the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (3) Strict liability applies to subsection (2)(a).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

Note for section 84

If a relevant Act allows for the imposition of fines, the enforcement provisions for those fines will apply.

85 Accessibility of evidence

- (1) The Tribunal may, on application by a person, allow the person to inspect or obtain a copy of the following:
- (a) any process relating to a proceeding and forming part of the Tribunal's records;
 - (b) a transcript of evidence taken by the Tribunal in a proceeding;
 - (c) any evidentiary material;
 - (d) any decision or order given or made by the Tribunal;
 - (e) any other material specified in the rules.
- (2) However, a person may inspect or obtain a copy of the following only with the leave of the Tribunal:
- (a) evidentiary material that was taken in a private proceeding;
 - (b) material the disclosure of which would be contrary to a direction or order of the Tribunal given under another provision of this or any other Act;
 - (c) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
 - (d) any other material specified in the rules.
- (3) The Tribunal may permit inspection or copying of material referred to in subsection (1) or (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.

- (4) A decision by the Tribunal on an application under this section is administrative and is final and not subject to any form of review.
- (5) The Tribunal may charge a fee, prescribed by the regulations, for inspection or copying of material under this section.

86 Contempt

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct constitutes contempt of the Tribunal (as defined in section 87).

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

87 Conduct constituting contempt of the Tribunal

- (1) A person's conduct constitutes *contempt* of the Tribunal if the person:
 - (a) appears before the Tribunal as a witness; and
 - (b) does not do any of the following when required by the Tribunal to do so:
 - (i) take an oath;
 - (ii) answer a question;
 - (iii) produce a document or other thing.
- (2) A person's conduct constitutes *contempt* of the Tribunal if:
 - (a) the Tribunal has made an order requiring the person to do or not do something; and
 - (b) the order:
 - (i) was made orally to the person during proceedings; or
 - (ii) has been served on the person; and
 - (c) the person does not comply with the order.

- (3) However, subsection (2) does not apply if another law of the Territory provides a penalty for non-compliance with, or enforcing, the order.
- (4) A person's conduct constitutes *contempt* of the Tribunal if the person fails to comply with an undertaking the person has given to the Tribunal.
- (5) A person's conduct constitutes *contempt* of the Tribunal if the person:
 - (a) insults, threatens, intimidates or obstructs a member of the Tribunal in relation to his or her performance of functions or exercise of powers under this Act; or
 - (b) interrupts, obstructs or hinders a proceeding of the Tribunal; or
 - (c) creates, or takes part in creating, a disturbance at or near the place where the Tribunal is sitting; or
 - (d) engages in any other conduct that, under a law of the Territory, would constitute contempt in the face of the court if the Tribunal were a court of record.

88 Remove person engaging in contempt

The Tribunal may order a person be removed from a proceeding if the person is engaging in conduct that constitutes contempt.

Division 2 Evidence

89 Power to require person to give evidence or produce evidentiary material

- (1) The Tribunal may, on the application of a party to a proceeding or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence or produce evidentiary material.
- (2) A summons to produce evidentiary material may require production of the material to:
 - (a) the Tribunal; or
 - (b) a person specified in the summons.

90 Person fails to comply with summons

- (1) A person commits an offence if:
- (a) the person has been served with a summons to appear before the Tribunal to give evidence; and
 - (b) the person fails to do either or both of the following:
 - (i) to attend as required by the summons;
 - (ii) to appear and report from day-to-day unless excused, or released from further attendance, by a member.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if:
- (a) the person has been served with a summons to produce evidentiary material; and
 - (b) the person does not comply with the summons.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (3) Strict liability applies to subsection (1)(a) and (2)(a).
- (4) It is a defence to a prosecution for an offence against subsections (1) or (2) if the defendant establishes a reasonable excuse.

91 Dealing with evidentiary material

If evidentiary material is produced in a proceeding, the Tribunal may:

- (a) keep any item of evidentiary material for a period of time it considers appropriate; and
- (b) make copies of any item of evidentiary material.

92 Witnesses

The Tribunal may:

- (a) require a witness to take an oath before giving evidence; and

- (b) require a witness to answer a question put by a member or a person appearing before the Tribunal that is determined by the Tribunal to be relevant to the proceeding.

Note for section 92

A person who fails to take the oath or answer a question commits an offence of contempt under section 86.

93 Entry and inspection of property

- (1) If the Tribunal considers an inspection of a place is relevant to a proceeding, an inspection may be carried out by:
 - (a) a member; or
 - (b) a person authorised by the Tribunal.
 - (2) A person commits an offence if:
 - (a) a member or authorised person is carrying out an inspection; and
 - (b) the person obstructs the member or authorised person.
- Maximum penalty: 100 penalty units or imprisonment for 6 months.
- (3) Strict liability applies to subsection (2)(a).
 - (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
 - (5) In this section:
obstruct includes hinder and resist.

Division 3 Procedures

94 Commencing proceeding

- (1) A proceeding before the Tribunal commences when a person's application is accepted by the Registrar (whether or not on conditions).
- (2) The application must be accompanied by the fee prescribed by the regulations.
- (3) If the application is for a review proceeding, the person must file the application with the Registrar within 28 days after the relevant day.

- (4) The Registrar must ensure that a person intending to commence a proceeding before the Tribunal is given any reasonable assistance required by the person.
- (5) A proceeding may not be commenced by 2 or more persons jointly unless the facts or circumstances relating to each person's interests are the same or related.
- (6) The Tribunal may extend the time allowed for making an application mentioned in subsection (3).

- (7) In this section:

relevant day, for an application for the review of a reviewable decision, means:

- (a) the day the applicant was notified of the decision by the decision maker; or
- (b) if the applicant applied to the decision maker for a written statement of reasons for the decision under section 35 or the relevant Act – the earlier of the following:
 - (i) the day the written statement is given to the applicant;
 - (ii) the day by which the written statement was required to have been given to the applicant.

95 Registrar may accept or refuse application

- (1) The Registrar may accept or refuse an application to commence a proceeding.
- (2) The Registrar may accept an application to commence a proceeding on conditions.
- (3) The Registrar must refuse an application to commence a proceeding if:
 - (a) it is made by a person not entitled to make it; or
 - (b) it is made after the time limit before which the application is required by the rules or the relevant Act; or
 - (c) it does not otherwise comply with the Act or the relevant Act.
- (4) The Registrar must accept or refuse an application if directed to do so by the Tribunal.

- (5) The Tribunal may direct the Registrar to accept or refuse an application:
 - (a) if requested to do so by the Registrar; or
 - (b) if the Registrar has refused an application – on application by the applicant.

96 Directions for conduct of proceeding

- (1) The Tribunal may give a direction at any time in a proceeding and do whatever is necessary for the expeditious and fair conduct of the proceeding.
- (2) The Tribunal may give a direction on its own initiative or at the request of a party.
- (3) A directions hearing may be held for the purposes of this section before any other hearing in a proceeding.

97 Consolidating proceedings

- (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts or circumstances be consolidated into one proceeding.
- (2) 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.

98 Splitting proceedings

- (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts or circumstances remain as separate proceedings but be heard and decided together.
- (2) The Tribunal may direct:
 - (a) that any aspect of a proceeding be heard and determined separately; or
 - (b) that a proceeding commenced by 2 or more persons jointly be split into separate proceedings.

99 More appropriate forum

The Tribunal may, at any time, make an order dismissing 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.

100 **Withdrawing proceeding**

- (1) The applicant in a proceeding may withdraw the proceeding or a part of the proceeding.
- (2) Unless otherwise provided by the rules, an applicant may do so only with the leave of the Tribunal.
- (3) The Tribunal may make any orders it considers appropriate after receiving an application for leave to withdraw a proceeding.

101 **Dismissing proceeding for want of prosecution**

- (1) The Tribunal may dismiss all, or any part, of a proceeding for want of prosecution.
- (2) The Tribunal may do so on the application of a party or on its own initiative.

102 **Frivolous, vexatious or improper proceedings**

- (1) This section applies if the Tribunal considers that a proceeding:
 - (a) is frivolous, vexatious, misconceived or lacking in substance or involves a trivial matter or amount; or
 - (b) is being made for an improper purpose; or
 - (c) is otherwise an abuse of process.
- (2) The Tribunal may dismiss the proceeding and may make any other order.
- (3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.
- (4) If a proceeding is dismissed under this section, another proceeding of the same kind in relation to the same matter cannot be commenced without the leave of the President.

103 **Proceeding conducted to cause disadvantage**

- (1) This section applies if the Tribunal considers that a party to a proceeding is conducting the proceeding in a way that unnecessarily disadvantages another party to the proceeding.
- (2) The Tribunal may:
 - (a) if the party causing the disadvantage is the applicant – order that the proceeding be dismissed; or

(b) otherwise:

- (i) determine the proceeding in favour of the applicant; or
 - (ii) order that the party causing the disadvantage be removed from the proceeding.
- (3) The Tribunal may make any other orders the Tribunal considers necessary.
- (4) The Tribunal may act under subsections (2) and (3) on the application of a party or on its own initiative.
- (5) If a proceeding is dismissed under this section, another proceeding of the same kind in relation to the same matter cannot be commenced without the leave of the President.

104 Tribunal may appoint guardian

The Tribunal may appoint a litigation guardian for a person who is a party or a potential party to a proceeding.

105 Decisions and reasons for decisions

- (1) All decisions and orders made by the Tribunal must be issued under the seal of the Tribunal.
- (2) The Tribunal must give the decision, the reasons for the decision and any relevant findings of fact in writing to the parties to the proceeding within 28 days after the hearing of a proceeding.
- (3) However, the validity of a decision of the Tribunal is not affected merely because of a failure to comply with subsection (2).
- (4) The Tribunal may request an extension of the time limit mentioned in subsection (2) from the President.

106 Publication

The Tribunal may publish its final decision in a proceeding, with or without the reasons for the decision, in any way it considers appropriate.

Division 4 Alternative dispute resolution and settlement

Subdivision 1 Compulsory conference

107 Tribunal may require parties to attend compulsory conference

- (1) The Tribunal may require the parties to a proceeding to attend a compulsory conference.
- (2) Subject to this Act, the presiding member for a proceeding presides over the compulsory conference and may determine the procedure of a compulsory conference.

108 Purpose of compulsory conference

The purpose of a compulsory conference is to identify and clarify the issues in the proceeding and promote the resolution of the matter by a settlement between the parties.

109 Question of law may be referred to President

The member may, if that member is not the President, refer a question of law to the President for determination during a compulsory conference.

110 Conduct of compulsory conference

- (1) The member may require a party to give particulars of the party's matter.
- (2) The member may determine who, apart from the parties to the proceedings (and their representatives), may be present at the conference.
- (3) The member may, on the member's own initiative, close the conference at any time if, in the member's opinion, settlement cannot be reached.
- (4) The member may permit a party to withdraw from the proceedings during the compulsory conference and make any consequential order that is appropriate in the circumstances.
- (5) A compulsory conference must be held in private unless otherwise ordered by the member.

111 Evidence in compulsory conference inadmissible in proceeding

Evidence of anything said or done in the course of a compulsory conference is inadmissible in a proceeding before the Tribunal except with the consent of all parties to the proceeding.

112 Settlement at compulsory conference

- (1) This section applies if the parties to a proceeding reach a settlement at a compulsory conference.
- (2) The settlement has no effect unless it is accepted by the member.
- (3) The member:
 - (a) must not accept a settlement that appears to be inconsistent with the relevant Act; and
 - (b) may decline to accept a settlement on the basis that the settlement may prejudice a person who was not represented at the conference but who has a direct or material interest in the matter.
- (4) If the member accepts the settlement, the member must reduce the terms of the settlement to writing and make any decision or order necessary to give effect to the settlement.
- (5) The settlement accepted by the member and any other determination or order made by the member may be enforced as if it were an order made by the Tribunal.

113 Advise Tribunal of outcome

The member must advise the Tribunal:

- (a) if a settlement is accepted by the member; or
- (b) if the member has closed the conference under section 110(3).

114 Another member may preside over compulsory conference

If the member presiding over the compulsory conference is unable to continue with the conference, another member may continue and complete the conference.

115 Member who presided over compulsory conference may not constitute Tribunal

A member who presided over a compulsory conference is disqualified from sitting as a member for the purpose of deciding the proceeding, unless the parties to the proceeding consent to the member's continued participation.

Note for section 115

If the matter is not settled at a compulsory conference and the proceeding needs to continue, the President may alter the constitution of the Tribunal under section 24.

116 Rules may set out circumstances for compulsory conference details to be made public

The rules may set out circumstances in which the outcome of a compulsory conference, including details of a settlement, are to be, or may be, made available to the public.

Subdivision 2 Mediation

117 Approved mediators

The President must establish a list of persons who are approved mediators.

118 Tribunal may require parties to attend mediation

- (1) The Tribunal may require the parties to a proceeding to attend mediation by an approved mediator.
- (2) The referral may be made with or without the consent of the parties or on application by the parties.
- (3) The rules may specify how notice of mediation is to be given, how the mediation is to be conducted, and the fees to be paid by a party to the mediation.

119 Purpose of mediation

The purpose of mediation is to promote the resolution of the matter by a settlement between the parties.

120 Conduct of mediation

- (1) Subject to this Act, the mediator may determine the procedure for the mediation.

- (2) A mediation must be held in private unless otherwise ordered by the mediator.

121 Evidence in mediation inadmissible in proceeding

Evidence of anything said or done in the course of mediation is inadmissible in a proceeding before the Tribunal except with the consent of all parties to the proceeding.

122 Settlement at mediation if mediator is member

- (1) This section applies if the mediator is a member and the parties to a proceeding reach a settlement at mediation.
- (2) The settlement has no effect unless it is accepted by the member.
- (3) The member:
- (a) must not accept a settlement that appears to be inconsistent with the relevant Act; and
 - (b) may decline to accept a settlement on the basis that the settlement may prejudice a person who was not represented at the mediation but who has a direct or material interest in the matter.
- (4) If the member accepts the settlement, the member must reduce the terms of the settlement to writing and make any decision or order necessary to give effect to the settlement.
- (5) The settlement accepted by the member and any other determination or order made by the member may be enforced as if it were an order made by the Tribunal.

123 Settlement at mediation if mediator is not a member

- (1) This section applies if:
- (a) the parties to a proceeding reach a settlement at mediation; and
 - (b) the mediator is not a member.
- (2) Any settlement under this section:
- (a) must not be inconsistent with the relevant Act; and
 - (b) may be rejected by the Tribunal on the basis that the settlement may prejudice a person who was not represented at the mediation but who has a direct or material interest in the matter.

124 Advise Tribunal of outcome

The mediator must advise the Tribunal:

- (a) if the mediator is a member – if a settlement is accepted by the member; or
- (b) if the mediator is not a member – the terms of a settlement reached between the parties; or
- (c) if the mediation does not reach a settlement within a reasonable time.

125 Member who presided over mediation may not constitute Tribunal

A member who presided over a mediation is disqualified from sitting as a member for the purpose of deciding the proceeding, unless the parties to the proceeding consent to the member's continued participation.

Note for section 125

If the matter is not settled at mediation and the proceeding needs to continue, the President may alter the constitution of the Tribunal under section 24.

Subdivision 3 Settlement by Tribunal

126 Settling a proceeding

- (1) The Tribunal may endeavour to achieve a negotiated settlement of a matter before the Tribunal.
- (2) If the parties agree in writing to settle a matter before the Tribunal, the Tribunal may make any decision or order necessary to give effect to the settlement.
- (3) A settlement under this section must not be inconsistent with the relevant Act and the Tribunal may reject a settlement under subsection (2) on the basis that:
 - (a) the settlement may prejudice a person who is not a party to the settlement but who has a direct or material interest in the matter; or
 - (b) the terms of the settlement are inappropriate.

Division 5 Parties and representation

127 Parties

- (1) A person is a party to a proceeding before the Tribunal if the person is:
 - (a) the applicant; or
 - (b) for a disciplinary proceeding or a proceeding consisting of an inquiry into a person's behaviour – the person who is the subject of the proceeding; or
 - (c) for a proceeding in the Tribunal's review jurisdiction – the decision maker; or
 - (d) a person joined in a proceeding by order of the Tribunal; or
 - (e) a person lawfully intervening in a proceeding; or
 - (f) a litigation guardian appointed by the Tribunal; or
 - (g) any other person specified in this Act or the relevant Act to be a party to a proceeding.
- (2) Subsection (1) applies subject to the rules.
- (3) In a proceeding where a decision maker is a party, the decision maker's statutory position rather than the decision maker's name is to be used so far as is practicable.

128 Person may be joined as 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 should be bound by, or have the benefit of, a decision of the Tribunal in the proceeding; or
 - (b) the person's interests are affected by the proceeding; or
 - (c) it is desirable for any other reason for the person to be a party.
- (2) The Tribunal may make an order under this section:
 - (a) on the application of any person or on its own initiative; and
 - (b) without the person whom it is proposed to join being heard on the matter.

129 Minister or other person may intervene in proceeding

- (1) The Minister may, on behalf of the Territory, intervene in a proceeding before the Tribunal at any time.
- (2) Any other person may intervene in a proceeding with the leave of the Tribunal.
- (3) The Tribunal may grant a person leave to intervene:
 - (a) on the grounds specified in the rules; and
 - (b) on any conditions the Tribunal considers appropriate.

130 Representation

- (1) A party to a proceeding before the Tribunal is entitled to appear:
 - (a) personally; or
 - (b) by a legal practitioner; or
 - (c) with the leave of the Tribunal and subject to the rules – by another representative.
- (2) Unless otherwise determined by the Tribunal, a person appearing before the Tribunal may be assisted by another person as a friend.
- (3) Nothing in this section authorises a person who is not a legal practitioner to act for a fee or reward in relation to a proceeding.
- (4) In this section:

legal practitioner, see section 4 of the *Legal Profession Act*.

Division 6 Costs

131 Parties bear own costs

Subject to sections 132 and 134, parties bear their own costs in a proceeding before the Tribunal.

132 Tribunal may make costs orders

- (1) The Tribunal may make a costs order.

- (2) Before making the costs order the Tribunal must take into account:
 - (a) the main objectives of the Tribunal that are relevant to simplifying proceedings and issues before the Tribunal and to keeping costs to parties in proceedings before the Tribunal to a minimum; and
 - (b) the need to ensure that proceedings are fair and that parties are not disadvantaged by proceedings that have little or no merit; and
 - (c) if the Tribunal has dismissed the proceeding – that fact; and
 - (d) any other matter specified by the rules; and
 - (e) any other matter the Tribunal considers relevant.
- (3) If the Tribunal makes a costs order and does not fix the amount of costs, that amount is to be determined in accordance with the rules.

133 Additional considerations for costs in review jurisdiction

Before making a costs order in a review proceeding, the Tribunal must take into account:

- (a) whether the party genuinely attempted to enable and assist the decision maker to make the original decision on its merits; and
- (b) whether the decision maker genuinely attempted to make the original decision on its merits.

134 Costs order against a representative

The Tribunal may make a costs order against a representative of a party because the representative acted in, or delayed, the proceeding in a way that resulted in unnecessary costs.

Division 7 Arrest

135 Arrest of person for not complying with summons

- (1) If a person fails to attend as required by a summons under section 89, the President or a Deputy President may issue a warrant for the arrest of the person.
- (2) Before issuing the warrant, the President or Deputy President must be satisfied that:
 - (a) the summons was served on the person; or

- (b) a reasonable attempt was made to serve the summons on the person.
- (3) The warrant authorises the person to whom it is addressed:
 - (a) to arrest the person at any time and bring the person before the President or Deputy President; and
 - (b) to detain the person in custody until released by order of the President, a Deputy President or the Supreme Court.
- (4) The arrest of a person under this section does not prevent the person from being prosecuted for an offence under section 86.

136 Conditional release of arrested person

- (1) The President or a Deputy President may release a person arrested under section 135.
- (2) The release may be subject to any conditions the President or Deputy President considers appropriate.
- (3) The President or Deputy President may act on his or her own initiative or on application by the person for release.
- (4) A person commits an offence if he or she:
 - (a) is released subject to a condition; and
 - (b) fails to comply with the condition.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (5) Strict liability applies to subsection (4)(a).
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

137 Review by Supreme Court

- (1) This section applies if a person has been arrested under section 135 and the President or a Deputy President has decided under section 136:
 - (a) to release the person on conditions; or
 - (b) to refuse an application by the person for release.

- (2) For subsection (1)(b), if an application has not been dealt with within a reasonable time, the President or Deputy President is taken to have refused it.
- (3) The person may apply to the Supreme Court for a review of the President's or Deputy President's decision.
- (4) On a review, the Supreme Court must do one of the following:
 - (a) confirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision and substitute its own decision.
- (5) An order made under subsection (4) is taken to be an order of the Tribunal.

Division 8 Directions and rules

138 Rules

- (1) The President must establish a rules committee consisting of at least the following members:
 - (a) the President;
 - (b) a Deputy President;
 - (c) an ordinary member.
- (2) The President is the chairperson of the rules committee.
- (3) The rules committee has the following functions:
 - (a) to make and review rules for this Act;
 - (b) to approve forms for use for this Act;
 - (c) to perform any other functions conferred on it by this or any other Act.
- (4) Subject to subsections (5) and (6), the rules committee may determine its own procedures.
- (5) A decision at a meeting of the rules committee must be determined by the majority vote of members present and voting.
- (6) If there is an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

139 Practice directions

- (1) The President may issue practice directions for the Tribunal as the President considers necessary or convenient for the operation of the Tribunal.
- (2) If there is an inconsistency between a practice direction and the rules, the rules prevail to the extent of the inconsistency.

Part 5 Internal review and appeals

Division 1 Internal review

140 Review of original decision

- (1) A person aggrieved by a decision of the Tribunal in the exercise of its original jurisdiction may apply for review of the decision.
- (2) The review of a decision of the Tribunal in the exercise of its original jurisdiction is a proceeding in the Tribunal's review jurisdiction.
- (3) The Registrar may not constitute the Tribunal for a review under this section.

Division 2 Appeals

141 Appeal to Supreme Court

- (1) A party to a proceeding may appeal to the Supreme Court against a decision of the Tribunal on a question of law.
- (2) A person may appeal only with the leave of the Supreme Court.
- (3) On hearing an appeal, the Supreme Court must do one of the following:
 - (a) confirm the decision of the Tribunal;
 - (b) vary the decision of the Tribunal;
 - (c) set aside the decision and substitute its own decision;
 - (d) dismiss the appeal.

142 Effect of appeal on decision appealed against

- (1) The filing of an application for leave to appeal from the decision does not affect the operation of the decision appealed against.

- (2) However, the Supreme Court may stay the operation of the decision until the determination of an application for leave to appeal from the decision.

Part 6 Registrar

143 Appointment of Registrar

The Minister may, in writing, appoint a public sector employee who is admitted or qualified to be admitted as a legal practitioner in the Territory to be the Registrar of the Tribunal.

144 Functions and powers of Registrar

- (1) The Registrar has the following functions:
- (a) to assist the President in the administration of the Tribunal;
 - (b) to manage the registry and records of the Tribunal;
 - (c) to manage the day-to-day case management of the Tribunal;
 - (d) to constitute the Tribunal under section 22(3);
 - (e) any other function as directed by the President or specified under the rules.
- (2) The Registrar has the powers necessary or convenient to perform the Registrar's functions.

145 Registrar may delegate powers and functions

The Registrar may delegate the Registrar's powers and functions to a public sector employee.

146 Termination of appointment

The Minister may terminate the appointment of a person as the Registrar for inability, misbehaviour or physical or mental incapacity.

Part 7 Miscellaneous matters

147 Protection from liability for acts

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a member.

(2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Tribunal in good faith in the exercise of a power or performance of a function under this or another Act.

(3) Subsections (1) and (2) do not affect any liability the Territory would, apart from those subsections, have for the act or omission.

(4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

148 Protection from liability for disclosure

If a person produced a document or other material under a requirement of this Act, the person is not civilly or criminally liable, or in breach of a professional code, for doing so.

149 Confidentiality of information

(1) A person commits an offence if:

- (a) the person obtains information in the course of performing functions connected with the administration of this Act; and
- (b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
- (b) the information is otherwise available to the public.

150 False or misleading information

- (1) A person commits an offence if:
- (a) the person gives information to another person; and
 - (b) the other person is a member constituting, or is one of the persons constituting, the Tribunal; and
 - (c) the person knows the information is misleading; and
 - (d) the person knows the member is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if:
- (a) the person gives a document to another person; and
 - (b) the other person is a member constituting, or is one of the persons constituting, the Tribunal; and
 - (c) the person knows the document contains misleading information; and
 - (d) the person knows the member is acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (3) Strict liability applies to subsections (1)(a) and (b) and (2)(a) and (b).
- (4) Subsection (2) does not apply if the person, when giving the document:
- (a) draws the misleading aspect of the document to the other person's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.

- (5) In this section:

acting in an official capacity, in relation to a member, means the member is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

151 Annual report

- (1) The President must prepare and give to the Minister a report on the administration and operation of the Tribunal during each financial year.
- (2) The report must contain information about:
 - (a) the number, nature and outcome of matters that have come before the Tribunal; and
 - (b) the number and nature of matters that are outstanding; and
 - (c) any trends or special problems that may have emerged; and
 - (d) in relation to the matters that have come before the Tribunal – 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; and
 - (e) forecasts of the workload of the Tribunal in the next financial year; and
 - (f) any proposals for improving the administration and operation of the Tribunal.
- (3) The report must not contain information in relation to the evidence given in closed hearings or other confidential matters.
- (4) The report must be given to the Minister within 3 months after the end of the financial year or such other period as the Minister determines.
- (5) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the report.

152 Additional reports

- (1) The President must, at the request of the Minister, report to the Minister on any matter relevant to the administration or operation of the Tribunal.

- (2) The report must not contain information in relation to the evidence given in closed hearings or other confidential matters.

153 Proceedings for offences

Proceedings for an offence against this Act must be brought within 12 months from the date on which the offence is alleged to have been committed.

154 Seal

- (1) The Tribunal may have a seal for sealing documents issued out of the Tribunal and required to be sealed.
- (2) The seal must be of a design approved by the President and must include the words "The Seal of the Northern Territory Civil and Administrative Tribunal".
- (3) The seal must be kept at the place and in the custody of a person as directed by the President.

155 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may prescribe fees payable under this Act.