

Queensland



CHILDREN SERVICES TRIBUNAL ACT 2000

**Reprinted as in force on 7 February 2001
(Act not amended up to this date)**

Reprint No. 1 *

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Information about this reprint

This Act is reprinted as at 7 February 2001.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- correct minor errors (s 44)

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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2000**

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CHILDREN SERVICES TRIBUNAL ACT 2000

[reprinted as in force on 7 February 2001]

An Act to establish the Children Services Tribunal, to provide for the review by the tribunal of certain decisions about services for children, and for other purposes

PART 1—PRELIMINARY

Division 1—Introduction

1 Short title

This Act may be cited as the *Children Services Tribunal Act 2000*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Division 2—Interpretation

3 Dictionary

The dictionary in schedule 2 defines particular words used in this Act.

4 What is “harm” to a child

(1) “**Harm**”, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

Division 3—Operation of Act

5 Act binds all persons

(1) This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and all the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

Division 4—Object and principles

6 Object

The object of this Act is to establish the Children Services Tribunal—

- (a) to provide merit reviews of reviewable decisions that is accessible, fair, informal, just and quick; and
- (b) to make decisions in a review that promote the interests, rights and wellbeing of the child about whom the reviewable decision was made; and
- (c) to conduct proceedings in a way that—
 - (i) promotes the interests, rights and wellbeing of the child involved in the proceedings; and
 - (ii) uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances; and
- (d) to foster an atmosphere of review that enhances the delivery of services to children.

7 Principles underlying this Act

The following principles underlie this Act—

Children Services Tribunal Act 2000

- (a) in decisions involving a child—
 - (i) the best interests of the child are the paramount concern; and
 - (ii) the child's views and wishes should be taken into account in a way that has regard to the child's age and maturity;
- (b) every child is entitled to be protected from harm and cared for in a way that promotes the child's wellbeing;
- (c) every child is entitled to be treated in a way that respects the child's dignity and privacy;
- (d) it is generally in a child's best interests that decisions about the child's welfare are made as quickly as possible;
- (e) a child entitled to start, or participate in, a review—
 - (i) should be given the information and help necessary for the child to do so; and
 - (ii) should have access to appropriate representation;
- (f) Aboriginal tradition and Island custom must be taken into account in matters involving Aboriginal people and Torres Strait Islanders;
- (g) the cultural practices of persons involved in a review must be taken into account to the extent they are relevant to the review;
- (h) the relationship between a child and each significant person in the child's life should be preserved unless to do so would not be in the child's best interests;
- (i) the tribunal should have all relevant material before it for making a decision.

PART 2—ESTABLISHMENT AND MEMBERSHIP OF CHILDREN SERVICES TRIBUNAL

Division 1—Establishment of tribunal

8 Children Services Tribunal

The Children Services Tribunal is established.

9 Tribunal not subject to direction by Minister

In exercising its jurisdiction, the tribunal is not subject to the direction of the Minister.

Division 2—Membership of tribunal

10 Membership of tribunal

(1) The members of the tribunal are—

- (a) the president; and
- (b) if a deputy president is appointed, the deputy president; and
- (c) the other members.

(2) The members are to be appointed by the Governor in Council.

(3) The members are appointed under this Act and not under the *Public Service Act 1996*.

11 Selection

(1) For selecting a person for recommendation for appointment as a member, the Minister must advertise for applications from appropriately qualified persons to be considered for selection.

(2) The Minister may recommend to the Governor in Council a person for appointment as a member only if subsection (1) has been complied with.

(3) In recommending persons for appointment as members, the Minister must take into account—

- (a) the need for a balanced gender representation in the membership of the tribunal; and
- (b) the need for the membership of the tribunal to include Aboriginal people and Torres Strait Islanders; and
- (c) the need for the membership of the tribunal to reflect the social and cultural diversity of the general community; and
- (d) the range and experience of members of the tribunal.

12 Eligibility for appointment as member

A person is eligible for appointment as a member only if the Minister considers the person—

- (a) is committed to the principles mentioned in section 7; and
- (b) has extensive professional knowledge and experience of children; and
- (c) has demonstrated a knowledge of and has experience in 1 or more of the fields of administrative review, child care, child protection, child welfare, community services, education, health, indigenous affairs, law, psychology or social work.

13 Term of appointment

(1) A member is appointed for the term stated in the member's instrument of appointment.

(2) The term must not be longer than 3 years.

14 Resignation

A member may resign the person's office by signed notice of resignation given to the Minister.

15 Remuneration etc.

(1) A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) A member holds office on the other conditions decided by the Governor in Council.

16 Removal from office

The Governor in Council may remove a member from office by notice given to the member if the member—

- (a) is mentally or physically incapable of properly discharging the functions of a member; or
- (b) has demonstrated a disregard of the principles stated in section 7 in carrying out the member's duties; or
- (c) has been found guilty of an offence the Minister considers makes the member inappropriate to perform official duties.

17 Minister may obtain information from commissioner of police service

(1) This section applies to a person who—

- (a) is a member; or
- (b) has applied to be considered for selection as a member.

(2) For helping decide whether the person is suitable to be, or to continue to be, a member, the Minister may ask the commissioner of the police service to give the Minister the following information about the person—

- (a) a written report about the person's criminal history;
- (b) a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history.

(3) Subject to subsection (4), the commissioner of the police service must comply with the request.

(4) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.

(5) The Minister must cause information given to the Minister under this section to be destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

*Division 3—Functions and powers of president and deputy president***18 President’s functions**

(1) The president must—

- (a) ensure the efficient and quick discharge of the tribunal’s business; and
- (b) ensure the members and the tribunal’s staff receive regular and appropriate training; and
- (c) compile and maintain a list (the “**facilitators list**”) of persons the president considers are suitable to facilitate alternative dispute resolution processes under this Act (“**facilitators**”); and
- (d) compile and maintain a list (the “**independent inquirers list**”) of persons the president considers have the necessary expertise or experience to perform the functions and exercise the powers of an independent inquirer appointed under this Act (“**independent inquirers**”); and
- (e) ensure facilitators and independent inquirers receive appropriate training.

(2) The president also has the other functions given to the president under this or another Act.

19 President not subject to direction by Minister

In performing or exercising the president’s functions or powers, the president is not subject to direction by the Minister.

20 Facilitators and independent inquirers lists

(1) The president must not include a person’s name on the facilitators list or independent inquirers list without the person’s consent.

(2) The president must review each list at least once each year.

(3) The president may add a person’s name to, or omit a person’s name from, a list.

(4) Before the president omits a person’s name from a list, the president must notify the person of the proposed omission and give the person

reasonable opportunity to make submissions to the president about why the person's name should not be omitted.

(5) Subsection (4) does not apply if the person—

- (a) has asked the president to omit the person's name from the list;
or
- (b) has died.

21 President's powers

(1) The president has the powers necessary or convenient to carry out the president's functions.

(2) The president also has the other powers given to the president under this or another Act.

22 Delegation

The president may delegate the president's powers under this Act to another member.

23 When deputy president to act as president

The deputy president is to act as president if the president is not available to carry out the president's functions or there is a vacancy in the office of president.

PART 3—REGISTRAR AND OTHER STAFF

24 Registrar of tribunal

(1) There is to be a registrar of the tribunal.

(2) The registrar must be a lawyer.

(3) The registrar is a member of the tribunal's staff.

(4) Subject to the president, the registrar is responsible for managing the administrative affairs of the tribunal.

(5) The registrar's functions include helping the president to exercise the president's functions.

25 Keeping of records and information

(1) The registrar may keep the records and information the registrar considers appropriate.

(2) Without limiting subsection (1), the registrar must keep the records of and information about reviews.

26 Staff of tribunal

The registrar, and other staff necessary to enable the tribunal to perform its functions, are to be employed under the *Public Service Act 1996*.

PART 4—ORGANISATION, JURISDICTION AND OPERATION OF TRIBUNAL

Division 1—Sitting and constitution of tribunal

27 Sitting of tribunal

The tribunal sits at the times and places in Queensland the president directs.

28 Constitution of tribunal for review

(1) For a review, the tribunal is to be constituted under the president's direction.

(2) The president is to direct the constitution of the tribunal as soon as practicable after the review application is filed.

(3) The tribunal must be constituted by 3 members unless, for a child-related employment review, the president considers it appropriate for the tribunal to be constituted by a single member.

(4) The tribunal, when constituted by 3 members—

- (a) must include, to the extent practicable—
 - (i) at least 1 member with specialist knowledge and expertise relevant to the matter the subject of the review; and
 - (ii) at least 1 member who is an Aborigine if a party, or a person entitled to elect to become a party under section 62,¹ is an Aborigine; and
 - (iii) at least 1 member who is a Torres Strait Islander if a party, or a person entitled to elect to become a party under section 62, is a Torres Strait Islander; and
- (b) must include, at least 1 member who is a lawyer of at least 5 years standing.

(5) If the tribunal is constituted by a single member for a child-related employment review, the member must be a lawyer of at least 5 years standing.

29 Presiding member

(1) If the tribunal is constituted by 3 members, the “**presiding member**” is—

- (a) if the president is a constituting member—the president; or
- (b) if paragraph (a) does not apply and the deputy president is a constituting member—the deputy president; or
- (c) otherwise—the constituting member designated as the presiding member by the president.

(2) If the tribunal is constituted by a single member, including under section 73 or 80,² the “**presiding member**” is that person.

30 Limitation on members who may constitute tribunal

(1) A member is ineligible to be a constituting member for a review if the member—

1 Section 62 (Certain persons may elect to become parties)

2 Section 73 (President or presiding member may constitute tribunal for ss 74, 75 and 76) or 80 (Single member may constitute tribunal for preliminary conference)

- (a) is an employee or officer of the government entity in which the reviewable decision was made; or
- (b) was, when the reviewable decision was made, an employee or officer of the government entity in which the reviewable decision was made.

(2) A member is ineligible to be a constituting member for a review of a reviewable decision made under the *Child Care Act 1991* if the member has been refused a licence under that Act or has had a licence under that Act revoked.

(3) Subsection (4) applies if a member—

- (a) has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved foster carer, under the *Child Protection Act 1999* or has had a certificate of approval as an approved foster carer under that Act cancelled; or
- (b) has been refused an application to act as a foster parent to a child under the *Children's Services Act 1965*, section 107 or has had an approval to act as a foster parent under that section revoked.

(4) The member is ineligible to be a constituting member for a review of a reviewable decision made under the *Child Protection Act 1999*.

31 Members must disclose certain interests

(1) This section applies if a constituting member becomes aware the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the review (the "conflict").

(2) The constituting member must immediately disclose the issue giving rise to the conflict—

- (a) if the member is the president—to the parties to the review; or
- (b) otherwise—to the president and the parties to the review.

(3) After making the disclosure, the constituting member may disqualify himself or herself.

(4) The constituting member may take part in the review only—

- (a) if the member is the president—with the agreement of the parties; or

(b) otherwise—with the agreement of the president and the parties.

(5) This section is subject to section 30.

32 Reconstituting tribunal

(1) This section applies if—

- (a) the tribunal is constituted for a review by 3 members; and
- (b) a constituting member stops being a member or for any reason is not available for the review.

(2) The president may direct that the tribunal be reconstituted by the remaining constituting members together with another member.

(3) In reconstituting the tribunal, the president must have regard to section 28(4).

(4) The tribunal as reconstituted must continue and finish the review and, for that purpose, may have regard to any record relating to the review made by the tribunal as previously constituted.

33 Way question of law to be decided

(1) This section applies for deciding a question of law arising in a proceeding before the tribunal.

(2) If the presiding member is a lawyer, it must be decided according to the presiding member's opinion.

(3) If the presiding member is not a lawyer and the tribunal as constituted for the review includes 1 lawyer, it must be decided by the lawyer.

(4) If the presiding member is not a lawyer and the tribunal as constituted for a review includes 2 lawyers, it must be decided by the lawyer authorised by the president to decide questions of law arising in the review.

(5) If the presiding member constituting the tribunal under section 73 or 80³ is not a lawyer, the member must obtain advice about the question from

3 Section 73 (President or presiding member may constitute tribunal for ss 74, 75 and 76) or 80 (Single member may constitute tribunal for preliminary conference)

a member appointed under section 10 who is a lawyer and decide the question in accordance with the advice.

(6) For acting under subsection (5), the presiding member may adjourn a proceeding.

(7) In this section—

“**lawyer**” means a lawyer of at least 5 years standing.

34 Way other question to be decided

(1) This section applies for deciding a question arising in a proceeding before the tribunal, other than a question of law.

(2) The decision is to be the opinion of—

- (a) if the tribunal is constituted by 3 members—the majority of the constituting members; or
- (b) if the tribunal is constituted by a single member—that member.

Division 2—Jurisdiction and matters relating to decisions

35 Jurisdiction

(1) The tribunal has jurisdiction to review a reviewable decision on an application made under this Act.

(2) The tribunal also has other jurisdiction given to it under this or another Act.

36 Tribunal may hold hearing

(1) The tribunal may hold a hearing for a review.

(2) The tribunal may also hold a hearing to decide anything it may decide under this or another Act.

37 Tribunal to decide matters afresh

(1) For reviewing a reviewable decision, the tribunal is to—

- (a) decide afresh the matter to which the reviewable decision relates, unaffected by the reviewable decision; and

- (b) take all reasonable steps to ensure it has all relevant material before it.

(2) Without limiting subsection (1), the tribunal may have regard to relevant material that was not available to the decision maker.

38 Powers of tribunal on review

(1) After reviewing the reviewable decision, the tribunal may—

- (a) confirm, set aside or vary the decision; or
- (b) set aside the decision and substitute its own decision; or
- (c) set aside the decision and return it to the decision maker for reconsideration in accordance with directions given by the tribunal.

(2) For subsection (1), the tribunal—

- (a) has all the functions and powers of the decision maker; and
- (b) must have regard to the matters the decision maker was required to have regard to under the Act under which the decision was made.

(3) Also, after reviewing a reviewable decision the tribunal may make written recommendations to the chief executive of the government entity in which the reviewable decision was made about the entity's policies, practices and procedures relevant to the decision.

39 President may refer reviewable decision back for internal review

(1) This section applies if—

- (a) a review application is before the tribunal; and
- (b) the tribunal has not made a final decision on the review; and
- (c) the president is satisfied there is an appropriate internal review process available to review the reviewable decision in the government entity in which it was made; and
- (d) the applicant has not used the internal review process; and
- (e) it is reasonable for the applicant to use the internal review process.

(2) The president may order the applicant to use the internal review process.

(3) The president may adjourn the tribunal's review pending the outcome of the internal review.

(4) If the issues in dispute between the parties to the tribunal's review are resolved by the internal review, the president must dismiss the application.

40 When matter before court

(1) Subsection (2) applies if—

- (a) a review application is before the tribunal; and
- (b) some or all the matters to which the reviewable decision relates are also before a court.

(2) The president must suspend the tribunal's review if the president considers—

- (a) the court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and
- (b) the matters will be dealt with quickly by the court.

(3) If the president acts under subsection (2), the court decides the matters and the decision effectively decides the issues before the tribunal, the president must dismiss the review application.

(4) Subsection (5) applies if—

- (a) the president has suspended the tribunal's review; and
- (b) the matters have not been decided by the court.

(5) The president may cancel the suspension and the tribunal may continue to deal with the review application.

(6) The president may act under subsection (2), (3) or (5) on the president's own initiative or on application by a party to the review.

41 Tribunal's powers to dismiss review application

(1) The tribunal may dismiss a review application if—

- (a) the tribunal considers it is frivolous or vexatious; or

- (b) the applicant has received reasonable notice of the time and place of a proceeding relating to the application and has failed to appear at the proceeding; or
- (c) because of the applicant's unreasonable actions, proceedings relating to the application have been delayed.

(2) The tribunal must not dismiss a review application under subsection (1)(b) if, within 7 days of the proceeding, the applicant gives the tribunal a reasonable excuse for the applicant's failure to appear at the proceeding.

42 Tribunal's decision must be in writing etc.

- (1) The tribunal must give its decision on a review in writing.
- (2) The decision must include the reasons for the decision.
- (3) As far as practicable, the tribunal must state the reasons so they can be readily understood by the parties.

43 Registrar must give information notice to parties

- (1) As soon as practicable after the tribunal gives its decision on a review, the registrar must give each party to the review an information notice about its decision.
- (2) The information notice must state—
 - (a) the tribunal's decision; and
 - (b) the tribunal's reasons for the decision; and
 - (c) the party may appeal to the District Court against the decision within 28 days, but only on a question of law; and
 - (d) how the party may start an appeal.
- (3) However, to the extent the information notice given to a party would otherwise state information in contravention of a confidentiality order, the registrar must omit the information from the notice.

44 Copies of decisions and recommendations must be given

- (1) The registrar must also give a copy of the tribunal's decision on a review to the chief executive of the government entity in which the decision was made if the chief executive is not a party to the review.

(2) The registrar must give a copy of the tribunal's recommendations made under section 38(3) on a review, if any, to the decision maker if the decision maker is not the chief executive of the government entity in which the reviewable decision was made.⁴

45 Effect of tribunal's decision

(1) The tribunal's decision on a review application takes effect from when it is given or the later date stated in the decision.

(2) Subsection (3) applies if the tribunal decides to vary the reviewable decision or substitute its own decision for the reviewable decision.

(3) The tribunal's decision—

- (a) is taken to be the decision of the person who made the reviewable decision; and
- (b) must be given effect by the government entity in which the reviewable decision was made.

(4) Subsection (3) does not allow the tribunal's decision to be reviewed under this Act by the tribunal.

Division 3—General powers and procedures of the tribunal

46 Powers generally

(1) The tribunal has the powers given to it under this or another Act.

(2) The tribunal may do any of the following—

- (a) receive information on oath or affirmation;
- (b) question a person giving evidence before the tribunal;
- (c) adjourn its proceedings to the times and places it thinks fit;
- (d) order a party to a review to do something for progressing the review;
- (e) make interim orders and give procedural directions.

⁴ Under section 38(3) the tribunal may make recommendations about a government entity's policies, practices and procedures to the chief executive of the entity.

47 Method of conducting proceedings

(1) The tribunal may, in appropriate cases, conduct a proceeding by means of telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between persons taking part in the proceeding.

(2) The tribunal may decide all or part of a proceeding from a consideration of the documents filed, without the parties or witnesses appearing in person, if—

- (a) the parties to the proceeding agree; and
- (b) the tribunal considers it appropriate in the circumstances.

48 Proceedings must usually be held in private

(1) A proceeding before the tribunal must be held in private.

(2) However, the following are entitled to be present at the proceeding—

- (a) each party to the proceeding;
- (b) if, under this Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- (c) a separate representative representing a child in the proceeding;
- (d) a witness while giving evidence;
- (e) a person allowed to be present to support a party;
- (f) a person allowed to be present to support a witness, while the witness is giving evidence;
- (g) a person allowed to be present by the tribunal.

(3) This section is subject to sections 50, 93 and 112.⁵

⁵ Sections 50 (When proceeding may be held in public), 93 (Children giving evidence or expressing views to tribunal) and 112 (Tribunal may exclude person for contempt)

49 Party and witness before tribunal may have support person present

(1) The tribunal must inquire as to whether a party to, or a witness in, a review before the tribunal requires the support of another person for the review or while giving evidence.

(2) If the party or witness indicates he or she requires the support of another person (the “**support person**”), the tribunal may allow the support person to be present with the party at the review or while the witness is giving evidence.

(3) The support person must not be a party to the review.

(4) The support person is not entitled to represent the party or witness at the review or to address the tribunal.

50 When proceeding may be held in public

(1) The tribunal may allow a proceeding before the tribunal to be held in public if information identifying, or likely to lead to the identification of, a particular child will not be given in the proceeding.

(2) However, the tribunal must not allow a proceeding about a child-related employment review to be held in public.

51 Procedure generally

(1) To the extent a matter relating to the tribunal’s procedure is not provided for by this Act, tribunal rules or directions given under section 54, the tribunal may decide its own procedure.

(2) In conducting its proceedings, the tribunal—

- (a) must observe procedural fairness; and
- (b) must act quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inquire into, and inform itself, of anything in the way it considers appropriate.

52 Tribunal's procedures must take account of certain matters

(1) In conducting its proceedings, the tribunal must take reasonable and practicable measures to ensure—

- (a) the proceedings are conducted in a way that recognises, and is responsive to—
 - (i) the needs of parties and witnesses who are children or persons with intellectual or physical disabilities; and
 - (ii) the customs, need and traditions of parties or witnesses who are Aborigines, Torres Strait Islanders or persons from other cultural or linguistic backgrounds; and
- (b) people taking part in the proceedings, particularly children, understand the tribunal's procedures; and
- (c) the tribunal understands the actions and assertions of, and views expressed by, people taking part in the proceedings; and
- (d) parties understand the nature of, and assertions made in, the proceedings and the legal implications of the assertions; and
- (e) parties have an opportunity to present their cases and have their submissions considered.

(2) In taking measures under subsection (1)(c), the tribunal must have regard to the people's ages, disabilities, and cultural, religious and socioeconomic backgrounds.

(3) The measures may include—

- (a) using the services of lingual and cultural interpreters; and
- (b) appointing an expert under section 53.

(4) However, if a person taking part in a proceeding has a difficulty communicating in English or a disability that prevents him or her fully participating in the proceeding, the tribunal must not continue with the proceeding without a lingual interpreter to translate things said in the proceeding or a person to facilitate his or her participation in the proceeding.

53 Expert help

(1) For a review, the tribunal may appoint a person having special knowledge or skill to help the tribunal (an “**expert**”).

(2) If allowed by the tribunal, an expert may attend a proceeding before the tribunal and advise the tribunal about the proceeding.

(3) The tribunal may act under subsection (1) on its own initiative or on application by a party to the review.

54 Procedural directions

(1) To the extent a matter relating to the tribunal's procedure is not provided for by this Act or tribunal rules, the matter may be dealt with by directions under this section.

(2) The president may give written directions about the tribunal's procedure.

(3) The directions may be of general or limited application.

55 Adjournments

(1) In considering whether to adjourn a proceeding involving a child, the tribunal must take into account any impact that adjourning the proceeding will have on the child.

(2) When it adjourns a proceeding, the tribunal must—

- (a) give reasons for the adjournment; and
- (b) state any matters it requires a party to the proceeding to address during the adjournment; and
- (c) give directions and make orders it considers necessary or desirable.

56 Tribunal may proceed in absence of party

At a proceeding before the tribunal, the tribunal may decide a matter, including a review application, in the absence of a party if it is satisfied—

- (a) the party has received reasonable notice of the proceeding; or
- (b) all reasonable attempts have been made to give the party notice of the proceeding.

Division 4—Starting reviews, parties and representatives, and stay of reviewable decisions

57 Reviewable decisions

(1) Under various Acts persons may apply to the tribunal to have certain decisions made under those Acts reviewed by the tribunal.⁶

(2) In this Act those decisions are called reviewable decisions.

58 How to start a review

(1) The review of a reviewable decision is started by the applicant for review filing an application for the review (the “**review application**”) in the approved form with the registrar.

(2) The review application must state fully the grounds for the review including why the applicant considers the reviewable decision is wrong.

(3) The review application must be filed within 28 days after the applicant receives notice of the reviewable decision.

(4) However, the president may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

59 Applications on behalf of children

(1) A person may file a review application on behalf of a child only with the president’s permission.

(2) The president may give permission only if the president considers—

- (a) the person is not, on the person’s own behalf, entitled to apply for the decision to be reviewed by the tribunal; and
- (b) it is in the child’s best interests that the application be made; and
- (c) it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.

⁶ See, for example, the *Adoption of Children Act 1964*, section 14D, the *Child Protection Act 1999*, section 247, the *Child Care Act 1991*, section 41 and the *Commission for Children and Young People Act 2000*, section 121.

60 Registrar to give notice of review application

(1) The registrar must give notice of a review application to the decision maker.

(2) Within 7 days after receiving the notice, the decision maker must give the registrar notice of the names and addresses of all persons, apart from the applicant—

- (a) who are entitled to apply for a review of the reviewable decision concerned; and
- (b) of whom the decision maker is aware.

(3) For subsection (2), a person's entitlement to apply for a review is taken to be unaffected by the ending of the period of 28 days mentioned in section 58(3).

(4) Immediately on receipt of the decision maker's notice, the registrar must give an information notice to each person named in the decision maker's notice.

(5) The information notice must state—

- (a) details of the review application; and
- (b) that the person may elect to become a party to the review within 7 days of receipt of the notice; and
- (c) how the person may elect to become a party to the review.

61 Parties to review

The parties to a review are—

- (a) the applicant for the review; and
- (b) the decision maker; and
- (c) a person who elects to become a party under section 62;
- (d) a person joined as a party under section 63.

62 Certain persons may elect to become parties

(1) This section applies to a person who is given an information notice under section 60(4).

(2) The person may elect to become a party to the review to which the notice relates by filing a notice of election in the approved form with the registrar.

(3) The notice of election must be filed with the registrar within 7 days after the person receives the information notice.

63 Joinder of person as party to review

(1) The tribunal may join a person as a party to a review if it is satisfied the person is genuinely concerned in the subject matter of the review.

(2) However, if the review concerns a child, the tribunal must not join a person as a party unless it is satisfied that to do so would be in the child's best interests.

(3) The tribunal may join a person as a party to the review on its own initiative or on application by the person.

(4) The tribunal may join a person as a party to the review at any time before the review application is finally decided by the tribunal.

64 Right of party to appear

(1) A party in a proceeding before the tribunal may appear in person.

(2) If the party is a corporation, the corporation may appear through an officer of the corporation who is not a lawyer.

65 When review applications may be dealt with together

If the tribunal considers 2 or more review applications arise from the same or similar circumstances, the tribunal may deal with the applications together.

66 Representation of parties other than children

(1) This section applies to a party to a review other than a party who is a child.

(2) The party may not be represented before the tribunal by a lawyer or agent without the tribunal's permission.

(3) The party may apply to the tribunal for the tribunal's permission.

(4) In deciding the application, the tribunal must have regard to—

- (a) the nature and complexity of the factual and legal issues involved; and
- (b) the party's capacity to present the party's case.

(5) Subsection (4) does not limit the matters to which the tribunal may have regard in deciding the application.

67 Representation of children by lawyers

(1) This section applies to a party to a review who is a child.

(2) The child may be represented before the tribunal by a lawyer.

68 Separate representation of children

(1) This section applies if a reviewable decision is about a child and the decision is the subject of a review application.

(2) This section applies whether or not the child—

- (a) is a party to the review; or
- (b) is represented under section 67.

(3) The tribunal must consider whether it would be in the child's best interests for the child to be separately represented under this section before the tribunal by a lawyer (a "**separate representative**").

(4) If the tribunal considers it would be in the child's best interests for the child to be separately represented under this section before the tribunal by a lawyer, the tribunal must order that the child be represented by a separate representative.

(5) A separate representative may represent more than 1 child in the same proceeding.

(6) A separate representative must—

- (a) act in the child's best interests having regard to any expressed views or wishes of the child; and
- (b) as far as possible, present the child's views and wishes to the tribunal.

(7) For this Act, a separate representative has the same rights and obligations as a party to the review.

69 Review application does not affect reviewable decision

The filing of a review application with the registrar does not affect the reviewable decision, or the carrying out of the decision, unless the decision is stayed.

70 Stay of reviewable decision's operation

(1) The tribunal may stay the operation of a reviewable decision if a review application relating to the decision has been filed with the registrar.

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

(3) In deciding whether to stay the decision, the tribunal must—

- (a) in having regard to the principles mentioned in section 7, have particular regard to the principle mentioned in section 7(a)(i);⁷ and
- (b) take into account—
 - (i) the interests of persons likely to be affected by the tribunal's decision on the review application; and
 - (ii) any submissions made to it by the decision maker and other parties to the review.

(4) Subsection (3) does not limit the things the tribunal may take into account.

(5) The stay—

- (a) may be given on conditions the tribunal considers appropriate; and
- (b) operates for the period fixed by the tribunal; and
- (c) may be revoked or amended by the tribunal.

(6) However, the period of the stay must not extend past the time when the tribunal decides the review.

⁷ Section 7(a)(i)—

7. The following principles underlie this Act—

(a) in decisions involving a child—

(i) the best interests of the child are the paramount concern;

71 Withdrawal of review application

(1) An applicant may withdraw a review application by filing with the registrar a notice of withdrawal.

(2) However, an applicant may withdraw a review application filed on behalf of a child under section 59 only with the permission of the president or the tribunal.

(3) The president or tribunal may give permission under subsection (2) only if the president or tribunal considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

(4) If a notice of withdrawal is filed, the registrar must give notice of the withdrawal to each party to the review.

(5) This section does not affect the operation of section 95(4).⁸

Division 5—Documents**72 Div 5 does not affect the *Child Protection Act 1999*, ss 186 or 191**

Nothing in this division affects the operation of the *Child Protection Act 1999*, section 186 or 191.⁹

73 President or presiding member may constitute tribunal for ss 74, 75 and 76

(1) This section applies if the tribunal is constituted for a review by 3 members.

(2) Despite section 28,¹⁰ for exercising the tribunal's powers under sections 74, 75 and 76, the tribunal may be constituted by the president or the presiding member alone.

8 Section 95 (Provisions for child-related employment reviews)

9 The *Child Protection Act 1999*, section 186 is about protecting the identity of persons who give information about suspected harm to a child. Section 191 allows a person engaged in the administration of that Act to refuse to disclose to a court, tribunal or party certain information obtained under or in relation to the Act.

10 Section 28 (Constitution of tribunal for review)

74 Decision maker must give the tribunal certain documents

(1) Within 21 days of receiving notice under section 60(1) about a review application, the decision maker must give to the tribunal—

- (a) a notice containing the reasons for the reviewable decision; and
- (b) every other document in the decision maker's possession or control that is relevant to the review.

(2) By notice given to the decision maker, the tribunal may shorten or extend the period.

(3) The tribunal must not shorten the period to less than 3 business days after the decision maker receives notice of the review application.

(4) The tribunal may act under subsection (2) only if satisfied that, not to do so, will result in a child's interests being adversely affected or another party to the review suffering hardship.

(5) Subsection (6) applies if the tribunal considers a notice given to the tribunal under subsection (1)(a) does not adequately—

- (a) state the reasons; or
- (b) state the findings on material questions of fact; or
- (c) refer to the evidence and other material on which the findings were based.

(6) The tribunal may order the decision maker to give the tribunal the information necessary for the tribunal to be adequately informed of the reasons for the reviewable decision.

(7) The tribunal may order the decision maker to give the applicant a copy of the notice mentioned in subsection (1)(a) or information mentioned in subsection (6).

(8) This section does not limit section 75.

75 Tribunal may order production of documents

(1) This section applies if the tribunal considers a document may be relevant to a review.

(2) The tribunal may, by notice given to a person, order the person to give the document to the tribunal within a time stated in the notice.

(3) The notice must state—

- (a) sufficient particulars to enable the person to identify the document; and
- (b) that the tribunal considers the document may be relevant to the review.

(4) The time stated in the notice must not be less than 3 business days from when the notice is received by the person.

(5) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) It is a reasonable excuse if complying with the notice might tend to incriminate the person.

76 Person may object to giving documents to tribunal

(1) This section applies to a person who is ordered, under section 75 to give the tribunal a document for a review.

(2) Before the day the person must give the document to the tribunal, the person may apply to the tribunal for an order that the person does not have to give the document to the tribunal.

(3) Subject to subsection (5)(a), the person does not have to give the document to the tribunal pending the outcome of the application.

(4) The tribunal must make the order if it is satisfied the document is not materially relevant to the review.

(5) For deciding the application, the tribunal may do 1 or more of the following—

- (a) order the person to give the document to the tribunal;
- (b) examine the document;
- (c) appoint an independent inquirer to examine the document and report to the tribunal on the document's relevance to the review.

(6) If the document is given to the tribunal under subsection (5)(a), the tribunal must deal with the document in a way that ensures it is not disclosed to anyone else other than an independent inquirer appointed under subsection (5)(c).

(7) An independent inquirer appointed under subsection (5)(c)—

- (a) may examine the document; and

(b) must not disclose the document's contents to anyone else except the tribunal.

(8) The tribunal may act on the report of an independent inquirer appointed by it.

(9) If a person gives a document to the tribunal under subsection (5)(a) and the tribunal orders that the person does not have to give the document to the tribunal, the tribunal must return the document to the person.

77 Parties access to documents

(1) This section applies to documents in the tribunal's possession for a review.

(2) The registrar must allow the parties to the review to inspect and make copies of the documents.

(3) For subsection (2), the registrar must give the parties reasonable access to the documents during normal business hours.

(4) This section does not apply to documents in the tribunal's possession for deciding an application under section 76(2).

(5) Also, this section is subject to a confidentiality order about the documents.

78 When copies of documents may be given

If, under this Act, a person is required to give a document to the tribunal, the tribunal may allow the person to give it a copy of the document instead of the original.

Division 6—Preliminary conferences

79 Preliminary conferences

(1) The president, registrar or tribunal may require the parties to a review to attend 1 or more preliminary conferences before the tribunal.

(2) At a preliminary conference, the tribunal may do 1 or more of the following—

- (a) decide issues about representation under section 66 or 68;¹¹
- (b) identify and clarify the issues in dispute;
- (c) identify the questions of fact and law to be decided by the tribunal;
- (d) identify information to be given to the tribunal by the parties;
- (e) give the parties information about the tribunal's practice and procedures;
- (f) refer the parties to alternative dispute resolution;
- (g) give directions and make orders about the conduct of the review.

(3) The procedure for a preliminary conference is at the discretion of the tribunal.

(4) Without limiting subsection (3), at a preliminary conference the tribunal may meet with a party separately—

- (a) if it considers doing so may avoid the escalation of conflict between the parties; or
- (b) if the party is a child and the tribunal considers doing so is in the child's best interests having regard to the child's views and wishes.

80 Single member may constitute tribunal for preliminary conference

(1) This section applies if the tribunal constituted for a review consists of 3 members and the parties to the review have been required to attend a preliminary conference.

(2) The president or presiding member may direct that, for the preliminary conference, the tribunal may be constituted by a stated single constituting member.

81 Registrar must give parties notice of preliminary conference

(1) The registrar must give notice of a preliminary conference to the parties.

11 Section 66 (Representation of parties other than children) or 68 (Separate representation of children)

(2) The notice must state the matters that may be dealt with at the preliminary conference.

(3) The period of the notice must be reasonable having regard to the matters that may be dealt with at the preliminary conference.

Division 7—Alternative dispute resolution

82 Purpose of alternative dispute resolution

The purpose of alternative dispute resolution (“ADR”) is—

- (a) to identify and reduce the issues in dispute between the parties to a review; and
- (b) to promote settlement of the issues in dispute.

83 Referral to ADR

(1) At any stage of a review, the tribunal may refer the parties to ADR.

(2) The tribunal may give directions and make orders about the conduct of ADR.

84 Appointment of facilitators

(1) This section applies if the parties to a review are referred to ADR.

(2) The registrar must appoint a facilitator to conduct ADR.

(3) If the facilitator is likely to have contact with a child, the person appointed must have professional experience in communicating and working with children.

85 Facilitators must disclose certain interests

(1) This section applies if a facilitator appointed to conduct ADR becomes aware the facilitator has an interest, financial or otherwise, that could conflict with the proper performance of the facilitator’s functions for the ADR (the “**conflict**”).

(2) The facilitator must disclose the issue giving rise to the conflict to the president, registrar and parties to the review.

(3) After making the disclosure, the facilitator may disqualify himself or herself.

(4) The facilitator may conduct the ADR only with the agreement of the president and the parties.

86 Procedure at ADR

Subject to any directions given or orders made by the tribunal, the way the ADR is conducted is at the discretion of the facilitator.

Example of tribunal direction—

To help a person to participate in ADR, the tribunal may direct that the person be allowed to use the services of a lingual interpreter.

87 Evidence from ADR inadmissible

(1) Evidence of anything said or done in the course of ADR is inadmissible in any proceeding, except—

- (a) if all parties participating in ADR agree to the admission of the evidence; or
- (b) a proceeding relating to an act or omission about which a disclosure has been made under section 88(2)(b).

(2) In this section, “**proceeding**” is not limited by the meaning of the term in the dictionary in schedule 2.

88 Facilitators to maintain secrecy

(1) The facilitator must not disclose information about a matter coming to the facilitator’s knowledge during ADR, unless the facilitator has a reasonable excuse.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) It is a reasonable excuse to disclose information if—

- (a) the disclosure is made with the agreement of all the parties who took part in the ADR; or
- (b) the facilitator reasonably considers the disclosure is necessary to prevent, or minimise the risk of, harm to a child, injury to a person or damage to property; or
- (c) the disclosure is made under section 89.

89 Facilitators' reports

The facilitator must report to the tribunal on the following—

- (a) whether ADR happened;
- (b) if ADR happened—
 - (i) when ADR took place; and
 - (ii) who participated in ADR; and
 - (iii) the outcome of ADR.

90 Settlement of review at ADR

(1) This section applies if the parties reach a settlement of the matters in dispute during ADR.

(2) The settlement must be written down, signed by the parties and filed with the registrar.

(3) Without conducting a hearing or any further hearing, the tribunal may decide the review in terms of the settlement if the tribunal—

- (a) considers the terms of the settlement are in the best interests of the child, if any, about whom the reviewable decision was made; and
- (b) could otherwise give a decision in those terms under this or another Act.

*Division 8—Children as witnesses etc.***91 Children must not be compelled to give evidence**

(1) A child must not be compelled to give evidence in a proceeding.

(2) Before a child gives evidence in a proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

92 Child's right to express views to tribunal

(1) This section applies if a reviewable decision is about a child and the decision is being reviewed by the tribunal.

(2) Whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

93 Children giving evidence or expressing views to tribunal

(1) This section applies if a child is giving evidence or expressing the child's views to the tribunal.

(2) Only the following persons may be present while the child gives evidence or expresses the child's views—

- (a) the constituting members;
- (b) the lawyer, if any, representing the child under section 67;
- (c) the separate representative, if any, for the child;
- (d) the child's support person if the child has a support person and agrees to that person's presence.

(3) Despite subsection (2), the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child—

- (a) is 12 years or more; and
- (b) is represented by a lawyer or a separate representative.

94 Questioning of children

(1) A child giving evidence or expressing the child's views in a proceeding must not be cross-examined.

(2) Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in a proceeding—

- (a) the constituting members;
- (b) the lawyer, if any, representing the child;
- (c) the separate representative, if any, for the child.

95 Provisions for child-related employment reviews

(1) This section applies if—

- (a) a child makes a review application to have a child-related employment decision reviewed by the tribunal or a person makes the application on the child's behalf;¹² and
- (b) in a proceeding for the review the child elects to give evidence.

(2) Sections 93 and 94 do not apply to the child.

(3) Before the child gives evidence, the tribunal must tell the child that he or she—

- (a) may be cross-examined by the tribunal or a party to the proceeding; and
- (b) may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
- (c) if the child acts under paragraph (b), the review application is taken to have been withdrawn and the review ceases.

(4) If the child acts under subsection (3)(b), the review application is taken to have been withdrawn and the review ceases.

96 Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made

(1) This section applies if—

- (a) a party to a review is a child who is a parent of the child about whom the reviewable decision was made; and
- (b) in a proceeding for the review the parent elects to give evidence.

(2) Sections 93 and 94 do not apply to the parent.

(3) Before the parent gives evidence, the tribunal must tell the parent that he or she—

- (a) may be cross-examined by the tribunal or a party to the proceeding; and
- (b) may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
- (c) if the parent acts under paragraph (b), this may effect the weight given by the tribunal to the parent's evidence.

12 Section 59 deals with the making of a review application on behalf of a child.

Division 9—Witnesses generally**97 Attendance of witnesses**

(1) The presiding member may notify a person, other than a child, to attend at a proceeding before the tribunal—

- (a) as a witness; or
- (b) to produce the thing stated in the notice.

(2) The notice must be in the approved form and state the time at and place where the person must attend.

(3) The presiding member may act under subsection (1) on the member's own initiative or on application by a party.

98 Swearing or affirming witnesses

The presiding member at a proceeding—

- (a) may require an adult witness at the proceeding to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to a witness at the proceeding; and
- (c) for participation under section 47(1),¹³ may make the arrangements the member considers appropriate in the circumstances for administering an oath or affirmation to a witness.

99 Allowances for witnesses

A witness notified to attend at a proceeding before the tribunal is entitled to be paid—

- (a) the allowances and expenses prescribed under a tribunal rule; or
- (b) if no allowances and expenses are prescribed, the allowances and expenses decided by the president.

13 Section 47 (Method of conducting proceedings)

100 Witnesses need not be sworn or make affirmations

The tribunal may allow a witness appearing at a proceeding before it to give evidence without being sworn or making an affirmation.

101 Tribunal may refuse to allow party to call evidence etc.

(1) The tribunal may refuse to allow a party to call evidence about a matter if the tribunal considers there is sufficient evidence about the matter before the tribunal.

(2) The tribunal may refuse to allow a party to cross-examine a witness about a matter if the tribunal considers—

- (a) there is sufficient evidence about the matter before the tribunal; and
- (b) the evidence has been sufficiently tested by cross-examination.

102 Tribunal may examine and cross-examine witnesses

(1) The tribunal may examine and cross-examine an adult witness appearing before it.

(2) The tribunal may also examine and cross examine a child who elects to give evidence under section 95 or 96.¹⁴

103 Offences by witnesses

(1) A person notified under section 97(1) to attend before the tribunal must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the tribunal until excused from further attendance.

Maximum penalty—100 penalty units.

(2) An adult appearing as a witness before the tribunal must take an oath or make an affirmation if required to do so by the presiding member.

¹⁴ Section 95 (Provisions for child-related employment reviews) or 96 (Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made)

Maximum penalty—100 penalty units.

(3) Also, an adult appearing as a witness before the tribunal must not fail, without reasonable excuse—

- (a) to answer a question the adult is required to answer by the tribunal; or
- (b) to produce the thing the person is required to produce by a notice under section 97(1).

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse to refuse to answer a question or produce a thing on the ground that answering the question or producing the thing might tend to incriminate the person.

104 Separate representative must not be called to give evidence

(1) A separate representative must not in any proceeding be called to give evidence, and if called must not give evidence, about a communication between the representative and the child for whom the representative was appointed.

(2) In this section, “**proceeding**” is not limited by the meaning of the term in the dictionary in schedule 2.

Division 10—Other supporting provisions

105 Confidentiality orders

(1) The tribunal may, by order (a “**confidentiality order**”), prohibit or restrict the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review.

(2) Subsection (3) applies for the purpose of the tribunal—

- (a) deciding whether to make a confidentiality order; or
- (b) giving effect to a confidentiality order.

(3) The tribunal—

- (a) may exclude a party, and any representative of the party, from part of the review; or

(b) deal with a document in a way that ensures it is not disclosed to a party.

(4) The tribunal may make a confidentiality order only if it is satisfied that if it does not do so—

(a) a child is likely to be harmed; or

(b) the safety of another person is likely to be endangered.

(5) The tribunal may act under subsection (1) on its own initiative or on application by a party to the review.

(6) A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in a review.

106 President or tribunal may authorise medical examination of child

(1) For a review, the president or the tribunal may, by order, authorise a medical examination of a child and require a report of the examination to be filed with the registrar.

(2) The order must state the particular issues the report must address.

(3) The president or tribunal must not make the order unless the president or tribunal is satisfied—

(a) the medical information, if any, available to the tribunal about the child is insufficient to allow the tribunal to decide the review; and

(b) the child's interests will be best served by making the order.

(4) In deciding whether the child's interests will be best served by making the order, the president or tribunal must consider the child's views and wishes, if any, and the effect the medical examination may have on the child having regard to the number and frequency of any previous medical examinations the child has undergone.

107 Carrying out medical examinations

(1) This section applies if an order under section 106 authorises a child's medical examination.

(2) A doctor may medically examine the child.

(3) Subsection (2) applies even though the child's parents or guardian has not consented to the examination.

(4) However, subsection (2) is subject to the rights the child has in relation to the examination.

(5) For deciding any liability in relation to the carrying out of the examination, the doctor is taken to have the consent of the child's parents or guardian to the examination.

108 Tribunal may authorise constituting members to enter places and have contact with children

(1) Subsection (2) applies if—

- (a) a review is about the suitability of a place or the suitability of facilities provided or to be provided for a child at a place; and
- (b) the tribunal considers it is necessary for the purpose of the review for the constituting members or any of them to view the place; and
- (c) the tribunal is satisfied that entry to the place has been, or is likely to be, refused.

(2) The tribunal may, by order, authorise the constituting members or any of them to enter and inspect the place.

(3) Subsection (4) applies if, for the purpose of a review, the tribunal—

- (a) considers that, having regard to a child's views and wishes, if any, it is in the child's best interests for the constituting members, or any of them, to have contact with a child; and
- (b) is satisfied that contact has been, or is likely to be, refused by the child's carer, guardian or parent; and
- (c) considers that the appointment of a separate representative for the child or of an independent inquirer will not ensure the information the tribunal is seeking to obtain from the contact is placed before the tribunal.

(4) The tribunal may, by order, authorise the constituting members, or any of them, to have contact with the child and, for that purpose, enter a place where the child is or is reasonably believed to be.

(5) An order under this section must be in writing and state—

- (a) the names of the constituting members to whom it relates; and
- (b) if the order is about contact with a child, the child's name; and

- (c) either that the members, with necessary reasonable help and force—
 - (i) may enter and inspect the place; or
 - (ii) may enter the place where the child is or is reasonably believed to be; and
- (d) if the order is about contact with a child, the members—
 - (i) may search the place for the child; and
 - (ii) may remain in the place for as long as the members consider necessary for having contact with the child; and
- (e) the hours of the day or night when the place may be entered; and
- (f) the date, within 14 days after the order is made, the order ends.

(6) An order under this section does not compel a child to have contact with a member.

109 Constituting members may enter place etc.

The constituting members may exercise the powers given to the members under section 108.

110 Order to enter—procedure before entry

(1) This section applies to an entry under section 108.

(2) Before entering the place the constituting members acting under the tribunal's order must do or make a reasonable attempt to do all the following—

- (a) give an occupier or, if there is no occupier, the owner, of the place reasonable notice of the entry;
- (b) identify themselves to a person present who is an occupier of the place by producing notices of their appointments or other documents evidencing their appointments;
- (c) give the person a copy of the tribunal's order;
- (d) tell the person the members are permitted to enter the place;
- (e) give the person an opportunity to allow the members immediate entry to the place without using force.

(3) However, the constituting members need not comply with subsection (2) if the members believe, on reasonable grounds, that immediate entry to the place is required to ensure the effective execution of the tribunal's order is not frustrated.

111 Contempt of tribunal

(1) A person must not, without reasonable excuse—

- (a) insult a member, or a member of the tribunal's staff, at a tribunal proceeding, or in going to or returning from the proceeding; or
- (b) deliberately interrupt a tribunal proceeding, or otherwise misbehave at a tribunal proceeding; or
- (c) create, or join in creating or continuing, a disturbance in or near a place where a tribunal proceeding is being conducted; or
- (d) obstruct a person attending a tribunal proceeding; or
- (e) obstruct a member in the performance of the member's functions or the exercise of the member's powers; or
- (f) contravene a lawful order or direction of the tribunal made or given under this Act; or
- (g) obstruct a person acting under an order made by the tribunal or a member under this Act; or
- (h) do anything that would be contempt of court if the tribunal were a court of record.

Maximum penalty—100 penalty units.

(2) A child does not commit an offence against subsection (1) if the thing that would otherwise constitute the offence is done by the child in the course of, or relates in any way to, a review of a reviewable decision about the child.

112 Tribunal may exclude person for contempt

(1) The tribunal may order that a person who contravenes section 111(1) at a proceeding be excluded from the place where the proceeding is being conducted.

(2) A member of the tribunal staff, acting under the tribunal's order, may, using necessary and reasonable help and force, exclude the person from the place.

113 Costs

(1) Each party to a review must bear the party's own costs for the review.

(2) However, the tribunal may award costs in a proceeding against a party if, in the special circumstances of the proceeding, the tribunal considers an award for costs is appropriate.

Example of possible special circumstances—

The proceeding, or a part of the proceeding, has been frivolous or vexatious.

(3) An award of costs under subsection (2) may require a party to pay the costs of a separate representative.

(4) The tribunal must not award costs against a child.

(5) If costs are awarded by the tribunal, the amount of the costs is to be the amount the tribunal considers reasonable.

114 Recovery of costs

(1) This section applies if the tribunal awards costs against a party under section 113(2).

(2) The amount of the costs is a debt owing by the party to the person in whose favour the award is made.

PART 5—INQUIRIES BY INDEPENDENT INQUIRERS

Division 1—Appointment of independent inquirers for inquiries and other matters

115 Appointments

(1) The tribunal may appoint an independent inquirer to inquire into and report to the tribunal about a matter connected with a review.

(2) If the independent inquirer is likely to have contact with a child, the person appointed must have professional knowledge of, and experience in working with, children.

(3) The instrument of appointment must state—

- (a) any conditions of the appointment; and
- (b) the time within which the independent inquirer must report to the tribunal.

116 Independent inquirers must disclose certain interests

(1) This section applies if an independent inquirer appointed to inquire into and report to the tribunal about a matter connected with a review becomes aware the independent inquirer has an interest, financial or otherwise, that could conflict with the proper performance of the independent inquirer's functions (the “**conflict**”).

(2) The independent inquirer must disclose the issue giving rise to the conflict to the president and parties to the review.

(3) After making the disclosure, the independent inquirer may disqualify himself or herself.

(4) The independent inquirer may conduct the inquiry and report about the matter only with the agreement of the president and the parties.

117 Functions of independent inquirers

(1) The independent inquirer has the functions of inquiring into the matter for which the inquirer is appointed and reporting the results of the inquiry to the tribunal.¹⁵

(2) For inquiring into the matter, the independent inquirer may seek information from the parties and other persons.

(3) The independent inquirer may make recommendations in the report.

15 Under section 76(5)(c), an independent inquirer may also be appointed to examine a document required to be given to the tribunal.

118 Independent inquirer's access to documents

The tribunal may, for helping the independent inquirer's inquiry, give the inquirer access to any documents given to the tribunal, including documents to which a confidentiality order relates.

119 Production of independent inquirer's instrument of appointment etc.

The independent inquirer may exercise a power in relation to someone else only if the inquirer first produces, for the other person's inspection—

- (a) the inquirer's instrument of appointment; and
- (b) photographic identification of the inquirer.

Division 2—Powers of independent inquirers**120 Definition for div 2**

In this division—

“authorised member” means—

- (a) the president if the president is a lawyer of at least 5 years standing; or
- (b) a constituting member of the tribunal who is a lawyer of at least 5 years standing.

121 Authorised member or tribunal may authorise entry of places and contact with children by independent inquirer

(1) Subsection (2) applies if—

- (a) the independent inquirer's inquiry is about or includes the suitability of a place or the suitability of facilities provided or to be provided for a child at a place; and
- (b) an authorised member or the tribunal considers it is necessary for the purpose of the inquiry that the inquirer inspect the place; and
- (c) the authorised member or tribunal is satisfied that entry to the place has been, or is likely to be, refused.

(2) The authorised member or tribunal may, by order, authorise the independent inquirer to enter and inspect the place.

(3) Subsection (4) applies if an authorised member or the tribunal—

- (a) considers that, having regard to a child's views and wishes, if any, it is in the child's best interests for the independent inquirer to have contact with the child for the independent inquirer's inquiry; and
- (b) is satisfied contact has been, or is likely to be, refused by the child's carer, guardian or parent.

(4) The authorised member or tribunal may, by order, authorise the independent inquirer to have contact with the child and, for that purpose, enter a place where the child is or is reasonably believed to be.

(5) An order under this section must be in writing and state—

- (a) the independent inquirer's name; and
- (b) if the order is about contact with a child, the child's name; and
- (c) either that the independent inquirer may, with necessary reasonable help and force—
 - (i) enter and inspect the place; or
 - (ii) enter the place where the child is or is reasonably believed to be; and
- (d) if the order is about contact with a child, the independent inquirer—
 - (i) may search the place for the child; and
 - (ii) may remain in the place for as long as the independent inquirer considers necessary for having contact with the child; and
- (e) the hours of the day or night when the place may be entered; and
- (f) the date, within 14 days after the order is made, the order ends.

(6) An order under this section does not compel a child to have contact with the independent inquirer

122 Independent inquirer may enter place etc.

The independent inquirer may exercise the powers given to the inquirer under section 121.

123 Order to enter—procedure before entry

(1) This section applies to an entry under section 121.

(2) Before entering the place, the independent inquirer must do or make a reasonable attempt to do all the following—

- (a) give an occupier or, if there is no occupier, the owner, of the place reasonable notice of the entry;
- (b) identify himself or herself to a person present at the place who is an occupier of the place;
- (c) give the person a copy of the order for the entry;
- (d) tell the person the independent inquirer is permitted to enter the place;
- (e) give the person an opportunity to allow the independent inquirer immediate entry to the place without using force.

(3) However, the independent inquirer need not comply with subsection (2) if the inquirer believes, on reasonable grounds, that immediate entry to the place is required to ensure the effective execution of the authorised member's or tribunal's order is not frustrated.

(4) This section does not limit section 119.¹⁶

Division 3—Reports by independent inquirers**124 Copies of independent inquirer's report to be given to parties**

(1) This section applies when an independent inquirer gives the inquirer's report to the tribunal.

(2) Subject to any confidentiality order relating to the report, the registrar must give a copy of the report to each party to the review in relation to which the independent inquirer was appointed.

¹⁶ Section 119 (Production of independent inquirer's instrument of appointment etc.)

125 Independent inquirer may be cross-examined about report

(1) The parties to the review to which the independent inquirer's report relates are entitled to cross-examine the inquirer about the report's contents.

(2) However, a question must not be asked and, if asked, must not be answered, under subsection (1) if—

- (a) a confidentiality order is in force in relation to the report; and
- (b) answering the question would result in the order being contravened.

126 Tribunal may adopt report

For the review to which the independent inquirer's report relates, the tribunal may adopt any findings, observations or recommendations contained in the report.

PART 6—ENSURING TRIBUNAL DECISIONS AND RECOMMENDATIONS ARE GIVEN EFFECT**127 Application of pt 6**

(1) This part applies to each decision of the tribunal on a review application other than a decision to confirm the reviewable decision.

(2) This part also applies to recommendations made by the tribunal, after reviewing a reviewable decision, to the chief executive of the government entity in which the reviewable decision was made about policies, practices and procedures of the entity relevant to the making of reviewable decisions.

128 Requests to chief executives of government entities

The president may ask the chief executive of the government entity in which the reviewable decision was made to notify the president, within a reasonable stated time—

- (a) of the steps taken to give effect to the tribunal's decision; or

- (b) of the steps taken to give effect to the tribunal's recommendations and, if no steps have been taken, the reasons for this.

129 What happens if decision not given effect etc.

(1) This section applies if the president, after considering the response of the chief executive of a government entity given under section 128, is of the opinion that—

- (a) the tribunal's decision has not been given effect; or
- (b) no steps have been taken to give effect to the tribunal's recommendations or the steps taken are inadequate or inappropriate.

(2) The president may report on the matter to the Minister responsible for the government entity.

(3) The president must attach the following to the report—

- (a) if the report is about the tribunal's decision—copies of the decision and response;
- (b) if the report is about the tribunal's recommendations—copies of the recommendations and response.

PART 7—APPEALS

130 Who may appeal

A party to a review may appeal to the District Court against the tribunal's decision on the review under section 38(1),¹⁷ but only on a question of law.

131 When to start an appeal

(1) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—

¹⁷ Section 38 (Powers of tribunal on review)

- (a) if the party is given an information notice under section 43¹⁸ about the tribunal's decision—the day the party receives the notice; or
- (b) if paragraph (a) does not apply—the day the party otherwise becomes aware of the decision.

(2) The court may, at any time, extend the period for filing the notice of appeal.

132 Appeal does not affect tribunal's decision

The filing of a notice of appeal with the registrar of the court does not affect the tribunal's decision, or the carrying out of the decision, unless the decision is stayed.

133 Powers of the court on appeal

In deciding the appeal, the court may—

- (a) confirm, set aside or vary the tribunal's decision; or
- (b) set aside the decision and return it to the tribunal for reconsideration in accordance with directions given by the court; or
- (c) make orders, and give directions, the court considers appropriate.

PART 8—MISCELLANEOUS

134 Government entity may nominate decision maker

(1) This section applies if a person files a review application with the registrar.

(2) The government entity in which the reviewable decision was made may give the registrar a notice nominating an officer or employee of the entity, or the holder for the time being of an office in the entity, as the decision maker for the review.

18 Section 43 (Registrar must give information notice to parties)

135 Obstruction of independent inquirer

A person must not obstruct an independent inquirer in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

136 False or misleading statements

(1) A person must not state anything to the tribunal, or an independent inquirer appointed under this Act, the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state the statement was, without specifying which, ‘false or misleading’.

137 False or misleading documents

(1) A person must not give to the tribunal, or an independent inquirer appointed under this Act, a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the tribunal or independent inquirer, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough for a charge to state the document was, without specifying which, ‘false or misleading’.

138 Giving documents to children

(1) This section applies if, under this Act, the tribunal gives a written decision, direction, notice or order to a child.

(2) The tribunal must cause the terms and effects of the document to be explained to the child.

(3) However the terms and effects of the document need only be explained to the extent that is reasonably practicable in the circumstances having regard to the child's age or ability to understand the terms and effects of the document.

(4) Failure to comply with subsection (2) does not affect—

- (a) the validity of the document; or
- (b) if the tribunal is required, under this Act, to give the document to the child, the tribunal's compliance with the requirement to give the document.

(5) In this section—

“tribunal” includes a member and the registrar.

139 Giving documents to certain persons

(1) This section applies if—

- (a) under this Act, the tribunal gives a written decision, direction, notice or order to a person; and
- (b) the tribunal is aware that the person is blind, apparently illiterate or does not understand English.

(2) The tribunal must do everything reasonably possible to communicate the information in the document to the person.

Example—

If a person does not understand English, the tribunal may arrange for the document to be translated into a language the person understands.

(3) Failure to comply with subsection (2) does not affect—

- (a) the validity of the document; or
- (b) if the tribunal is required, under this Act, to give the document to the person, the tribunal's compliance with the requirement to give the document.

(4) In this section—

“tribunal” includes a member and the registrar.

140 Return of documents

(1) This section applies if—

- (a) a person produces a document or other thing to the tribunal for a review; and
- (b) the review has finished; and
- (c) either—
 - (i) the tribunal's decision on the review has been appealed to the District Court and the appeal has been finalised; or
 - (ii) 35 days have elapsed since the tribunal's decision on the review was made and the decision has not been appealed to the District Court.

(2) The registrar must return the document or other thing to the person.

141 Certain information not to be published

(1) A person must not publish—

- (a) information given in evidence or otherwise in a proceeding before the tribunal; or
- (b) information that is likely to identify a person who—
 - (i) appears as a witness before the tribunal in a proceeding; or
 - (ii) is a party to the proceeding; or
 - (iii) is mentioned, or otherwise involved, in the proceeding.

Maximum penalty—

- (a) for a corporation—1 000 penalty units; or
- (b) for an individual—100 penalty units or 2 years imprisonment.

(2) Subsection (1)(a) does not apply to a person if the tribunal consents to the publication of the information by the person.

(3) In this section—

“publish”, for information, means to publish it to the public by way of the internet, newspaper, radio, television or other form of communication.

142 Confidentiality of information

(1) This section applies to—

- (a) a person who is, or was, a member, an expert, an independent inquirer or a member of the tribunal's staff; and
- (b) information obtained by the person in the course of performing the person's functions under this Act.

(2) The person must not disclose the information if the information is about another person's affairs.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) Subsection (2) does not apply if—

- (a) the information—
 - (i) is disclosed in the performance of functions under this Act; or
 - (ii) relates to an adult and the information is disclosed with the written consent of the adult and the information is unlikely to identify a child; or
- (b) the disclosure of the information is authorised or permitted under an Act or required by law.

143 Protection and immunity of member etc.

(1) A person who is a member, expert, facilitator or independent inquirer has, in performing the person's functions, the same protection and immunity as a judge of the Supreme Court.

(2) A person appearing before the tribunal for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A witness, or person required to be a witness, in a proceeding before the tribunal has the same protection as a witness in a proceeding in the Supreme Court.

144 Protecting staff members from liability

(1) A member of the tribunal's staff is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a member of the tribunal's staff, the liability attaches instead to the State.

145 President to give statistical information to commissioner

(1) The president must, from time to time, give the commissioner statistical information about all the following—

- (a) the number and types of reviewable decisions that have been the subject of review applications;
- (b) the tribunal's decisions on the applications;
- (c) recommendations under section 38(3)¹⁹ about the policies, practices and procedures of government entities.

(2) The information must not identify the parties (other than the decision maker) to, or other persons taking part in, a review.

146 Annual reports

(1) As soon as practicable after the close of each financial year but not later than 4 months after that close, the president must prepare a report for that year about the tribunal and give a copy of the report to the Minister.

(2) The report must contain a review of the tribunal's operations during the financial year.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives the report.

147 Approved forms

The president may approve forms for this Act.

148 Summary proceedings for offences

Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.

19 Section 38 (Powers of tribunal on review)

149 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees for this Act.
- (3) Without limiting subsection (2), a regulation may impose fees for filing applications and other documents with the registrar or the tribunal.
- (4) However, if a regulation imposes a fee for the filing of an application or other document, no fee is payable if the application or other document is filed by, or on behalf of, a child.

150 Rule-making power

- (1) The Governor in Council may make rules (“**tribunal rules**”) for—
 - (a) the practice and procedure of the tribunal; and
 - (b) the conduct of the tribunal’s business.
- (2) The tribunal rules may include the following—
 - (a) guidelines for deciding applications by parties to a review for permission to be represented before the tribunal;
 - (b) guidelines for deciding whether the tribunal should make an order that a child be represented before it by a separate representative;
 - (c) criteria the president must have regard to in deciding whether to include a person’s name on, or omit a person’s name from, the facilitators list or independent inquirers list.
- (3) Rules made under this section are rules of court.

PART 9—SAVING AND TRANSITIONAL PROVISIONS**152 Definitions for pt 9**

In this part—

“**commencement day**” means the day this part commences.

“**repealed Act**” means the *Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996*.

153 Saving of appointments of tribunal panel members under repealed Act

(1) This section applies to a person holding office as a tribunal panel member under section 37 of the repealed Act immediately before the commencement day.

(2) The person is taken to be properly appointed as a member of the tribunal established under this Act.

(3) Subject to this Act, the term of the person's appointment is the balance of the term for which the person was appointed under the repealed Act.

154 Certain decisions taken to be reviewable decisions under this Act

(1) This section applies to a reviewable decision under the repealed Act if, immediately before the commencement day, a person has a right to appeal against the decision to a tribunal established under that Act.

(2) The decision is taken to be a reviewable decision under this Act and the provisions of this Act relating to a review of a reviewable decision apply with any necessary changes.

155 Appeals under repealed Act

(1) This section applies if, under the repealed Act, a person has appealed against a reviewable decision under that Act and the appeal has not been decided by a tribunal under that Act.

(2) For this Act, the appeal is taken to be a review application properly made under this Act relating to the reviewable decision and the provisions of this Act relating to the review of reviewable decisions apply with any necessary changes.

156 What happens if a tribunal established under repealed Act

(1) This section applies if, under the repealed Act, a tribunal has been established to hear an appeal under the repealed Act.

(2) The members of that tribunal constitute the tribunal for this Act.

(3) The chairperson of the tribunal under the repealed Act is taken to be the presiding member of the tribunal as constituted for this Act.

(4) If the tribunal established under the repealed Act has started to hear the appeal, the tribunal may continue, under this Act, to deal with the matter of the appeal as a review under this Act.

(5) If the tribunal established under the repealed Act has done anything else under that Act relating to the appeal, the thing has effect for this Act.

Example for subsection (5)—

The tribunal established under the repealed Act may have stayed the decision appealed against.

157 Appeals to District Court from decisions of tribunals established under repealed Act

(1) A person's right of appeal under section 65 of the repealed Act continues despite the repeal of the Act.

(2) For subsection (1), the District Court may hear and decide the appeal under the repealed Act.

(3) Subsection (4) applies for an appeal pending or started under section 66 of the repealed Act on or after the commencement day.

(4) Section 66(c) of the repealed Act is taken to empower the District Court to set aside the decision appealed against and refer it to the tribunal established under this Act for consideration in accordance with directions given by the court.

(5) For dealing with the reference, the tribunal is to be constituted as for a review.

SCHEDULE 2

DICTIONARY

section 3

“**ADR**” see section 82.

“**approved form**” means a form approved under section 147.

“**authorised member**”, for part 5, division 2, see section 120.

“**child**” means an individual under 18 years.

“**child-related employment decision**” means a reviewable decision mentioned in the *Commission for Children and Young People Act 2000*, section 121.

“**child-related employment review**” means the review of a child-related employment decision.

“**commissioner**” means the Commissioner for Children and Young People under the *Commission for Children and Young People Act 2000*.

“**confidentiality order**” see section 105(1).

“**constituting member**”, for a proceeding before the tribunal, means—

- (a) if the tribunal is constituted by 3 members for the proceeding—1 of the members; or
- (b) if the tribunal is constituted by a single member for the proceeding—that member.

“**contact**”, with a child, includes to see and talk to the child.

“**criminal history**”, of a person, means the person’s criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and—

- (a) despite section 6 of that Act, includes a conviction of the person to which the section applies; and
- (b) despite section 5 of that Act, includes a charge made against the person for an offence.

SCHEDULE 2 (continued)

“decision maker” means—

- (a) the person who made the decision concerned; or
- (b) the person for the time being holding the office by virtue of which the decision was made; or
- (c) if a person is nominated as the decision maker for a review under section 134(2), the person.

“deputy president” means the member, if any, appointed under section 10 as deputy president of the tribunal.

“expert” see section 53(1).

“facilitators” see section 18(1)(c).

“facilitators list” see section 18(1)(c).

“government entity” see *Public Service Act 1996*, section 21.

“harm”, to a child, see section 4.

“independent inquirers” see section 18(1)(d).

“independent inquirers list” see section 18(1)(d).

“member” means a member of the tribunal.

“notice” means written notice.

“obstruct” includes hinder, resist and attempt to obstruct.

“place” includes premises and vacant land.

“premises” includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated; and
- (d) a vehicle.

“president” means the member appointed under section 10 as president of the tribunal.

“presiding member” see section 29.

“proceeding” means a proceeding under this Act relating to a review application and does not include an inquiry being undertaken by an independent inquirer.

SCHEDULE 2 (continued)

“registrar” means the registrar of the tribunal.

“review” means the review of a reviewable decision by the tribunal.

“reviewable decision” means a decision that, under an Act, a person may apply to have reviewed by the tribunal.

“review application” see section 58(1).

“separate representative” see section 68(3).

“support person” see section 49(2).

“tribunal” means the Children Services Tribunal.

“tribunal rules” see section 150(1).

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Children Services Tribunal Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|--------|---|
| AIA | = Acts Interpretation Act 1954 | prev | = previous |
| amd | = amended | (prev) | = previously |
| amdt | = amendment | proc | = proclamation |
| ch | = chapter | prov | = provision |
| def | = definition | pt | = part |
| div | = division | pubd | = published |
| exp | = expires/expired | R[X] | = Reprint No.[X] |
| gaz | = gazette | RA | = Reprints Act 1992 |
| hdg | = heading | reloc | = relocated |
| ins | = inserted | renum | = renumbered |
| lap | = lapsed | rep | = repealed |
| notfd | = notified | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 1992 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |

4 List of legislation

Children Services Tribunal Act 2000 No. 59

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2001 (2001 SL No. 2)

5 List of annotations

Acts amended

s 151 om R1 (see RA s 40)

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

om R1 (see RA s 40)

6 Table of corrected minor errors

TABLE OF CORRECTED MINOR ERRORS

under the Reprints Act 1992 s 44

| Provision | Description |
|-----------|-----------------------------------|
| 111(2) | om ‘does does not’ ins ‘does not’ |