

Queensland



# **MISCONDUCT TRIBUNALS ACT 1997**

**Act No. 59 of 1997**



# Queensland



## MISCONDUCT TRIBUNALS ACT 1997

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Queensland



## **Misconduct Tribunals Act 1997**

**Act No. 59 of 1997**

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**An Act to provide for the establishment and operation of misconduct tribunals, and for other purposes**

*[Assented to 5 November 1997]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Misconduct Tribunals Act 1997*.

### **Commencement**

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

### **Main objects**

3. The main objects of this Act are to provide for the establishment and operation of misconduct tribunals that—

- (a) act independently, and in a way that is—
  - (i) fair and impartial; and
  - (ii) effective and efficient; and
- (b) have jurisdiction to hear and decide—
  - (i) charges, of a disciplinary nature, of official misconduct against prescribed persons; and
  - (ii) appeals from particular decisions made in relation to charges, of a disciplinary nature, made against prescribed persons.

### **Dictionary**

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



## **PART 2—MISCONDUCT TRIBUNALS**

### *Division 1—Misconduct tribunal panel and members*

#### **Appointment of misconduct tribunal panel members**

**5.(1)** The Governor in Council may, by gazette notice, appoint qualified individuals as members of a panel of misconduct tribunal members (the “**tribunal panel**”).

**(2)** The tribunal panel is to consist of at least 6 tribunal members.

**(3)** The Governor in Council is to appoint 1 tribunal member as the senior member of the tribunal panel (the “**senior member**”).

#### **Qualifications of tribunal members**

**6.(1)** A person is qualified for appointment as a tribunal member if the person is—

- (a) nominated for appointment by the Minister; and
- (b) a barrister or solicitor of the Supreme Court of at least 5 years standing.

**(2)** However, a person is not qualified for appointment as a tribunal member if the person holds office in—

- (a) a unit of public administration; or
- (b) the commission.

**(3)** In this section—

“**office in a unit of public administration**” does not include an office—

- (a) held in an educational institution; or
- (b) held merely because the person is the holder of another office.

#### **Nomination for appointment as tribunal member**

**7.(1)** The Minister may nominate a person for appointment as a tribunal member only after—

- (a) advertising State-wide for applications; and
- (b) consulting with the chairperson of the commission; and
- (c) obtaining the support of a multi-party majority of the members of the parliamentary committee for the nomination.

(2) In this section—

**“multi-party majority”**, of the members, includes all of the members, but does not include a majority of the members consisting only of members of the political party or parties recognised in the Legislative Assembly as being in government.

### **Duration of appointment**

**8.(1)** A tribunal member may be appointed for a term not longer than 3 years.

(2) Appointment as a tribunal member is on a part-time basis.

(3) A tribunal member may be appointed for a further term, but the member must not serve as a tribunal member for more than 6 years in total.

(4) A tribunal member may resign by signed notice of resignation given to the Minister.

### **Conditions of appointment**

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

(2) A tribunal member holds office on the conditions not provided in this Act decided by the Governor in Council.

### **Removal from office**

**10.** The Governor in Council may, by written notice given to a tribunal member, remove the member from office if the member—

- (a) is incapable of properly discharging the functions of a tribunal member; or
- (b) is unfit to hold the office.

### *Division 2—Establishment and composition of tribunals*

#### **Senior member to establish misconduct tribunal**

**11.(1)** The senior member may establish a misconduct tribunal to hear a particular matter within the jurisdiction of misconduct tribunals.

**(2)** The misconduct tribunal is to consist of the senior member or another tribunal member chosen by the senior member.

**(3)** The registrar must, within 3 days after the establishment of a misconduct tribunal, give notice of the tribunal member constituting the tribunal to—

- (a) the prescribed person to whom the matter relates; and
- (b) the person making the charge against the prescribed person; and
- (c) if the person making the charge is not the principal officer for the unit of public administration in which the prescribed person is or was employed—the principal officer.

## **PART 3—JURISDICTION**

### *Division 1—Charges of official misconduct against prescribed persons*

#### **What is “official misconduct”**

**12.** In this Act, “**official misconduct**” has the same meaning as in the *Criminal Justice Act 1989*.<sup>1</sup>

#### **Jurisdiction—original**

**13.** A misconduct tribunal has jurisdiction (“**original jurisdiction**”) to

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<sup>1</sup> See the *Criminal Justice Act 1989*, sections 31 (Official misconduct) and 32 (General nature of official misconduct)

hear and decide charges, of a disciplinary nature, of official misconduct made against a prescribed person.

### **Tribunal’s original jurisdiction exclusive**

**14.(1)** A charge, of a disciplinary nature, of official misconduct made against a prescribed person may be heard and decided only by a misconduct tribunal.

**(2)** Subsection (1) applies to the exclusion of authority given by law to any other person or tribunal to hear and decide, at first instance, disciplinary charges made against the prescribed person.

**(3)** A decision of a misconduct tribunal exercising original jurisdiction is binding on and must be given effect by all persons concerned.

**(4)** Subsection (3) applies subject to section 37.<sup>2</sup>

### ***Division 2—Appeals against decisions on charges of other misconduct against prescribed persons***

#### **What is a “reviewable decision”**

**15.** A “reviewable decision” is—

- (a) a decision made in relation to a disciplinary charge of misconduct made against a prescribed person, other than a decision made by a court or a misconduct tribunal; or
- (b) a finding mentioned in the *Police Service Administration Act 1990*, section 7.4(2A)(b),<sup>3</sup> that a prescribed person is guilty of misconduct.

#### **Jurisdiction—appellate**

**16.** A misconduct tribunal has jurisdiction (“appellate jurisdiction”) to hear and decide an appeal against a reviewable decision.

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<sup>2</sup> Section 37 (Appeal from misconduct tribunal in original jurisdiction)

<sup>3</sup> Section 7.4 (Disciplinary action)

## PART 4—PROCEEDINGS

### *Division 1—Starting proceedings*

#### **Proceedings—original jurisdiction**

**17.** The commission or a principal officer for a unit of public administration may start a proceeding against a prescribed person in a misconduct tribunal's original jurisdiction by—

- (a) filing a written charge of official misconduct with the registrar;  
and
- (b) giving to the prescribed person a copy of the charge.

#### **Proceedings—appellate jurisdiction**

**18.(1)** The commission or a prescribed person against whom a reviewable decision has been made may start a proceeding in a misconduct tribunal's appellate jurisdiction—

- (a) by filing a notice of appeal with the registrar—
  - (i) identifying the decision to which the appeal relates; and
  - (ii) stating clearly the grounds for the appeal; and
- (b) by giving a copy of the notice to each other party to the appeal.

**(2)** The notice of appeal must be filed with the registrar—

- (a) if the appeal relates to a reviewable decision notice of which must be given to the commission or prescribed person under the *Police Service Administration Act 1990*, section 7.4<sup>4</sup>—within 14 days after the day on which the notice was given; or
- (b) otherwise—within 14 days after the day on which the reviewable decision was announced.

**(3)** The parties to an appeal are—

- (a) the prescribed person; and

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<sup>4</sup> Section 7.4 (Disciplinary action)

- (b) the person who made the reviewable decision; and
- (c) if the appeal is started by the commission—the commission.

### *Division 2—Procedures of misconduct tribunals*

#### **Procedure following start of proceeding**

**19.(1)** The registrar must ask the senior member to establish a misconduct tribunal to hear and decide the matter as soon as practicable after—

- (a) a proceeding is started; and
- (b) if the proceeding is started in the tribunal’s original jurisdiction—the registrar receives written notice that a copy of the charge made against the relevant prescribed person has been given to the person.

**(2)** If the hearing relates to a proceeding in a misconduct tribunal’s original jurisdiction, the commission or principal officer for the unit of public administration that started the proceeding must give to the prescribed person a copy of the brief of evidence, including copies of any witness statements, to be presented at the hearing—

- (a) as soon as practicable after the charge is filed; or
- (b) in accordance with directions of the misconduct tribunal established for the hearing.

#### **Misconduct tribunal’s powers**

**20.(1)** A misconduct tribunal may give the orders about a proceeding it considers appropriate.

**(2)** A misconduct tribunal may order a person to do 1 or more of the following—

- (a) attend a hearing until excused;
- (b) give evidence, on oath or affirmation;
- (c) give to the tribunal, in the way the tribunal orders—

- (i) a stated document or class of document; or
- (ii) a stated thing; or
- (iii) specified information.

(3) Without limiting the ways the tribunal may order a document, thing or information to be given, the tribunal may order that the document, thing or information be given to the tribunal at a stated reasonable place and time.

(4) A person to whom a tribunal order applies must comply with the order, unless the person has a reasonable excuse.

(5) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document—

- (a) might tend to incriminate the person; or
- (b) would disclose a communication to which legal professional privilege attaches.

(6) The tribunal may enforce its order by filing a copy of it in a registry of the Supreme Court.

(7) On filing, the order is enforceable as if it were an order of the Supreme Court.

(8) The tribunal may give leave to amend a written charge of official misconduct if satisfied—

- (a) the amendment is of a minor nature; and
- (b) giving leave to make the amendment would not be unfair to the prescribed person.

### **Representation before tribunal**

21. A party to a proceeding before a misconduct tribunal may appear in person or be represented by a lawyer or someone else.

### **Misconduct tribunal may keep documents etc.**

22.(1) If a document or thing is given to a misconduct tribunal, the tribunal—

- (a) may keep the document or thing for the period it considers is reasonably necessary; and
- (b) must allow a person who, if the document or thing were not in the tribunal's possession, would have a right to inspect it, to inspect it at all reasonable times and places; and
- (c) for a document—may copy or take extracts from the document.

(2) While the tribunal keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides.

### **Conduct of proceeding**

**23.(1)** When conducting a hearing in a proceeding, a misconduct tribunal must—

- (a) observe natural justice; and
- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself of any thing in the way it considers appropriate; and
- (c) may decide the procedures to be followed for the proceeding.

(3) However, the tribunal must comply with this division and any procedural rules.

(4) If the tribunal is exercising appellate jurisdiction, the appeal is by way of rehearing on the evidence (“**original evidence**”) given in the proceeding before the original decision-maker (“**original proceeding**”).

(5) However, the tribunal may give leave to adduce fresh, additional or substituted evidence (“**new evidence**”) if the tribunal is satisfied—

- (a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence



at the original proceeding; or

- (b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

(6) If the tribunal gives leave under subsection (5), the appeal is—

- (a) by way of rehearing on the original evidence; and
- (b) on the new evidence adduced.

(7) A person nominated by the tribunal for the purpose may administer an oath or affirmation, or take a statutory declaration, required by the tribunal.

(8) The tribunal may conduct a proceeding in the absence of the prescribed person who is the subject of the charge if—

- (a) for a proceeding in original jurisdiction—it is satisfied the prescribed person has been—
  - (i) given a copy of the charge; and
  - (ii) notified of the date, time and place of the proceeding; and
  - (iii) given the opportunity to be present or to be legally represented at the proceeding; and
- (b) for a proceeding in appellate jurisdiction—it is satisfied the prescribed person has been—
  - (i) notified of the date, time and place of the proceeding; and
  - (ii) given the opportunity to be present or to be legally represented at the proceeding.

### **Hearings open to public unless tribunal otherwise orders**

**24.(1)** A misconduct tribunal hearing is open to the public unless the misconduct tribunal orders, before or during the hearing, that it be closed to the public.

(2) The tribunal may order the hearing be closed to the public only if it considers an open hearing would be unfair to a person or contrary to the public interest, having regard to—

- (a) the subject matter of the hearing; or

(b) the nature of the evidence expected to be given.

(3) The tribunal may order the hearing be closed to the public while it considers whether to make an order under subsection (2).

(4) If the tribunal orders the hearing to be closed to the public, it may make an order—

- (a) deciding who may be present at the hearing; or
- (b) prohibiting the publication of any of the following matters, if it considers publication of the matter would be unfair to a person or contrary to the public interest—
  - (i) the fact a person has given, or may give, evidence before the tribunal;
  - (ii) information that may help to identify a person who has given, or may give, evidence before the tribunal;
  - (iii) evidence given before the tribunal;
  - (iv) the contents of, or a summary of, a record produced to the tribunal.

(5) A person must not contravene an order under subsection (4).

Maximum penalty—100 penalty units or 1 year’s imprisonment.

(6) In this section—

“**hearing**” includes part of a hearing.

### *Division 3—Misconduct tribunal decisions*

#### **Misconduct tribunal decisions—original jurisdiction**

**25.(1)** A misconduct tribunal exercising original jurisdiction may, if it finds the charge proved, order that the prescribed person—

- (a) be dismissed; or
- (b) be reduced in rank or salary level; or
- (c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or

- (d) be fined an amount decided by the misconduct tribunal to be deducted from—
- (i) the person's periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or
  - (ii) the person's monetary entitlements, other than superannuation entitlements, on termination of the person's service.

(2) In deciding the amount for subsection (1)(d)(ii), a tribunal may have regard to the value of any gain to the prescribed person from the person's official misconduct.

(3) The tribunal may publish its reasons for decision.

### **Misconduct tribunal decisions—appellate jurisdiction**

**26.(1)** A misconduct tribunal exercising appellate jurisdiction may make the following orders—

- (a) confirm the decision appealed against;
- (b) set aside the decision and substitute another decision;
- (c) set aside the decision and return the matter to the original decision-maker with the directions the tribunal considers appropriate.

(2) In substituting another decision, the misconduct tribunal may impose any punishment provided for on a finding of the charge being proved even though the original decision-maker's power to impose the punishment may have been restricted.

(3) The decision of the tribunal is final and conclusive, and is binding on, and must be given effect by, all persons concerned.

### **Misconduct tribunal may refer matter for investigation**

**27.(1)** A misconduct tribunal exercising original or appellate jurisdiction may, by order, refer a matter for investigation, or further investigation, with a view to the taking of a criminal proceeding or for another purpose.

(2) The matter may be referred to—

- (a) the commission; or
- (b) the principal officer for the unit of public administration in which the prescribed person is employed.

(3) The tribunal may adjourn its proceeding until the investigations are completed.

### **Misconduct tribunal's power to suspend punishment**

**28.(1)** This section applies if punishment has been imposed on a prescribed person by—

- (a) a misconduct tribunal exercising original or appellate jurisdiction; or
- (b) the decision-maker of a reviewable decision.

(2) A misconduct tribunal may order that punishment imposed on the prescribed person be suspended if the tribunal considers it is appropriate to do so in the circumstances.

(3) The tribunal must state an operational period for the period of suspension and the suspension may be given on conditions.

(4) If the prescribed person is found to have committed an act of misconduct or official misconduct or to have contravened a condition during the operational period, on the finding—

- (a) the suspension on the punishment is revoked; and
- (b) the punishment imposed has immediate effect.

(5) If the prescribed person is not found to commit an act of misconduct or official misconduct or contravene a condition during the operational period, the punishment imposed on the person is taken to have been satisfied.

(6) Subsection (4) does not limit the person's liability to punishment for the further act of misconduct or official misconduct.

***Division 4—Protection of persons associated with misconduct tribunals*****Protection of members, legal representatives and witnesses**

**29.(1)** A tribunal member has, in the performance of the member's duties for a misconduct tribunal, the same protection and immunity as a Supreme Court judge.

**(2)** A lawyer or other person appearing before a misconduct tribunal has the same protection and immunity as a barrister appearing in a proceeding in the Supreme Court.

**(3)** A person required to attend or appearing before a misconduct tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

**Disclosure to tribunal not breach of confidence etc.**

**30.(1)** A person is not liable, civilly, criminally or under an administrative process, for—

- (a) giving information to a tribunal for a hearing; or
- (b) producing a document or thing to a tribunal for a hearing.

**(2)** Without limiting subsection (1)—

- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the disclosed information; and
- (b) if the person would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice—the person—
  - (i) does not contravene the Act, oath, rule of law or practice for making the disclosure; and
  - (ii) is not liable to disciplinary action for making the disclosure.

***Division 5—Contempt of misconduct tribunal*****Contempt of misconduct tribunal**

**31.** A person is in contempt of a misconduct tribunal if the person—

- (a) insults the tribunal or a tribunal member acting as a tribunal member; or
- (b) deliberately interrupts the tribunal’s hearing; or
- (c) creates or continues or joins in creating or continuing, a disturbance in or near a place where the tribunal is conducting a hearing; or
- (d) does anything that would be contempt of court if the tribunal were a judge acting judicially.

**Punishment of contempt**

**32.(1)** A contempt of a misconduct tribunal may be punished under this section.

**(2)** The tribunal, or the senior member, may certify the contempt in writing to the Supreme Court (the “**court**”).

**(3)** For subsection (2), it is enough for the certifier of the contempt to be satisfied there is evidence of contempt.

**(4)** If the tribunal or senior member certifies a person’s contempt of the tribunal to the court, the court must inquire into the alleged contempt.

**(5)** The court must hear—

- (a) witnesses and evidence that may be produced against or for the person charged with the contempt; and
- (b) any statement given by the person in defence.

**(6)** If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to a proceeding in the court.

**(7)** The Rules of the Supreme Court apply, with all necessary changes, to the court’s investigation, hearing and power to punish.

(8) The tribunal's or senior member's certificate of contempt is evidence of the matters contained in the certificate.

(9) The person is not excused from attending before the tribunal in obedience to the order of the tribunal or a court merely because the person is punished or liable to punishment under this section for contempt of a misconduct tribunal.

### **Conduct that is contempt and offence**

33.(1) If conduct of an offender is both contempt of a misconduct tribunal and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.

(2) In this section—

“**offender**” means a person guilty, or alleged to be guilty, of contempt of the tribunal.

## ***Division 6—Miscellaneous***

### **Allowance to witnesses**

34. A witness who appears at a misconduct tribunal hearing is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing or, if no allowance is prescribed, the reasonable allowance decided by the member constituting the tribunal.

### **Costs**

35.(1) Each party to a hearing must bear the party's own costs of the hearing.

(2) However, a misconduct tribunal may make an order about the payment of a party's costs if in particular circumstances it is satisfied it is appropriate to do so.

**Tribunal to keep record of proceeding**

**36.(1)** A misconduct tribunal must keep a record of its proceeding.

(2) The record may be kept in the way the misconduct tribunal considers appropriate.

**PART 5—APPEALS****Appeal from misconduct tribunal in original jurisdiction**

**37.(1)** The following persons may appeal against a decision of a misconduct tribunal exercising original jurisdiction—

- (a) the prescribed person in relation to whom the decision was made;
- (b) the principal officer for the unit of public administration in which the prescribed person is or was employed;
- (c) the commission, whether or not the commission was a party to the proceeding before the tribunal.

(2) The appeal may be made to the Supreme Court—

- (a) without leave—on 1 or more of the following grounds—
  - (i) denial of natural justice;
  - (ii) error of law;
  - (iii) manifestly excessive or inadequate level of penalty; or
- (b) with the leave of a Supreme Court judge—on 1 or both of the following grounds—
  - (i) error of fact;
  - (ii) the decision can not be supported having regard to—
    - (A) the evidence and the proceeding before the misconduct tribunal; and
    - (B) any evidence that may be given in the appeal.

(3) The appeal must be started within 28 days after the day on which the



tribunal's decision is announced.

(4) The appeal must be decided on the evidence and proceedings before the tribunal, unless the court—

- (a) if leave is given under subsection (2)(b)—orders the matter be heard afresh, completely or partly; or
- (b) in any case—otherwise orders.

(5) The court may, on application by a party or its own initiative, transfer the appeal to a District Court at any time after the appeal is started.

(6) If an order is made under subsection (5)—

- (a) the appeal must be continued and disposed of in the District Court; and
- (b) a District Court judge may exercise any of the powers under this section that would have been exercisable by a Supreme Court judge if the order had not been made.

(7) An appeal may be under the Rules of the Supreme Court or, in so far as the rules do not provide, as directed by a Supreme Court judge.

(8) If an appeal is allowed other than on the ground of manifestly excessive or inadequate level of penalty, the court may, by order—

- (a) set aside the decision and substitute another decision; or
- (b) set aside the decision and remit the matter to any misconduct tribunal with the directions the court considers appropriate.

(9) If an appeal on the ground specified in subsection (2)(a)(iii) is allowed, the court may set aside the penalty order and substitute another penalty the misconduct tribunal was authorised to order and the court considers should have been ordered by the tribunal.

## **PART 6—GENERAL**

### **Parliamentary committee**

**38.(1)** The parliamentary committee may conduct a review of

misconduct tribunals when it reviews the activities of the commission for the *Criminal Justice Act 1989*, section 118(1)(f).<sup>5</sup>

(2) However, the parliamentary committee is not authorised to inquire into a particular proceeding before a misconduct tribunal.

### **Annual report**

**39.** As soon as practicable after the end of each financial year, but within 2 months after the end of the financial year, the senior member must prepare and give to the parliamentary committee and the Minister a written report about the operation of misconduct tribunals during the year.

### **Registrar and tribunal staff**

**40.(1)** The chief executive may appoint a registrar of misconduct tribunals for this Act.

(2) The registrar, and other staff necessary to enable misconduct tribunals to exercise their functions (the “**registrar’s staff**”), are to be employed under the *Public Service Act 1996*.

(3) The office of registrar may be held in conjunction with any other office in the public service.

### **Authentication of documents**

**41.** A document requiring authentication by a misconduct tribunal is sufficiently authenticated if it is signed by the member constituting the tribunal or the senior member.

### **Judicial notice of certain signatures**

**42.** Judicial notice must be taken of the signature of a tribunal member if it appears on a document issued by a misconduct tribunal.

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<sup>5</sup> Section 118 (Functions and powers)

### **Application of Criminal Code**

**43.** It is declared that—

- (a) a proceeding before a misconduct tribunal is a judicial proceeding under the Criminal Code, chapter 16; and
- (b) a person constituting a misconduct tribunal is the holder of a judicial office for the Criminal Code, chapter 16; and
- (c) a misconduct tribunal is a tribunal for the Criminal Code, chapter 16.

### **Confidentiality**

**44.(1)** This section applies to a person who—

- (a) is or has been—
  - (i) a tribunal member; or
  - (ii) the registrar; or
  - (ii) a member of the registrar's staff; and
- (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs or a thing belonging to someone else.

**(2)** A person to whom this section applies must not disclose the information, or give access to the document or thing, to anyone else.

Maximum penalty—100 penalty units or 1 year's imprisonment.

**(3)** However, a person may disclose the information or give access to the document or thing to someone else—

- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
- (b) if the disclosure or giving of access is otherwise required or permitted by law.

### **Rule-making power**

**45.** The senior member may make rules, not inconsistent with this Act, about the practice and procedure of misconduct tribunals.

**Regulation-making power**

46. The Governor in Council may make regulations under this Act.

**PART 7—TRANSITIONAL PROVISIONS AND  
AMENDMENTS****Existing proceedings**

47.(1) A matter started in the original or appellate jurisdiction of a misconduct tribunal constituted under the *Criminal Justice Act 1989*, but unheard, is taken to have been started in the original or appellate jurisdiction of a misconduct tribunal under this Act.

(2) A matter started in the original or appellate jurisdiction of a misconduct tribunal constituted under the *Criminal Justice Act 1989* and partly heard may be dealt with as if this Act had not been enacted.

**Acts amended—sch 1**

48. Schedule 1 amends the Acts mentioned in it.

**SCHEDULE 1****AMENDMENTS**

section 48

**CRIMINAL JUSTICE ACT 1989****1. Section 2(a)(vi)—***omit.***2. Section 2(a)(vii), ‘(vi)’—***omit, insert—**‘(v)’.***3. Section 19(1), ‘and tribunals’—***omit.***4. Section 19(1)(b)—***omit.***5. Section 19(1)(c) to (e)—***renumber as section 19(1)(b) to (d).***6. Section 20, heading, ‘, jurisdiction etc.’—***omit, insert—**‘of divisions of commission’.*

## SCHEDULE 1 (continued)

**7. Section 20(2)—**

*omit.*

**8. Section 25(2), ‘(other than a misconduct tribunal)’—**

*omit.*

**9. Section 33(2)(b)—**

*omit.*

**10. Section 39, heading, ‘Principal officer’s duty upon’—**

*omit, insert—*

**‘Commission’s duty on’.**

**11. Section 39(1), ‘Where’—**

*omit, insert—*

**‘If’.**

**12. Section 39(1), words after paragraph (b)—**

*omit, insert—*

‘the commission must charge the prescribed person with the relevant official misconduct by way of a disciplinary charge.

**‘(1A) The charge may be dealt with only by a misconduct tribunal under the *Misconduct Tribunals Act 1997*.’.**

**13. Section 39(1A) to (3)—**

*renumber* as section 39(2) to (4).

## SCHEDULE 1 (continued)

**14. Part 2, divisions 6 and 7—**

*omit.*

**15. Part 2, divisions 8 to 11—**

*renumber* as part 2, divisions 6 to 9.

**16. Section 69(4)(a), ‘referred to in section 46’—**

*omit.*

**17. Section 74(1)(a)—**

*omit, insert—*

‘(a) may summon a person to attend before the commission on a day and at a time and place specified in the notice and to then and there give evidence in relation to the subject matter of the commission’s investigation; and’.

**18. Section 74(2)—**

*omit.*

**19. Section 74(3)—**

*renumber* as section 74(2).

**20. Section 79(2)(a), ‘, or to a disciplinary charge of official misconduct before a misconduct tribunal’—**

*omit.*

**21. Section 79(2)(b), ‘or charge’—**

*omit.*

## SCHEDULE 1 (continued)

**22. Section 86(b), ‘or tribunal’—**

*omit.*

**23. Section 87, ‘or a misconduct tribunal’—**

*omit.*

**24. Section 87, ‘or the tribunal’—**

*omit.*

**25. Section 92(2), ‘, other than a misconduct tribunal exercising its jurisdiction,’—**

*omit.*

**26. Section 94(6)—**

*omit.*

**27. Section 100(1)(b)—**

*omit.*

**28. Section 100(1)(c)—**

*renumber* as section 100(1)(b).

**29. Section 104(1), ‘*Industrial Relations Act 1990*’—**

*omit, insert—*

*‘Workplace Relations Act 1997’.*



## SCHEDULE 1 (continued)

**30. Section 106(e), ‘ a person constituting a misconduct tribunal’—**

*omit.*

**31. Section 106(f)(ii)—**

*omit.*

**32. Section 106(f)(iii) and (iv)—**

*renumber* as section 106(f)(ii) and (iii).

**33. Section 108(7), ‘or misconduct tribunal’—**

*omit.*

**34. Section 108(7), ‘ or, as the case may be, tribunal’—**

*omit.*

**35. Section 125(b)(i), ‘or before a misconduct tribunal’—**

*omit.*

**36. Section 125(b)(ii), ‘and the office of a person constituting a misconduct tribunal is each’—**

*omit, insert—*

‘is’.

**37. Section 125(b)(iii), ‘and a misconduct tribunal is each’—**

*omit, insert—*

‘is’.

## SCHEDULE 1 (continued)

**JUDICIAL REVIEW ACT 1991****1. Schedule 2, section 3(2), ‘under that Act’—**

*omit, insert—*

‘under the *Misconduct Tribunals Act 1997*’.

**POLICE SERVICE ADMINISTRATION ACT 1990****1. Section 1.4, definition “official misconduct”, ‘sections 2.22 and 2.23’—**

*omit, insert—*

‘sections 31 and 32’.

**2. Section 4.5(3)(c), ‘referred to in the Criminal Justice Act 1989 where’—**

*omit, insert—*

‘under the *Misconduct Tribunals Act 1997* if’.

**3. Section 7.4—**

*insert—*

‘(2A) If the prescribed officer—

- (a) decides a disciplinary charge of misconduct brought against the officer; or
- (b) when deciding a charge of breach of discipline brought against the officer, finds the officer is guilty of misconduct;

the commissioner must give written notice of the decision, including the discipline imposed on the officer, or the finding and the discipline imposed

## SCHEDULE 1 (continued)

on the officer to the criminal justice commission and the officer within 14 days after making the decision or finding.’.

**PUBLIC SECTOR ETHICS ACT 1994**

**1. Section 2, definition “tribunal”, paragraph (d), ‘the *Criminal Justice Act 1989*’—**

*omit, insert—*

‘the *Misconduct Tribunals Act 1997*’.

**PUBLIC SERVICE ACT 1996**

**1. Section 109(3)(f), ‘the *Criminal Justice Act 1989*’—**

*omit, insert—*

‘the *Misconduct Tribunals Act 1997*’.

**WHISTLEBLOWERS PROTECTION ACT 1994**

**1. Schedule 6, definition “tribunal”, paragraph (d), ‘within the meaning of the *Criminal Justice Act 1989*’—**

*omit, insert—*

‘under the *Misconduct Tribunals Act 1997*’.

**SCHEDULE 2****DICTIONARY**

section 4

**“appellate jurisdiction”** see section 16.

**“commission”** means the criminal justice commission.

**“official misconduct”** see section 12.

**“original jurisdiction”** see section 13.

**“parliamentary committee”** means the criminal justice committee of the Legislative Assembly.

**“prescribed person”** means a person who is a prescribed person under the *Criminal Justice Act 1989*, section 39.

**“principal officer”**, for a particular unit of public administration, see the *Criminal Justice Act 1989*, section 3.

**“punishment”** includes sanction and penalty.

**“registrar”** means the registrar of misconduct tribunals appointed under section 40.

**“reviewable decision”** see section 15.

**“senior member”**, of the tribunal panel, see section 5(3).

**“unit of public administration”** see the *Criminal Justice Act 1989*, section 3.