

2014

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**NORTHERN TERRITORY CIVIL AND ADMINISTRATIVE
TRIBUNAL BILL 2014**

SERIAL NO. 77

EXPLANATORY STATEMENT

GENERAL OUTLINE

The issue of administrative law reform and the centralisation of appeal rights from specialist bodies or other decision makers to a single body has been the subject of extensive discussion Australia wide since the establishment of the Commonwealth Administrative Appeals Tribunal in 1976.

Since that time, this Commonwealth model, as a general merits review tribunal, has been replicated in many of the states and the Australian Capital Territory. Civil and administrative tribunals have now been established in Victoria (1998), Western Australia (2004), the Australian Capital Territory (2009) and Queensland (2009). New South Wales passed legislation in 2013 to establish the New South Wales Civil and Administrative Tribunal from 1 January 2014 and legislation was passed in the South Australian Parliament in late 2013 and the South Australian Civil and Administrative Tribunal came into operation on 14 November 2013.

Whilst the primary purposes of these tribunals is to provide a mechanism for individuals to seek review of decisions of public entities and officials, they have a secondary purpose, namely to bring about the merger of some existing tribunals to exercise original jurisdiction. They do not replace all existing tribunals within their states and territory as in some instances there is a clear justification to retain a specialist tribunal, but they do act generally as the appellate body for these tribunals where they have been retained.

In the Northern Territory, the matter of review of administrative decisions and the establishment of an administrative tribunal has been the subject of two Northern Territory Law Reform Committee Reports (June 1991 and September 2004) which have both recommended the establishment of a tribunal system, for the comprehensive making and review of administrative decisions.

This Bill establishes a single Tribunal to be called the Northern Territory Civil and Administrative Tribunal to hear and determine a broad range of matters. The Bill creates the Tribunal, contains the membership and provides for common provisions for the commencement of actions and sets out the Tribunal's generic functions, procedures and powers.

Other laws will authorise the tribunal to exercise jurisdiction in specific matters. Through this process, a common platform for dispute resolution is established however, unique differences in the legislation can be retained where this is necessary for a particular jurisdiction.

The focus of the Tribunal will be on resolving disputes, reviewing decisions of government agencies and statutory bodies and conducting disciplinary proceedings for a range of professions, vocations and occupations.

The Northern Territory Civil and Administrative Tribunal will also be positioned to incorporate new and emerging jurisdictions in the future, creating greater efficiencies for government and for users in the longer term.

NOTES ON CLAUSES

Part 1 Preliminary Matters

Clause 1. **Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Northern Territory Civil and Administrative Tribunal Act 2014*.

Clause 2. **Commencement**

This is a formal clause which provides that the Act will commence on the day fixed by the Administrator by notice published in the Government Gazette.

Clause 3. **Definitions**

This clause sets out the key definitions for the purposes of the Act.

They are: Compulsory conference, cost order, decision-maker, Deputy President, member, President, presiding member, original jurisdiction, proceeding, Registrar, relevant Act, reviewable decision, review jurisdiction, rules, and Tribunal.

Clause 4. **Act binds the Crown**

This is a formal clause that provides that the Act binds the Crown in the right of the Territory and, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Clause 5. **Relationship with other Acts**

This clause provides that in the event of an inconsistency between this Act and a 'relevant Act' (i.e. an Act that confers jurisdiction on the Tribunal) the relevant Act is to prevail to the extent of the inconsistency.

Clause 6. **Application of Criminal Code**

This is a formal clause that provides that Part IIAA of the Criminal Code applies to an offence against this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defenses, and deals with

burden of proof.

Part 2 Northern Territory Civil and Administrative Tribunal

Division 1 Establishment of Tribunal

Clause 7. Tribunal established

This Bill establishes a new tribunal called the Northern Territory Civil and Administrative Tribunal ('the Tribunal').

Clause 8. Jurisdiction

This clause provides that the Tribunal's jurisdiction is set out in the proposed Part 3 of the Bill.

Clause 9. Tribunal to operate throughout Territory

This clause provides that the Tribunal is to facilitate access to its services throughout the Territory and may sit at any place. The Minister, after consultation with the President, will determine where Registries of the Tribunal will be located.

Clause 10. Objectives of Tribunal

This clause sets out the Tribunal's primary objectives. These will enable the Tribunal to be an accessible 'one-stop shop' that can resolve disputes quickly, with minimal formality and costs and utilise Tribunal members who have the appropriate experience and expertise.

The objects of the Tribunal are:

- to promote the best principles of public administration;
- to be accessible by being easy to find, easy to access;
- be responsive to parties, especially people with special needs;
- to ensure that applications 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 other alternative dispute resolution procedures wherever appropriate;

- keep costs to parties involved in proceedings to a minimum as far as possible;
- use straightforward language and procedures;
- act with as little formality and technicality as possible; and
- be flexible in the way in which the Tribunal conducts its business.

Clause 11. **Independence of Tribunal**

This clause makes it clear that the Tribunal is independent and neither the Tribunal nor its members are subject to Ministerial direction or control.

Division 2 Membership of Tribunal

Clause 12. **Membership**

The clause provides for the membership of the Tribunal. The Tribunal is to have a President, Deputy Presidents and ordinary members.

Clause 13. **President**

This clause provides for the appointment of the President of the Tribunal by the Administrator by notice in the Gazette. The Tribunal President must be a Magistrate or any other person who is eligible for appointment as a magistrate in the Northern Territory. The person cannot be appointed as the President unless the person has agreed to the appointment and, if the person is a magistrate, the Minister has consulted the Chief Magistrate about the person's appointment. Appointment as the President does not affect that person's tenure, status, entitlements and allowances as a magistrate, and service as President (if a magistrate) is to be taken for all practical purposes as service as a magistrate. The clause also makes it clear that if a magistrate is appointed as President then they are not subject to directions from the Chief Magistrate that would interfere with the President's ability to exercise powers or perform functions under the Act.

Clause 14. **Functions of President**

This clause outlines the functions of the President of the Tribunal which are:

- having primary responsibility for the administration of the Tribunal;

- managing 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;
- providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal;
- managing the members of the Tribunal, including by developing codes of conduct for members;
- giving directions about the practices and procedures to be followed by the Tribunal;
- developing and implementing performance standards and setting benchmarks for the Tribunal;
- being responsible for promoting the training, education and professional development of members of the Tribunal;
- overseeing the proper use of the resources of the Tribunal; and
- any other functions conferred on the President by this or any other Act.

Clause 15. **Deputy President**

This clause provides that there will be at least one Deputy President of the Tribunal appointed by the Administrator by notice in the Gazette. It also specifies that a Deputy President must be a Magistrate or a person who is eligible to be appointed as a magistrate in the Northern Territory. The person must not be appointed as the Deputy President unless the person has agreed to the appointment and, if the person is a magistrate, the Minister has consulted the Chief Magistrate about the person's appointment and the Minister has taken into account

any recommendation of the President. Appointment as the Deputy President does not affect that person's tenure, status, entitlements and allowances as a magistrate, and service as Deputy President (if a magistrate) is to be taken for all practical purposes as service as a magistrate. The clause also makes it clear that if a magistrate is appointed as Deputy President then they are not subject to directions from the Chief Magistrate that would interfere with the Deputy President's ability to exercise powers or perform functions under the Act. The clause also sets out the functions of the Deputy President.

Clause 16. **Ordinary members**

The clause provides for the appointment of ordinary members of the Tribunal by the Administrator by notice in the Gazette. Ordinary members must be legal practitioners with at least 5 years' experience or hold suitable qualifications, or has suitable or special knowledge or experience involving any class of matters which can be dealt with by the Tribunal. A person must not be appointed unless they have agreed to the appointment and the Minister has taken into account any recommendations made by the President.

Clause 17. **Duration of appointment**

This clause provides that the tenure of Tribunal members is for five years or a shorter period specified in the instrument of appointment and that a member is eligible for reappointment.

Clause 18. **Vacation of office**

This clause contains standard provisions setting out the circumstances in which a person ceases to be a member of the Tribunal. These are: the person resigns, the person's term of office comes to an end and the person is not reappointed and the person's appointment is terminated under the Act.

Clause 19. **Termination of appointment of member**

This clause contains standard provisions setting out the circumstances under which the Administrator may terminate a person's appointment. These are for reasons of incapacity or misbehavior and only on the address of the Legislative Assembly seeking the removal of the member.

Clause 20. **Validity of acts**

This clause provides that acts or proceedings of the Tribunal are not invalidated by reason of a vacancy or defect in appointment.

Clause 21. **Delegation**

This clause provides for delegations by the President of the Tribunal of his or her administrative functions under the Act to other members of the Tribunal or the Registrar.

Division 3 Administration of Tribunal

Clause 22. Constitution of Tribunal for proceeding

This clause provides for the composition of the Tribunal. Generally, the composition of the Tribunal is to be determined by the President. Under the proposed clause, the Tribunal is to be constituted by not more than three members, except where a relevant Act provides otherwise. When the Tribunal is exercising its review jurisdiction, a person who made the original decision cannot also be a member of the review Tribunal. The clause also provides that the President may provide for the Registrar to constitute the Tribunal for a proceeding in respect of a matter or class of matters specified in the Rules. If the Tribunal is constituted by the Registrar, the Registrar may refer the matter to a differently constituted Tribunal for determination by that Tribunal on the Registrar's own initiative or at the President's direction.

Clause 23. Tribunal may hear different proceedings at the same time

This clause provides that the Tribunal may deal with more than one matter concurrently.

Clause 24. Alteration of members constituting Tribunal

This clause provides that the President may alter the membership of the Tribunal for the purposes of dealing with a matter or anything related to a matter.

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

This clause provides that the President may appoint different members of the Tribunal to deal with different aspects of the same matter thus ensuring maximum flexibility in dealing with matters before the Tribunal.

Clause 26. Who presides at proceedings of Tribunal

This clause makes provision for who will preside over proceedings in the Tribunal where the Tribunal is constituted by two or more members including establishing the seniority of members.

Clause 27. Decision if 2 or more members constitute Tribunal

This clause provides that if the Tribunal is constituted by two or more members for a matter, it is resolved according to the majority opinion. If the opinions on how to resolve a question is split equally between members, it is resolved according to the opinion of the presiding member.

Clause 28. Determination of questions of law

This clause provides for the resolution of questions of law in proceedings before the Tribunal. The Tribunal may refer a question of law to the President who may decide the question of law or refer the question of law to the Supreme Court.

Clause 29. Questions of law referred to Supreme Court

This clause provides that where a question of law has been referred to the Supreme Court by the President, the Court may decide the question and give any consequential orders or directions the Court considers appropriate and a decision of the Court is taken to be a decision of the Tribunal.

Part 3 Jurisdiction

Division 1 General matters

Clause 30. Sources of jurisdiction

This clause provides the sources of the Tribunal's jurisdiction, being jurisdiction conferred by this or any other Act.

Clause 31. Kinds of jurisdiction

The Tribunal will have original and review jurisdiction.

Division 2 Original jurisdiction

Clause 32. Original jurisdiction

In exercising its original jurisdiction, the Tribunal will act as the original decision-maker in the matter in accordance with this Act and the relevant Act.

Division 3 Review jurisdiction

Subdivision 1 General matters

Clause 33. Review jurisdiction

In exercising its review jurisdiction, the Tribunal will examine the decision of the decision-maker by way of rehearing in accordance with this Act and the relevant Act.

Subdivision 2 Information about reviewable decision

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

This clause provides that an original decision maker, of a reviewable decision, must notify a person in writing of the decision made and their right of review to the Tribunal.

This notification is not required in several specified circumstances, including those decisions that are prescribed by Regulations. Failure to notify a person does not invalidate the decision.

Clause 35. Statement of reasons for decision

This clause enables a person to request the decision-maker to supply reasons. This is not necessary if the decision-maker has already supplied reasons or the enabling Act contains an entitlement to reasons. The clause provides that when requested in writing, a decision-maker is to provide, within 28 days after the request is made, a written statement of reasons, including findings of fact and other evidence, for their reviewable decision.

Clause 36. Tribunal may order decision-maker to provide reasons

This clause gives the Tribunal power to make an order requiring the decision-maker to provide a written statement of reasons when the original decision maker has not provided a written statement of reasons as requested under the Act. The person may apply to the Tribunal for an order that the decision-of maker provide this information. Notice of this application must be provided to the decision maker in accordance with the Tribunal's Rules.

Clause 37. Exceptions to what must be provided

This clause provides that a written statement of reasons for decision cannot include any protected matter. Protected matter is defined to mean any information or document to which the Minister has certified in a certificate made under the Act,

which the disclosure would be contrary to the public interest.

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

This clause allows the Minister to 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. Such material includes deliberations of Cabinet or the Executive Council, information protected by Parliamentary privilege, information that could damage national or international security or inter-governmental relations, or for any other reason that could form the basis for a claim in a proceeding in the Supreme Court that the information or matter should not be disclosed.

Clause 39. **Tribunal may revoke certificate**

The Tribunal has the power to override the effect of a certificate and order that the disclosure of the information in question is not contrary to the public interest.

Clause 40. **Minister may appeal Tribunal's order**

If the Tribunal orders disclosure, the Minister has an appeal right to the Supreme Court in accordance with clause 112. The original certificate will remain in effect until the outcome of the appeal is known.

Clause 41. **Decision-maker to give Tribunal reasons for decision**

This clause provides that in a proceeding for the review of a decision, the decision-maker must provide the Tribunal with reasons for their decision, documents and other materials relevant to the Tribunal's review of the decision.

Clause 42. **No decision made by decision-maker**

This clause provides that no decision is taken to be a rejection of a person's application and this is therefore a reviewable decision.

Subdivision 3 Effect of commencement of review proceedings

Clause 43. **Decision-maker's powers restricted after proceeding commenced**

This clause provides that once a proceeding for review has commenced in the Tribunal, the original decision-maker cannot vary their decision or set aside their original decision and substitute a new decision unless:

- the power to do so is contained in the enabling Act that confers jurisdiction on

the Tribunal;

- the parties to the review proceeding freely consent to this; or
- the original decision maker is invited under the Act to reconsider the decision.

Clause 44. **Effect of review proceeding on decision**

This clause provides that the commencement of a review does not affect the operation of the original decision unless provided for by the relevant Act, or the Tribunal or the decision-maker makes an order for a stay of the decision.

Subdivision 4 Review of reviewable decision

Clause 45. **Rehearing**

This clause provides that the Tribunal must review a reviewable decision by way of rehearing.

Clause 46. **Proceeding for review of reviewable decision**

This clause provides that a rehearing will include an examination of the evidence or material before the decision-maker and any further evidence or material that the Tribunal decides to admit for a rehearing.

Clause 47. **Decision-maker to assist Tribunal**

This clause provides that in review proceedings, the decision-maker must, at the request of the Tribunal, assist the Tribunal so that it can make its decision on the review.

Clause 48. **Relevant Minister to identify government policy**

This clause provides that a Minister administering a relevant Act may certify that there was at the time of the reviewable decision, a statement of government policy that was publically available at the time the decision was made.

Clause 49. **Tribunal may invite decision-maker to reconsider decision**

At any time the Tribunal may invite the original decision-maker to reconsider their decision, the subject of review. Upon reconsideration the decision-maker may affirm, vary, or set aside their decision and substitute a new decision.

Subdivision 5 Decision on review

Clause 50. **Determination after proceeding**

The Tribunal may on a review, affirm, vary, or set aside the decision of the original decision-maker. If the Tribunal sets aside the decision it may substitute its own

decision or send the matter back to the original decision-maker for reconsideration. Any decision made upon reconsideration is open to review by the Tribunal.

Clause 51. Effect of determination

If the Tribunal has decided to affirm the decision no further review of the decision can be sought. If the Tribunal varies or substitutes the original decision then this reviewed decision is to be regarded and given effect as a decision of the original decision-maker. The reviewed decision has effect from the time when the original decision would have had effect, unless the relevant Act allows or the Tribunal orders otherwise. The varied or substituted decision is not a reviewable decision.

Part 4 Proceedings

Division 1 General matters

Clause 52. Tribunal may determine own procedures

The procedure for a proceeding is at the discretion of the Tribunal, subject to this Act, or a relevant Act.

Clause 53. Principles for conducting proceedings

This clause provides the general principles that the Tribunal will uphold in the performance of its functions. The main principles are that the Tribunal:

- must act fairly and according to the substantial merits of the matter;
- must comply with the rules of natural justice;
- may inform itself in anyway it considers appropriate;
- must conduct itself with minimal formality and technicality and with as much speed as requirements and proper consideration permits; and
- must ensure, as far as is practical, that all relevant material is disclosed to the Tribunal.

The Tribunal may admit into evidence the content of any document despite the non-compliance with any time limit or other requirement.

Clause 54. Tribunal to ensure parties are informed

The Tribunal must take reasonable steps to ensure the parties understand the nature of the matter under consideration, understand the assertions made in the proceedings and the legal implications of those assertions and explain to the parties, if requested to do so, any aspect of the procedures of the Tribunal or any decisions or directions made by the Tribunal.

Clause 55. **Tribunal to fully inform itself for proceedings**

The Tribunal must take all reasonable steps to ensure that the parties have the fullest opportunity to give evidence and be heard. The Tribunal must ensure that all relevant material is disclosed to the Tribunal to enable it to decide all the relevant facts and issues in a proceeding.

Clause 56. **How matter to be presented**

The Tribunal may require evidence or arguments to be presented in writing and decide which aspects it will hear oral evidence or argument, and limit the time available for presenting the respective cases of parties.

Clause 57. **Power to adjourn proceedings**

The Tribunal may adjourn a proceeding at any time and at any place.

Clause 58. **President may establish divisions**

This clause provides that the President of the Tribunal will be able to establish various divisions that reflect the areas of jurisdiction of the Tribunal and may assign members to one or more divisions.

Clause 59. **Sittings**

The Tribunal will sit at such times and in the places determined by the President of the Tribunal.

Clause 60. **Proceedings to be heard in public**

This clause provides that hearings are to be public unless the Tribunal or a relevant Act specifies otherwise.

Clause 61. **Interpreters**

This clause allows a party or a party's representative to be assisted in a proceeding by an interpreter or another person to make the proceedings intelligible to that party.

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

This clause provides the Tribunal with the power to make orders about the circumstances in which a hearing or part of the hearing is to be held in private. In exercising its powers, the Tribunal can also place restrictions on the publication of all or any part of proceedings and exclude a person from a proceeding or any part of a proceeding where the Tribunal considers it is necessary to do so.

Clause 63. **Preserving subject matter of proceedings**

Under this clause, the Tribunal may make any orders it considers necessary to preserve the subject matter of proceedings or to protect the interests of a party until questions arising in a proceeding have been determined.

Clause 64. **Tribunal may grant alternative orders or relief**

This clause empowers the Tribunal to grant any form of relief that it considers appropriate, notwithstanding that another form of relief may be sought by an applicant.

Clause 65. **Interlocutory orders**

The clause gives the Tribunal the power to make interlocutory orders.

Clause 66. **Security as to costs**

This clause allows the Tribunal to order a party to proceedings to give security for costs or an undertaking in relation to payment of costs.

Clause 67. **Conditional, alternative and ancillary orders**

The Tribunal may make orders on conditions the Tribunal considers appropriate. The Tribunal will, by ancillary order, be able to provide that a decision of the Tribunal is to be implemented by a third party.

Clause 68. **Relief from time limits**

The rules may provide for the Tribunal to extend or abridge a time limit for doing anything in connection with a proceeding.

Clause 69. **Electronic hearings and proceedings on documents**

This clause enables the Tribunal to hold proceedings using telephones, video links or other communication systems. It also allows the Tribunal to conduct proceedings solely on the basis of documents without need for a hearing.

Clause 70. **Completion of part-heard proceedings**

Under this clause, persons who no longer hold office as members of the Tribunal may continue to act in the relevant office for the purposes of completing part-heard proceedings.

Clause 71. **Privilege against self-incrimination**

This clause applies the provisions of the *Evidence (National Uniform Legislation) Act* as if the Tribunal were a Court. If a witness objects to giving evidence on the

basis of self-incrimination, and if the Tribunal considers that ‘in the interests of justice’ the evidence should be given, the witness is required to give the evidence but is given a certificate. The certificate guarantees the witness against the evidence (and any evidence, information or document, obtained as a consequence of that person giving evidence), being used against the person. The provision only applies to evidence given in proceedings before the Tribunal.

The Tribunal can only require the witness to give the evidence if the evidence does not tend to prove the witness has committed an offence or may be liable to a civil penalty under the law of a foreign country and the interests of justice require that the witness give the evidence. A certificate makes the evidence (and evidence obtained as a consequence of its being given) inadmissible in any Australian proceeding, except a criminal proceeding in respect of the falsity of the evidence.

The privilege does not apply to bodies corporate.

Clause 72. **Other claims of privilege**

A person may not be compelled to answer a question or produce a document or other material in proceedings before the Tribunal if the person could not be compelled to do so if the proceedings were before the Supreme Court.

Clause 73. **Appointment of assessors**

The clause provides that the President may appoint a person to be an assessor for a matter before the Tribunal.

To be eligible for appointment as an assessor, the person must be suitably qualified or have suitable knowledge or experience to provide specialist knowledge for the matter before the Tribunal.

The President may determine the terms and conditions of appointment including the remuneration of an assessor.

Clause 74. **Functions of assessors**

The Tribunal may ask an assessor to give expert evidence in a proceeding, give advice about the proceeding or decide a question of fact arising in a proceeding. A written report provided by an assessor to the Tribunal must be made available to each party to the proceeding and any other person to whom a copy of the report is required to be given under a relevant Act. Parties to the proceeding must be given an opportunity to make written submissions about a report. After considering the submissions, the Tribunal can either adopt the assessor’s decision and findings in whole or in part, or reject the decision and findings.

Clause 75. **Cost for assessor**

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.

Clause 76. **Disclosure of interests for assessors**

This clause requires an assessor to disclose to the President if they have or acquire an interest that may conflict with their performance as an assessor in relation to a proceeding.

Clause 77. **Disclosure of interests for members**

This clause provides procedures for disclosure where a member has, or acquires, an interest that may conflict with the performance of the member's functions in relation to proceedings before the Tribunal.

Clause 78. **Power to disregard requirements**

If a failure by a person to comply with a requirement of an Act is material, the Tribunal may disregard the non-compliance if satisfied that it would result in an expeditious resolution to the proceeding.

Clause 79. **Power to correct mistakes**

This clause allows the Tribunal to correct its decisions or statement of reasons so as to rectify, for example, clerical mistakes, accidental slips or omissions, material miscalculations or mistakes in descriptions or a defect of form.

Clause 80. **Tribunal may reopen proceedings if person was absent**

Under this clause, persons who did not appear and were not represented at hearings before the Tribunal may apply to the Tribunal for a review of the decision. The application must be made in the time limits specified under the Rules. If the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented, the Tribunal may reopen the proceeding and may set aside or vary its decision, if practical. As far as is practicable, the Tribunal should be constituted by the same members who made the original decision.

Clause 81. **Tribunal may authorise person to take evidence**

The Tribunal will be able to authorise a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal. The Tribunal may authorise evidence to be taken under this clause outside the Northern Territory.

Clause 82. **Process and service**

This clause sets out how notices and documents may be served.

Clause 83. **Proof of decisions and orders of Tribunal**

This clause provides that a document 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 a decision or order of the Tribunal.

Clause 84. **Enforcement of decisions and orders of Tribunal**

This clause enables a person seeking to enforce a costs order of the Tribunal to recover it in an appropriate court as if the order were a debt. Furthermore, a person commits an offence if they fail to comply with an order of the Tribunal (other than a monetary order).

Clause 85. **Accessibility of evidence**

This clause outlines the procedures that will apply where a person seeks to inspect or obtain a copy of documentary material. The Tribunal may charge a prescribed fee for inspection or copying of material under this clause.

Clause 86. **Contempt**

This clause outlines that a person commits an offence if they engage in conduct that constitutes contempt of the Tribunal. The maximum penalty is 100 penalty units or imprisonment for six months. The clause allows for a reasonable excuse defence.

Clause 87. **Conduct constituting contempt of the Tribunal**

This clause sets out what conduct constitutes contempt of the Tribunal.

Clause 88. **Remove person engaging in contempt**

This clause allows the Tribunal to order a person be removed from a proceeding if the person is engaging in conduct that constitutes contempt.

Division 2 Evidence

Clause 89. **Power to require person to give evidence or produce evidentiary material**

This clause provides the Tribunal with powers to order persons to appear before the Tribunal, to give evidence or produce to the Tribunal documents or materials relevant to the Tribunal's proceedings.

Clause 90. **Person fails to comply with summons**

The clause creates an offence relating to the refusal of a person to appear before the Tribunal if they have been summoned to do so or where a person is required by

summons to produce evidentiary material and fails to do so. The maximum penalty is 100 penalty units or imprisonment for six months.

Clause 91. **Dealing with evidentiary material**

This clause provides the Tribunal with power to keep or make copies of any evidentiary material produced in a proceeding.

Clause 92. **Witnesses**

This clause provides that the Tribunal may require a witness to take an oath before giving evidence and require a witness to answer a question put by a member or a person appearing before the Tribunal.

Clause 93. **Entry and inspection of property**

Under this clause, a member of the Tribunal or a person authorised by the Tribunal may enter any relevant place to carry out an inspection considered relevant to a proceeding before the Tribunal. In addition, the clause creates an offence if a member or authorised person is obstructed while exercising powers under the proposed clause. The maximum penalty is 100 penalty points or imprisonment for six months.

Division 3 Procedures

Clause 94. **Commencing proceeding**

This clause sets out the procedures for commencing proceedings before the Tribunal. A proceeding before the Tribunal commences when a person's application, accompanied by the prescribed fee, is accepted by the Registrar. The clause also specifies the timeframe for the lodgement of applications to commence a proceeding for a review of a reviewable decision. The Registrar is required to ensure that a person intending to commence a proceeding before the Tribunal is given any reasonable assistance to enable them to do so.

Clause 95. **Registrar may accept or refuse application**

This clause enables the Registrar to accept or refuse an application to commence a proceeding. The Registrar may accept an application to commence a proceeding on conditions and may refuse an application that is made by a person not entitled to make it, if the application is made after the time limit allowable or if the application does not comply with the Act or relevant Act. The Registrar must accept or refuse an application if directed to do so by the Tribunal.

Clause 96. **Directions for conduct of proceeding**

This clause enables the Tribunal to give directions and do other things necessary to enable the proceedings to be fair and expeditious. The Tribunal may hold a directions hearing.

Clause 97. **Consolidating proceedings**

The Tribunal may consolidate proceedings into one proceeding if they concern the same or related facts or circumstances.

Clause 98. **Splitting proceedings**

The Tribunal may also direct that proceedings commenced by two or more persons jointly be split into separate proceedings or that any aspect of proceedings be heard and determined separately.

Clause 99. **More appropriate forum**

This clause enables the Tribunal to dismiss a proceeding or part of a proceeding if another tribunal, court or person can more appropriately deal with the matter.

Clause 100. **Withdrawing proceedings**

This clause sets out provisions relating to the ability of a party to withdraw proceedings or a part of the proceedings.

Clause 101. **Dismissing proceeding for want of prosecution**

The Tribunal will also have power to dismiss all or any part of proceedings for want of prosecution (ie where the proceeding is not being actively pursued by on or another party).

Clause 102. **Frivolous, vexatious or improper proceedings**

This clause allows the Tribunal to dismiss a proceeding if the Tribunal considers that it is frivolous, vexatious, misconceived, lacking in substance, involves a trivial matter or amount, is being used for an improper purpose or is otherwise an abuse of process. If a proceeding is dismissed under this clause, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of the President.

Clause 103. **Proceeding conducted to cause disadvantage**

This clause enables the Tribunal to dismiss proceedings if the applicant is conducting proceedings in a way which unnecessarily disadvantages another party

to the proceedings. This can be done on the Tribunal's own initiative or following an application by a party to the proceedings. If a proceeding is dismissed under this clause, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of the President.

Clause 104. **Tribunal may appoint guardian**

This clause enables the Tribunal to appoint a litigation guardian for a person who is a party or potential party to a proceeding.

Clause 105. **Decisions and reasons for decisions**

This clause requires the Tribunal to make a decision and give the decision, reasons and findings of fact in writing to the parties within 28 days after the hearing of a proceeding. The Tribunal may request an extension of time from the President. The validity of a decision is not affected merely because of the failure to comply with this clause.

Clause 106. **Publication**

This clause allows the Tribunal to publish its final decision in a proceeding in any way it considers appropriate. The Tribunal has discretion to publish final decisions with or without the reasons for the decision.

Division 4 Alternative dispute resolution and settlement

Subdivision 1 Compulsory conference

Clause 107. **Tribunal may require parties to attend compulsory conference**

The clause empowers the Tribunal to hold private compulsory conferences. The presiding member of the Tribunal for a proceeding also presides over a compulsory conference and may determine the procedure.

Clause 108. **Purpose of compulsory conference**

The purpose of a compulsory conference is to identify and clarify issues and promote settlement of disputes.

Clause 109. **Questions of law may be referred to President**

This clause allows the member (if the presiding member is not the President) to refer a question of law to the President for determination during a compulsory conference.

Clause 110. **Conduct of compulsory conference**

This clause sets out the powers of the presiding member at a compulsory conference.

Clause 111. **Evidence in compulsory conference inadmissible in proceeding**

This clause provides that evidence presented in the compulsory conference proceeding may not be used in a proceeding before the Tribunal without the consent of all parties.

Clause 112. **Settlement at compulsory conference**

This clause provides that if the parties to a proceeding reach a settlement at a compulsory conference, the member presiding over the conference must accept the settlement, provided that any settlement is consistent with a relevant Act. The settlement can be rejected on the basis that it may prejudice a person who was not represented at the conference but who has a direct or material interest in the matter.

Clause 113. **Advise Tribunal of outcome**

The member must advise the Tribunal if a settlement is accepted by the member or if the conference does not reach a settlement within a reasonable time.

Clause 114. **Another member may preside over compulsory conference**

This clause provides that if the member presiding over a compulsory conference is unable to continue with the conference, another member of the Tribunal may continue and complete the conference.

Clause 115. **Member who presided over compulsory conference may not constitute Tribunal**

This clause provides that the member who presided over the compulsory conference may not take part in any further proceedings after the compulsory conference without the consent of all parties.

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

This clause prescribes that the Tribunal's Rules may set out the circumstances in which the outcome of any compulsory conference proceeding may be made public.

Subdivision 2 Mediation

Clause 117. **Approved mediators**

This provides for the President to establish a list of persons who are approved mediators.

Clause 118. **Tribunal may require parties to attend mediation**

This clause provides that the Tribunal may, at any time, refer a matter, or any aspect, for mediation by an approved mediator. The referral may be made with or without the consent of the parties.

Clause 119. **Purpose of mediation**

The purpose of mediation is to achieve resolution of the matters by settlement between the parties.

Clause 120. **Conduct of mediation**

Mediation is, unless otherwise directed by the mediator, to be in private and the mediator may determine the procedure for the mediation.

Clause 121. **Evidence in mediation inadmissible in proceeding**

This clause provides that anything said or done in the course of mediation may not be used in a proceeding before the Tribunal without the consent of all parties.

Clause 122. **Settlement at mediation if mediator is member**

This clause provides that if the mediator is a member and the parties to a proceeding reach a settlement at mediation, the member conducting the mediation must accept the settlement, provided that any settlement is consistent with a relevant Act. The settlement can be rejected on the basis that it may prejudice a person who was not represented at the mediation but who has a direct or material interest in the matter.

The member must reduce the terms of the settlement to writing and make any decision or order necessary to give effect to the settlement.

Clause 123. **Settlement at mediation if mediator is not a member**

This clause provides that, if the mediator is not a member of the Tribunal and settlement is reached at mediation, the settlement must not be inconsistent with a relevant Act and may be rejected by the Tribunal on the basis that it prejudices a person who was not represented at mediation but who has a direct or material interest in the matter.

Clause 124. **Advise Tribunal of outcome**

The mediator must advise the Tribunal if a settlement is accepted by the member or if the mediator is not a member, the terms of the settlement reached between the parties. The mediator must also advise the Tribunal if the mediation does not reach a settlement within a reasonable period of time.

Clause 125. **Member presides over mediation may not constitute Tribunal**

This clause provides that, if the mediator was a Tribunal member, they may not take part in any further proceedings after the mediation without the consent of all parties.

Subdivision 3 Settlement by Tribunal

Clause 126. Settling a proceeding

The Tribunal may attempt to achieve a negotiated settlement of any matter before the Tribunal. The Tribunal may make any decision or order giving effect to parties' written agreement to settle proceedings. A settlement under the proposed section must not be inconsistent with a relevant Act.

Division 5 Parties and representation

Clause 127. Parties

This clause outlines who the parties are in respect of proceedings before the Tribunal.

Clause 128. Person may be joined as party

This clause enables the Tribunal, in specified circumstances, to join persons as parties to proceedings and may make an order on the application of any person or on its own initiative.

Clause 129. Minister or other person may intervene in proceeding

This clause enables the Minister to intervene at any time in the Tribunal's proceedings on behalf of the Territory. In addition, any other person may be given leave to intervene if the Tribunal thinks fit.

Clause 130. Representation

This clause enables parties to the Tribunal's proceedings to appear in person and represent themselves or be represented by a legal practitioner. With leave of the Tribunal, parties may be represented by persons who are not legal practitioners. Unless specified by the Tribunal, a party appearing may be assisted by another person as a friend.

Division 6 Costs

Clause 131. Parties bear own costs

This clause makes provision for costs liability between parties to the proceedings in the Tribunal. In general, parties are to bear their own costs, unless there are reasons for the Tribunal to order otherwise.

Clause 132. Tribunal may make costs orders

This clause allows the Tribunal to make a costs order for a party to bear some or all of another party's costs if the Tribunal thinks that it is appropriate to do so.

Clause 133. **Additional considerations for costs in review jurisdiction**

This clause sets out the considerations the Tribunal must take into account in making an order as to costs in a review proceeding. These are:

- whether the party genuinely attempted to enable and assist the decision-maker to make a decision on merit; and
- whether the decision-maker genuinely attempted to make a decision on merit.

Clause 134. **Costs order against a representative**

This clause provides the Tribunal with the power make a costs order against a representative if they acted in, or delayed, the proceedings in a way that resulted in unnecessary costs.

Division 7 Arrest

Clause 135. **Arrest of person for not complying with summons**

This clause allows the President or a Deputy President to issue a warrant for the arrest of a person who fails to attend as required by a summons and allows for the person to be detained until released by order of the President, a Deputy President or, on review, the Supreme Court.

Clause 136. **Conditional release of arrested person**

This clause allows the President or a Deputy President to release a person arrested subject to conditions. Failure to comply with the conditions is an offence attracting a maximum penalty of 100 penalty units or imprisonment for six months.

Clause 137. **Review by Supreme Court**

This clause allows for a review by the Supreme Court of a decision by the President or a Deputy President under this Division.

Division 8 Directions and rules

Clause 138. **Rules**

This clause enables a committee comprising of at least the President, a Deputy President and an ordinary member of the Tribunal to make rules for the Tribunal. The President is the chairperson of the rules committee. A decision of the committee must be determined by the majority vote of members present. If there is an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

Clause 139. **Practice directions**

This clause enables the President to issue practice directions for the Tribunal. If there is an inconsistency between the practice directions and the rules, the rules prevail to the extent of the inconsistency.

Part 5 Internal review and appeals

Division 1 Internal review

Clause 140. Review of original decision

This clause makes provisions relating to the internal review by the Tribunal of original decisions of the Tribunal. Such a review is conducted as a proceeding in the Tribunal's review jurisdiction. The Registrar may not constitute the Tribunal in a review proceeding.

Division 2 Appeals

Clause 141. Appeal to Supreme Court

Under this clause, appeals from decisions of the Tribunal lie to the Supreme Court on a question of law only with leave of the Supreme Court. The Supreme Court may confirm, vary, or substitute its own decision or dismiss the appeal. A decision that is varied or substituted by the Court has effect as a decision of the Tribunal.

Clause 142. Effect of appeal on decision appealed against

This clause enables the Supreme Court to stay the operation of the Tribunal's decision while the Supreme Court decides whether to grant leave to appeal and, if so, while it decides the appeal. If the Supreme Court does not make such an order, the review or appeal does not affect the Tribunal's decision or prevent implementation of that decision.

Part 6 Registrar

Division 1 Registrar

Clause 143. Appointment of Registrar

This clause allows for the appointment by the Minister of a public sector employee who is admitted or qualified to be admitted as a legal practitioner, to be the Registrar of the Tribunal.

Clause 144. Functions and powers of Registrar

This clause sets out the functions and powers of the Registrar. These functions are:

- to assist the President in the administration of the Tribunal;

- to manage the registry and records of the Tribunal;
- to manage the day-to-day case management of the Tribunal;
- to constitute the Tribunal under the Act; and
- any other functions as directed by the President or specified under the rules.

Clause 145. **Registrar may delegate powers and functions**

This clause provides for delegations by the Registrar to other public sector employees.

Clause 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

Clause 147. **Protection from liability for acts**

This clause provides that no liability will attach to a person for compliance, or purported compliance, in good faith, in the exercise of a power or performance of a function under this or another Act.

Clause 148. **Protection from liability for disclosure**

If a person produces a document or material under a requirement of the Act, they are not liable or in breach of a professional code for doing so.

Clause 149. **Confidentiality of information**

This is a standard clause that makes it an offence for a person to breach confidentiality. The maximum penalty is 200 penalty points or imprisonment for two years.

Clause 150. **False or misleading information**

This clause is a standard provision and makes it an offence where a person knowingly gives information to the Tribunal or its members that is misleading. The maximum penalty is 100 penalty units or imprisonment for six months.

Clause 151. **Annual report**

This clause is a standard provision requiring the President of the Tribunal to prepare and give to the Minister an annual report within three months after the end of the financial year. The clause specifies the minimum information that must be included in the report. This report will be tabled in the Legislative Assembly by the Minister within seven sitting days after the Minister receives the Report. The report

must not include confidential information.

Clause 152. **Additional reports**

The Minister will also be able to request the President of the Tribunal to provide a report on any matter relevant to the administration or operation of the Tribunal. The Report must not include confidential information.

Clause 153. **Proceedings for offences**

This clause provides that a proceeding for an offence against the Act must be brought within 12 months from the date the offence is alleged to have been committed.

Clause 154. **Seal**

This clause is a standard provision allowing the Tribunal to have a seal for sealing documents issued out of the Tribunal.

Clause 155. **Regulations**

This is a standard clause allowing the Administrator to make regulations under the Act. A regulation may prescribe fees payable under this Act.