Queensland

Queensland Civil and Administrative Tribunal Act 2009

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Queensland Civil and Administrative Tribunal Act 2009

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Queensland Civil and Administrative Tribunal Act 2009

An Act to establish the Queensland Civil and Administrative Tribunal, to provide for the making and reviewing of particular decisions by the tribunal, and for other matters relating to the tribunal

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Civil and Administrative Tribunal Act 2009*.

2 Commencement

(1) This Act, other than section 277A, commences on a day to be fixed by proclamation.

(2) Section 277A commences on the day of assent of the *State Penalties Enforcement and Other Legislation Amendment Act 2009*.

3 Objects

The objects of this Act are—

(a) to establish an independent tribunal to deal with the matters it is empowered to deal with under this Act or an enabling Act; and

(b) to have the tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick; and

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(c) to promote the quality and consistency of tribunal decisions; and

(d) to enhance the quality and consistency of decisions made by decision-makers; and

(e) to enhance the openness and accountability of public administration.

4 Tribunal's functions relating to the objects

To achieve the objects of this Act, the tribunal must—

(a) facilitate access to its services throughout Queensland; and

(b) encourage the early and economical resolution of disputes before the tribunal, including, if appropriate, through alternative dispute resolution processes; and

(c) ensure proceedings are conducted in an informal way that minimises costs to parties, and is as quick as is consistent with achieving justice; and

(d) ensure like cases are treated alike; and

(e) ensure the tribunal is accessible and responsive to the diverse needs of persons who use the tribunal; and

(f) maintain specialist knowledge, expertise and experience of members and adjudicators; and

(g) ensure the appropriate use of the knowledge, expertise and experience of members and adjudicators; and

(h) encourage members and adjudicators to act in a way that promotes the collegiate nature of the tribunal; and

(i) maintain a cohesive organisational structure.

5 Act binds all persons

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

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6 Relationship between this Act and enabling Acts generally

(1) This Act provides for the tribunal's jurisdiction and related functions, and the practices and procedures for proceedings before the tribunal.

(2) An ***enabling Act*** is—

(a) an Act, other than this Act, that confers original, review or appeal jurisdiction on the tribunal; or

(b) subordinate legislation, other than subordinate legislation under this Act, that confers review jurisdiction on the tribunal.

(3) An enabling Act conferring original jurisdiction on the tribunal will generally state the tribunal's functions in the jurisdiction, which may add to, otherwise vary, or exclude functions stated in this Act.

(4) An enabling Act that is an Act conferring review jurisdiction on the tribunal may state the tribunal's functions in the jurisdiction, which may add to, otherwise vary, or exclude functions stated in this Act.

(5) An enabling Act conferring review jurisdiction on the tribunal may also confer jurisdiction on the tribunal to stay a decision made under the enabling Act while the decision is being reviewed under the enabling Act by an entity other than the tribunal.

(6) An enabling Act conferring appeal jurisdiction on the tribunal may state the tribunal's functions in the jurisdiction, which may add to, otherwise vary, or exclude functions stated in this Act.

(7) An enabling Act that is an Act may also include provisions about the following matters, which may add to, otherwise vary, or exclude provisions of this Act about the matters—

(a) requirements about applications, referrals or appeals for jurisdiction conferred by the enabling Act;

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Examples—

- the period within which an application, referral or appeal must be made
- documents required to accompany an application, referral or appeal

(b) the conduct of proceedings for jurisdiction conferred by the enabling Act, including practices and procedures, and the tribunal's powers, for the proceedings;

Examples—

- the availability or non-availability of stays of the operation of a decision the subject of a proceeding
- persons who must be notified of a proceeding, a hearing of a proceeding or the tribunal's decision in a proceeding
- additional persons who are a party to a proceeding
- persons who may be represented in a proceeding without the tribunal's leave
- hearings that must be held in private

(c) the enforcement of the tribunal's decisions in a proceeding for jurisdiction conferred by the enabling Act.

(8) This section does not limit another provision of this Act authorising an enabling Act to provide for a particular matter.

(9) To remove any doubt, it is declared that an enabling Act that is subordinate legislation—

(a) may only confer jurisdiction, including jurisdiction to stay a decision, on the tribunal; and

(b) can not add to, otherwise vary, or exclude anything provided in this Act or an enabling Act that is an Act.

7 Application of Act if modifying provision in enabling Act

(1) This section applies if a provision of an enabling Act (the ***modifying provision***) provides for—

(a) the tribunal's functions in jurisdiction conferred by the enabling Act; or

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(b) a matter mentioned in section 6(7).

(2) The modifying provision prevails over the provisions of this Act, to the extent of any inconsistency between them.

(3) This Act must be read, with any necessary changes, as if the modifying provision were a part of this Act.

(4) Without limiting subsection (3)—

(a) in a provision of this Act relating to a person starting a proceeding, a reference to the person doing something under this Act is taken to be a reference to the person doing the thing under this Act or a modifying provision; and

(b) in a provision of this Act relating to the tribunal conducting a proceeding, a reference to the tribunal doing something under this Act is taken to be a reference to the tribunal doing the thing under this Act or a modifying provision.

(5) This section does not prevent an enabling Act from expressly stating how this Act applies in relation to the modifying provision, including, for example, by stating that stated provisions of this Act do not apply, or apply subject to stated variations.

(6) In this section—

enabling Act means an enabling Act that is an Act.

8 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

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Chapter 2 Jurisdiction and procedure

Part 1 Jurisdiction of tribunal

Division 1 Preliminary

9 Jurisdiction generally

(1) The tribunal has jurisdiction to deal with matters it is empowered to deal with under this Act or an enabling Act.

(2) Jurisdiction conferred on the tribunal is—

(a) original jurisdiction; or

(b) review jurisdiction; or

(c) appeal jurisdiction.

(3) Without limiting the *Acts Interpretation Act 1954*, section 49A, an enabling Act confers jurisdiction on the tribunal to deal with a matter if the enabling Act provides for an application, referral or appeal to be made to the tribunal in relation to the matter.

(4) The tribunal may do all things necessary or convenient for exercising its jurisdiction.

Division 2 Original jurisdiction

10 Generally

(1) The tribunal's original jurisdiction is—

(a) the jurisdiction conferred on the tribunal by section 11; and

(b) the jurisdiction conferred on the tribunal under an enabling Act to decide a matter in the first instance.

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(2) The tribunal's original jurisdiction under subsection (1)(b) includes jurisdiction conferred on the tribunal under an enabling Act to review a decision of the tribunal made under the enabling Act.

Note—

See, for example, the *Guardianship and Administration Act 2000*, chapter 3, part 3, division 2.

11 Jurisdiction for minor civil disputes

The tribunal has jurisdiction to hear and decide a minor civil dispute.

11A Calculating whether amount, value, damage or sum is more than particular monetary limits

(1) In determining whether the tribunal has original jurisdiction for a matter, the following amounts must not be considered in calculating whether an amount, value, damage or sum claimed, or sought to be recovered, in the matter is more than the monetary limit for the matter—

(a) an amount of interest that is payable as of right whether because of a law, agreement or otherwise;

(b) an amount of interest that may be awarded by the tribunal, including, for example, an amount of interest that may be awarded under section 14.

(2) However, this section does not apply in relation to a matter the tribunal may decide under an enabling Act in the first instance if the enabling Act provides that an amount mentioned in subsection (1)(a) or (b) must or may be considered in making the calculation mentioned in subsection (1).

(3) In this section—

monetary limit means—

(a) for a minor civil dispute—the prescribed amount; or

(b) for a matter the tribunal may decide under an enabling Act other than a minor civil dispute—an amount that,

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under the enabling Act, the amount, value, damage or sum claimed, or sought to be recovered, in the matter must not exceed.

12 When jurisdiction for minor civil dispute exercised

(1) The tribunal may exercise its jurisdiction for a minor civil dispute if a relevant person has, under this Act, applied to the tribunal to deal with the dispute.

(2) A relevant person may, as provided for in subsection (3), agree to limit the person's claim to the prescribed amount in order to bring the claim within the tribunal's jurisdiction for a minor civil dispute.

(3) A relevant person limits the person's claim to the prescribed amount by applying to the tribunal to deal with the claim as a minor civil dispute.

(4) In this section—

relevant person means—

(a) for a claim to recover a debt or liquidated demand of money—a person to whom the debt is owed or money is payable; or

(b) subject to paragraphs (c) to (f), for a claim arising out of a contract between a consumer and a trader—the consumer; or

(c) for a claim arising out of a contract between 2 or more traders—any of the traders; or

(d) for a claim for payment of an amount for damage to property caused by, or arising out of the use of, a vehicle—a person incurring loss because of the damage; or

(e) for a tenancy matter—a person who, under the *Residential Tenancies and Rooming Accommodation Act 2008*, may apply to the tribunal for a decision in relation to the matter; or

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(f) for a claim that is the subject of a dispute under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*—a party to the dispute; or

(g) for a matter under the *Building Act 1975*, chapter 8, part 2A—a person who, under the *Building Act 1975*, chapter 8, part 2A may apply to the tribunal for a decision in relation to the matter.

13 Deciding minor civil dispute generally

(1) In a proceeding for a minor civil dispute, the tribunal must make orders that it considers fair and equitable to the parties to the proceeding in order to resolve the dispute but may, if the tribunal considers it appropriate, make an order dismissing the application.

(2) For subsection (1), the tribunal may make only the following final decisions to resolve the dispute—

(a) for a claim mentioned in schedule 3, definition minor civil dispute, paragraph 1(a), (b) or (c)—

(i) an order requiring a party to the proceeding to pay a stated amount to a stated person; or

(ii) an order that a stated amount is not due or owing by the applicant to a stated person, or by any party to the proceeding to the applicant; or

(iii) an order requiring a party to the proceeding, other than the applicant, to perform work to rectify a defect in goods or services to which the claim relates; or

(iv) an order requiring a party to the proceeding to return goods that relate to the claim and are in the party's possession or control to a stated person; or

(v) an order combining 2 or more orders mentioned in subparagraphs (i) to (iv);

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(b) for a tenancy matter—a decision the tribunal may make in relation to the matter under the *Residential Tenancies and Rooming Accommodation Act 2008*;

(c) for a claim that is the subject of a dispute under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*—a decision or order the tribunal may make in relation to the matter under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*;

(d) for a claim that is the subject of a dispute under the *Building Act 1975*, chapter 8, part 2A—a decision or order the tribunal may make in relation to the matter under the *Building Act 1975*, chapter 8, part 2A.

(3) However, the tribunal can not make an order or decision under subsection (2) that—

(a) purports to require payment of an amount, performance of work or return of goods of a value of more than the prescribed amount; or

(b) purports to grant relief of a value of more than the prescribed amount from the payment of an amount; or

(c) combines 2 or more orders mentioned in subsection (2)(a)(i) to (iv) and purports to award or declare entitlements or benefits (or both) of a total value of more than the prescribed amount.

(4) Subsection (3) does not apply to a claim that is the subject of a dispute under the *Building Act 1975*, chapter 8, part 2A.

(5) For subsection (3), the following amounts must not be considered in calculating whether an amount or value is more than the prescribed amount—

(a) an amount of interest that is payable as of right whether because of a law, agreement or otherwise;

(b) an amount of interest that may be awarded by the tribunal, including, for example, an amount of interest that may be awarded under section 14.

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14 Awarding interest for minor civil dispute

(1) This section applies in relation to a minor civil dispute involving a claim to recover a debt or liquidated demand of money.

(2) However, this section does not apply in relation to a minor civil dispute involving a claim to recover a debt or liquidated demand of money on which interest is payable as of right whether because of an agreement or otherwise.

(3) The tribunal may order that there be included in the amount payable under the tribunal's order under section 13 for the dispute interest at the rate the tribunal considers appropriate—

(a) for all or part of the amount; and

(b) for all or part of the period between the date when the dispute arose and the date the tribunal made its order under section 13.

(4) This section does not authorise the giving of interest on interest.

15 When jurisdiction conferred by enabling Act exercised

The tribunal may exercise its original jurisdiction conferred by an enabling Act if—

(a) a person has, under this Act, applied to the tribunal to exercise its original jurisdiction; or

(b) a person has, under this Act, referred a matter to the tribunal to exercise its original jurisdiction.

16 Functions for jurisdiction conferred by enabling Act

In exercising its original jurisdiction conferred by an enabling Act, the tribunal may perform the functions conferred on the tribunal by this Act or the enabling Act.

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Division 3 Review jurisdiction

17 Generally

(1) The tribunal's review jurisdiction is the jurisdiction conferred on the tribunal by an enabling Act to review a decision made or taken to have been made by another entity under that Act.

(2) For this Act, a decision mentioned in subsection (1) is a ***reviewable decision*** and the entity that made or is taken to have made the decision is the ***decision-maker*** for the reviewable decision.

18 When review jurisdiction exercised

(1) The tribunal may exercise its review jurisdiction if a person has, under this Act, applied to the tribunal to exercise its review jurisdiction for a reviewable decision.

(2) A person may apply to the tribunal to exercise its review jurisdiction for a reviewable decision, and the tribunal may deal with the application, even if the decision is also the subject of a complaint, preliminary inquiry or investigation under the *Ombudsman Act 2001*.

19 Exercising review jurisdiction generally

In exercising its review jurisdiction, the tribunal—

(a) must decide the review in accordance with this Act and the enabling Act under which the reviewable decision being reviewed was made; and

(b) may perform the functions conferred on the tribunal by this Act or the enabling Act under which the reviewable decision being reviewed was made; and

(c) has all the functions of the decision-maker for the reviewable decision being reviewed.

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20 Review involves fresh hearing

(1) The purpose of the review of a reviewable decision is to produce the correct and preferable decision.

(2) The tribunal must hear and decide a review of a reviewable decision by way of a fresh hearing on the merits.

21 Decision-maker must help tribunal

(1) In a proceeding for the review of a reviewable decision, the decision-maker for the reviewable decision must use his or her best endeavours to help the tribunal so that it can make its decision on the review.

(2) Without limiting subsection (1), the decision-maker must provide the following to the tribunal within a reasonable period of not more than 28 days after the decision-maker is given a copy of the application for the review under section 37—

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

(b) any document or thing in the decision-maker's possession or control that may be relevant to the tribunal's review of the decision.

(3) If the tribunal considers there are additional documents or things in the decision-maker's possession or control that may be relevant to the tribunal's review of the reviewable decision, the tribunal may, by written notice, require the decision-maker to provide the documents or things.

(4) If the tribunal considers the statement of reasons given under subsection (2)(a) is not adequate, the tribunal may, by written notice, require the decision-maker to give the tribunal an additional statement containing stated further particulars.

(5) The decision-maker must comply with a notice given under subsection (3) or (4) within the period stated in the notice.

(6) A requirement under this section that the decision-maker give the tribunal information or a document or other thing applies despite any provision in an Act prohibiting or restricting the

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disclosure of the information or the information contained in the document or thing.

Notes—

1 Under section 66, the tribunal may make an order prohibiting the publication of the information, or the information contained in the document or thing, other than in the way and to the persons stated in the order.

2 Under section 90(2), the tribunal may direct a hearing, or a part of a hearing, in which the information, or information contained in the document or thing, is disclosed to be held in private.

22 Effect of review on reviewable decision

(1) The start of a proceeding for the review of a reviewable decision under this Act does not affect the operation of the decision or prevent the implementation of the decision.

(2) However, subsection (1) does not apply—

(a) if an enabling Act that is an Act provides otherwise; or

(b) to the extent the operation of all or part of the reviewable decision is stayed by an order of the tribunal under this section that is still in effect.

(3) The tribunal may, on application of a party or on its own initiative, make an order staying the operation of all or part of a reviewable decision if a proceeding for the review of the decision has started under this Act.

(4) The tribunal may make an order under subsection (3) only if it considers the order is desirable after having regard to the following—

(a) the interests of any person whose interests may be affected by the making of the order or the order not being made;

(b) any submission made to the tribunal by the decision-maker for the reviewable decision;

(c) the public interest.

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(5) Subsection (4)(a) does not require the tribunal to give a person whose interests may be affected by the making of the order, or the order not being made, an opportunity to make submissions for the tribunal's consideration if it is satisfied it is not practicable because of the urgency of the case or for another reason.

(6) In making an order under subsection (3), the tribunal—

(a) may require an undertaking, including an undertaking as to costs or damages, it considers appropriate; or

(b) may impose conditions on the order it considers appropriate; or

(c) may provide for the lifting of the order if stated circumstances occur.

(7) The tribunal may assess damages for subsection (6)(a).

(8) The tribunal's power to assess damages under subsection (7) is exercisable only by a legally qualified member.

23 Inviting decision-maker to reconsider decision

(1) At any stage of a proceeding for the review of a reviewable decision, the tribunal may invite the decision-maker for the decision to reconsider the decision.

(2) If the decision-maker for a reviewable decision is invited to reconsider the decision under subsection (1), the decision-maker—

(a) has 28 days to reconsider the decision; and

(b) may—

(i) confirm the decision; or

(ii) amend the decision; or

(iii) set aside the decision and substitute a new decision.

(3) If, under subsection (2), the decision-maker for a reviewable decision confirms the decision, the proceeding for the review of the decision must continue.

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(4) If, under subsection (2), the decision-maker for a reviewable decision (***first decision***) amends the decision or sets the decision aside and substitutes another decision for it—

(a) the first decision as amended or the decision substituted for the first decision is taken to be the reviewable decision for this Act and the enabling Act; and

(b) the review must continue for the reviewable decision unless the applicant for the review withdraws the application for review; and

(c) if a person other than the applicant applies to the tribunal to review the reviewable decision—the tribunal may hear and decide each application for the review of the reviewable decision.

24 Functions for review jurisdiction

(1) In a proceeding for a review of a reviewable decision, the tribunal may—

(a) confirm or amend the decision; or

(b) set aside the decision and substitute its own decision; or

(c) set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with the directions the tribunal considers appropriate.

(2) The tribunal's decision under subsection (1)(a) or (b) for a reviewable decision—

(a) is taken to be a decision of the decision-maker for the reviewable decision except for the tribunal's review jurisdiction or an appeal under part 8; and

(b) subject to any contrary order of the tribunal, has effect from when the reviewable decision takes or took effect.

(3) The tribunal may make, to the chief executive of the entity in which the reviewable decision was made, written recommendations about the policies, practices and procedures applying to reviewable decisions of the same kind.

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(4) If the tribunal makes written recommendations under subsection (3) and the chief executive is not the decision-maker for the reviewable decision, the tribunal must give a copy of the recommendations to the decision-maker.

(5) In this section—

chief executive includes chief executive officer.

Division 4 Appeal jurisdiction

25 Generally

The tribunal's appeal jurisdiction is—

(a) the jurisdiction conferred on the tribunal by section 26; and

(b) the jurisdiction conferred on the tribunal by an enabling Act to hear and decide an appeal against a decision of another entity under that Act.

26 Jurisdiction for decisions of the tribunal

The tribunal has jurisdiction to hear and decide an appeal against a decision of the tribunal in the circumstances mentioned in section 142.

27 When appeal jurisdiction exercised

The tribunal may exercise its appeal jurisdiction if a person has, under this Act or an enabling Act, appealed to the tribunal against a decision for which it has appeal jurisdiction.

Note—

Part 8, division 1 provides for how an appeal is made under this Act and how the tribunal's appeal jurisdiction is exercised.

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Part 2 Practices and procedures

28 Conducting proceedings generally

(1) The procedure for a proceeding is at the discretion of the tribunal, subject to this Act, an enabling Act and the rules.

(2) In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.

(3) In conducting a proceeding, the tribunal—

(a) must observe the rules of natural justice; and

(b) is not bound by the rules of evidence, or any practices or procedures applying to courts of record, other than to the extent the tribunal adopts the rules, practices or procedures; and

(c) may inform itself in any way it considers appropriate; and

(d) must act with as little formality and technicality and with as much speed as the requirements of this Act, an enabling Act or the rules and a proper consideration of the matters before the tribunal permit; and

(e) must ensure, so far as is practicable, that all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.

(4) Without limiting subsection (3)(b), the tribunal may admit into evidence the contents of any document despite the noncompliance with any time limit or other requirement under this Act, an enabling Act or the rules relating to the document or the service of it.

29 Ensuring proper understanding and regard

(1) The tribunal must take all reasonable steps to—

(a) ensure each party to a proceeding understands—

(i) the practices and procedures of the tribunal; and

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(ii) the nature of assertions made in the proceeding and the legal implications of the assertions; and

(iii) any decision of the tribunal relating to the proceeding; and

(b) understand the actions, expressed views and assertions of a party to or witness in the proceeding, having regard to the party's or witness's age, any disability, and cultural, religious and socioeconomic background; and

(c) ensure proceedings are conducted in a way that recognises and is responsive to—

(i) cultural diversity, Aboriginal tradition and Island custom, including the needs of a party to or witness in the proceeding who is from another culture or linguistic background or is an Aboriginal person or Torres Strait Islander; and

(ii) the needs of a party to, or witness in, the proceeding who is a child or a person with impaired capacity or a physical disability.

(2) The steps that can be taken for ensuring a person understands something mentioned in subsection (1)(a) include, for example—

(a) explaining the matters to the person; or

(b) having an interpreter or other person able to communicate effectively with the person give the explanation; or

(c) supplying an explanatory note in English or another language.

30 Principal registrar to help parties and potential parties

The principal registrar must give parties and potential parties reasonable help to ensure their understanding of the tribunal's practices and procedures, including, for example, reasonable help to complete forms required under this Act or the rules.

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31 Related criminal or disciplinary action

(1) This section applies if matters arising in a proceeding involve the contravention, or the alleged contravention, of an Act by a person.

(2) Unless an enabling Act that is an Act provides otherwise, the tribunal may make its final decision in the proceeding whether or not the person—

(a) has been charged with, convicted of or sentenced for an offence arising out of the contravention; or

(b) may be, is, or has been, subject to disciplinary action (including a proceeding before the tribunal) relating to the contravention under an Act.

32 Proceeding by remote conferencing or on the papers

(1) The tribunal may, if appropriate, conduct all or a part of a proceeding by remote conferencing.

(2) The tribunal may, if appropriate, conduct all or a part of a proceeding entirely on the basis of documents, without the parties, their representatives or witnesses appearing at a hearing.

(3) If the tribunal conducts a proceeding under subsection (1) or (2), the tribunal must ensure the public has access to, or is precluded from access to, matters disclosed in the proceeding to the same extent as if the proceeding had been heard before the tribunal with the attendance in person of all persons involved.

(4) Provisions of this Act applying to a hearing apply with necessary changes in relation to a proceeding conducted under subsection (1) or (2).

Examples—

1 If a hearing is conducted under subsection (1), section 90 continues to apply to the proceeding as if the participants in the hearing were present before the tribunal.

2 If a hearing is conducted under subsection (2), section 92 will have no application.

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(5) In this section—

remote conferencing means—

(a) teleconferencing; or

(b) videoconferencing; or

(c) another form of communication that allows persons taking part in the proceeding to hear and take part in discussions as they happen.

Part 3 Starting proceeding

33 Making an application

(1) This section applies if this Act or an enabling Act provides that a person may apply to the tribunal to deal with a matter.

(2) The application must—

(a) be in a form substantially complying with the rules; and

(b) state the reasons for the application; and

(c) be filed in the registry.

(3) If the application is for the review of a reviewable decision, the application must be made, by filing it in the registry, within 28 days after the relevant day.

Notes—

1 Under section 6(7), an enabling Act that is an Act may provide for a different period within which a person must make an application.

2 Under section 61, the tribunal may extend the period within which a person must make an application.

(4) In this section—

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

(a) the day the applicant is notified of the decision; or

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(b) if the applicant has applied to the decision-maker for a written statement of reasons for the decision under section 158—the earlier of the following days—

(i) the day the written statement is given to the applicant;

(ii) the day by which the written statement is required to be given to the applicant under that section; or

(c) if the applicant has applied to the tribunal for an order under section 159—

(i) if the tribunal makes the order—the earlier of the following days—

(A) the day the written statement of reasons the subject of the order is given to the applicant;

(B) the day by which the written statement of reasons the subject of the order is required to be given to the applicant under the order; or

(ii) if the tribunal does not make the order—the day the applicant is notified of the tribunal's decision to not make the order.

34 Referring matter

(1) This section applies if an enabling Act provides for the referral of a matter to the tribunal.

(2) The referral must be made—

(a) within the period provided for under the enabling Act; and

(b) in a way complying with the rules.

35 Acceptance or rejection of application or referral

(1) This section applies if a person makes an application, or refers a matter, to the tribunal.

(2) The principal registrar may—

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(a) accept the application or referral without imposing any conditions; or

(b) accept the application or referral on conditions stated in the rules; or

(c) reject the application or referral on a ground mentioned in subsection (3); or

(d) refer the application or referral to the tribunal if the principal registrar believes there is a ground for rejecting the application or referral under subsection (3).

(3) The principal registrar may reject an application or referral on any of the following grounds—

(a) the application or referral is made by a person who is not authorised to make it;

(b) the application or referral is made after the expiry of the period within which it is required to be made under this Act;

(c) the application or referral does not otherwise comply with this Act, an enabling Act or the rules.

(4) If the principal registrar rejects an application or referral, or accepts an application or referral on conditions—

(a) the principal registrar must notify the applicant that the applicant may request the principal registrar to refer the decision to the tribunal for review; and

(b) if the applicant makes the request, the principal registrar must refer the decision to the tribunal for review.

(5) No fee is payable for a request for a referral under subsection (4).

(6) If the question of whether or not an application or referral should be rejected is referred to the tribunal under subsection (2)(d) or (4)(b), the tribunal must direct the principal registrar—

(a) to reject the application or referral; or

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(b) to accept the application or referral on stated conditions or no conditions.

(7) If the question of whether or not an application or referral should be accepted on stated conditions is referred to the tribunal under subsection (4)(b), the tribunal must direct the principal registrar—

(a) to accept the application or referral on no conditions; or

(b) to accept the application or referral on the stated conditions or different conditions; or

(c) to reject the application or referral.

(8) The tribunal may direct the principal registrar to reject an application or referral only if a ground for rejecting the application or referral under subsection (3) exists.

Note—

A decision of the tribunal under subsection (6) or (7) is not subject to appeal under part 8. See sections 142(2) and 149(4).

36 When proceeding starts

A proceeding starts when the principal registrar accepts an application or referral, whether or not on conditions.

Note—

However, under section 38, the tribunal must not take any action on the application or referral until the prescribed fee, if any, for the application or referral is paid.

37 Notice

(1) This section applies if a proceeding is started under section 36 for an application or referral.

(2) The applicant for the application or referral must, within the period stated in the rules, give a copy of the application or referral to—

(a) each party to the proceeding; and

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(b) each other person to whom notice of the proceeding must be given under an enabling Act or the rules; and

(c) any person the tribunal directs to be given notice of the proceeding.

Note—

See the rules for provisions about how the copy must, or may, be given and provisions about responding to an application.

(3) Subsection (2) does not require the applicant to give a copy of the application or referral to another person if—

(a) the principal registrar has given or undertaken to give the copy to the person; or

(b) under subsection (4), the tribunal makes an order that the copy is not required to be given to the person; or

(c) the rules exempt the applicant from the requirement to give the copy to the person.

(4) The tribunal may make an order exempting the applicant from giving a copy of the application or referral to a person if the tribunal is satisfied—

(a) the applicant has made all reasonable attempts to give the copy to the person but has been unsuccessful; or

(b) the making and deciding of the application or referral without notice to the person will not cause injustice.

(5) The tribunal may act under subsection (4) on the application of the applicant or on the tribunal's own initiative.

(6) The tribunal's power to act under subsection (4) is exercisable only by a legally qualified member or an adjudicator.

38 Prescribed fees

(1) An applicant for an application or referral must pay the prescribed fee, if any, for the application or referral.

(2) The tribunal must not take any action on an application or referral until the fee is paid.

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(3) Subsection (2) does not prevent the tribunal directing the principal registrar to accept or reject an application or referral under section 35.

Part 4 Parties to a proceeding

39 Parties to original jurisdiction

A person is a party to a proceeding in the tribunal's original jurisdiction if the person is—

(a) the applicant; or

(b) a person in relation to whom a decision of the tribunal is sought by the applicant; or

(c) intervening in the proceeding under section 41; or

(d) joined as a party to the proceeding under section 42; or

(e) someone else an enabling Act states is a party to the proceeding.

40 Parties to review jurisdiction

(1) A person is a party to a proceeding in the tribunal's review jurisdiction if the person is—

(a) the applicant; or

(b) the decision-maker for the reviewable decision the subject matter of the proceeding; or

(c) intervening in the proceeding under section 41; or

(d) joined as a party to the proceeding under section 42; or

(e) someone else an enabling Act states is a party to the proceeding.

(2) In a proceeding in the tribunal's review jurisdiction, so far as is practicable, the official description of the decision-maker must be used as the party's name instead of the decision-maker's name.

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41 Intervention

(1) The Attorney-General may, for the State, intervene in a proceeding at any time.

(2) The tribunal may, at any time, give leave for a person to intervene in a proceeding, subject to the conditions the tribunal considers appropriate.

42 Joining and removing parties

(1) The tribunal may make an order joining a person as a party to a proceeding if the tribunal considers that—

(a) the person should be bound by or have the benefit of a decision of the tribunal in the proceeding; or

(b) the person's interests may be affected by the proceeding; or

(c) for another reason, it is desirable that the person be joined as a party to the proceeding.

(2) The tribunal may order that a party be removed from a proceeding if the tribunal considers that—

(a) the party's interests are not, or are no longer, affected by the proceeding; or

(b) the party is not a proper or necessary party to the proceeding, whether or not the party was one originally.

(3) The tribunal may make an order under subsection (1) or (2) on the application of a person or on its own initiative.

43 Representation

(1) The main purpose of this section is to have parties represent themselves unless the interests of justice require otherwise.

(2) In a proceeding, a party—

(a) may appear without representation; or

(b) may be represented by someone else if—

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(i) the party is a child or a person with impaired capacity; or

(ii) the proceeding relates to taking disciplinary action, or reviewing a decision about taking disciplinary action, against a person; or

(iii) an enabling Act that is an Act, or the rules, states the person may be represented; or

(iv) the party has been given leave by the tribunal to be represented.

(3) In deciding whether to give a party leave to be represented in a proceeding, the tribunal may consider the following as circumstances supporting the giving of the leave—

(a) the party is a State agency;

(b) the proceeding is likely to involve complex questions of fact or law;

(c) another party to the proceeding is represented in the proceeding;

(d) all of the parties have agreed to the party being represented in the proceeding.

(4) A party can not be represented in a proceeding by a person—

(a) who, under rules made under section 224(3), is disqualified from being a representative of a party to a proceeding; or

(b) who is not an Australian legal practitioner or government legal officer, unless the tribunal is satisfied the person is an appropriate person to represent the party.

(5) A person who is not an Australian legal practitioner or government legal officer and who is seeking to represent a party in a proceeding must give the tribunal a certificate of authority from the party for the representation if—

(a) the party is a corporation; or

(b) the tribunal has asked for the certificate.

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(6) The tribunal may appoint a person to represent an unrepresented party.

(7) In this section—

Australian legal practitioner see the *Legal Profession Act 2007*.

government legal officer see the *Legal Profession Act 2007*.

44 Use of interpreters and other persons

(1) Unless the tribunal directs otherwise, a party to a proceeding or a witness may be helped in a proceeding by—

(a) an interpreter; or

(b) another person necessary or desirable to make the proceeding intelligible to the party or witness, including, for example, a person with appropriate cultural or social knowledge and experience.

(2) Without limiting subsection (1), the tribunal may arrange for an interpreter or another person to help a party or witness.

(3) In this section—

interpreter includes a person who interprets signs made or other things done by a person who can not speak or can not speak clearly enough to take part in a proceeding.

45 General obligation of parties

Each party to a proceeding must act quickly in any dealing relevant to the proceeding.

Note—

For possible consequences for a contravention of this section, see sections 48 (Dismissing, striking out or deciding if party causing disadvantage) and 102 (Costs against party in interests of justice).

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Part 5 Preliminary dealings with proceeding

Division 1 Early end to proceeding

46 Withdrawal of application or referral

(1) An applicant may, in the way stated in the rules, withdraw the applicant's application or referral for a matter before the matter is heard and decided by the tribunal.

(2) However, if the application or referral is made under any of the following, the applicant may withdraw the application or referral only with the leave of the tribunal—

(a) the *Child Protection Act 1999*;

(b) the *Disability Services Act 2006*, section 178(9);

(c) the *Guardianship and Administration Act 2000*;

(d) the *Powers of Attorney Act 1998*.

(3) If an applicant withdraws an application or referral, the applicant can not make a further application or referral, or request, require or otherwise seek a further referral, relating to the same facts or circumstances without leave of the tribunal.

47 Dismissing, striking out or deciding if unjustified proceeding or part

(1) This section applies if the tribunal considers a proceeding or a part of a proceeding is—

(a) frivolous, vexatious or misconceived; or

(b) lacking in substance; or

(c) otherwise an abuse of process.

(2) The tribunal may—

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(a) if the party who brought the proceeding or part before the tribunal is the applicant for the proceeding, order the proceeding or part be dismissed or struck out; or

(b) for a part of a proceeding brought before the tribunal by a party other than the applicant for the proceeding—

(i) make its final decision in the proceeding in the applicant's favour; or

(ii) order that the party who brought the part before the tribunal be removed from the proceeding; or

(c) make a costs order against the party who brought the proceeding or part before the tribunal to compensate another party for any reasonable costs, expenses, loss, inconvenience and embarrassment resulting from the proceeding or part.

Note—

See section 108 for the tribunal's power to order that the costs be paid before it continues with the proceeding.

(3) The tribunal may act under subsection (2) on the application of a party to the proceeding or on the tribunal's own initiative.

(4) The tribunal's power to act under subsection (2) is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

(b) if the tribunal has not been constituted for the proceeding—a legally qualified member or an adjudicator.

48 Dismissing, striking out or deciding if party causing disadvantage

(1) This section applies if the tribunal considers a party to a proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding, including by—

(a) not complying with a tribunal order or direction without reasonable excuse; or

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(b) not complying with this Act, an enabling Act or the rules; or

(c) asking for an adjournment as a result of conduct mentioned in paragraph (a) or (b); or

(d) causing an adjournment; or

(e) attempting to deceive another party or the tribunal; or

(f) vexatiously conducting the proceeding; or

(g) failing to attend conciliation, mediation or the hearing of the proceeding without reasonable excuse.

(2) The tribunal may—

(a) if the party causing the disadvantage is the applicant for the proceeding, order the proceeding be dismissed or struck out; or

(b) if the party causing the disadvantage is not the applicant for the proceeding—

(i) make its final decision in the proceeding in the applicant's favour; or

(ii) order that the party causing the disadvantage be removed from the proceeding; or

(c) make an order under section 102, against the party causing the disadvantage, to compensate another party for any reasonable costs incurred unnecessarily.

Note—

See section 108 for the tribunal's power to order that the costs be paid before it continues with the proceeding.

(3) In acting under subsection (2), the tribunal must have regard to the following—

(a) the extent to which the party causing the disadvantage is familiar with the tribunal's practices and procedures;

(b) the capacity of the party causing the disadvantage to understand, and act on, the tribunal's orders and directions;

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(c) whether the party causing the disadvantage is acting deliberately.

(4) The tribunal may act under subsection (2) on the application of a party to the proceeding or on the tribunal's own initiative.

(5) The tribunal's power to act under subsection (2) is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

(b) if the tribunal has not been constituted for the proceeding—a legally qualified member or an adjudicator.

49 Reinstatement of proceeding and restriction on new application or referral

(1) This section applies if the tribunal has ordered—

(a) a proceeding or a part of a proceeding be dismissed or struck out under section 47; or

(b) a proceeding be dismissed or struck out under section 48.

(2) Another proceeding or a part of a proceeding of the same kind relating to the same matter can not be started before the tribunal without the leave of the president or deputy president.

(3) The president or deputy president may give the leave if the president or deputy president considers the interests of justice requires it to be given.

(4) In giving leave to start another proceeding or part of a proceeding, the president or deputy president may extend any time limit for starting the proceeding or part.

(5) If the tribunal considers a proceeding has been dismissed or struck out in error, the tribunal may order that the proceeding be reinstated.

(6) The tribunal may act under subsection (5) on the application of a party to the proceeding or on the tribunal's own initiative.

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Division 2 Decision by default

50 Decision by default for debt or liquidated demand of money

(1) This section applies if—

(a) a person has applied to the tribunal to recover a debt or liquidated demand of money from a person (the ***respondent***); and

(b) an enabling Act that is an Act or the rules state that the respondent must respond to the application within a stated period; and

(c) the respondent has not responded to the application within the stated period.

(2) The applicant may, in the way stated in the rules, apply to the tribunal for a decision by default for an amount limited to—

(a) the amount claimed in the application starting the proceeding; and

(b) interest on the amount claimed at the rate the tribunal considers appropriate; and

(c) either—

(i) for an application for a minor civil dispute—costs stated in the rules as costs that may be awarded for minor civil disputes under section 102; or

(ii) for an application other than for a minor civil dispute—

(A) the fee paid for the application; and

(B) legal costs based on a scale stated in the rules.

(3) If the applicant applies for a decision by default under this section the principal registrar may make the decision.

(4) A decision by default given under subsection (3) is taken to be a final decision of the tribunal in the proceeding.

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(5) The applicant must prove the respondent has been given a copy of the application before a decision by default may be made under this section.

50A Decision by default for unliquidated damages

(1) This section applies if—

(a) a person has applied to the tribunal to recover an amount consisting of, or including, unliquidated damages from a person (the ***respondent***); and

(b) an enabling Act that is an Act, or the rules, states that the respondent must respond to the application within a stated period; and

(c) the respondent has not responded to the application within the stated period.

(2) The applicant may, in the way stated in the rules, apply to the tribunal for a decision by default conditional on the assessment by the tribunal of the unliquidated damages.

(3) The application may also include a claim for—

(a) any liquidated amount claimed in the application starting the proceeding; and

(b) interest on the liquidated amount claimed at the rate the tribunal considers appropriate; and

(c) the fee paid for the application; and

(d) legal costs based on a scale stated in the rules.

(4) The principal registrar may decide the application.

(5) If a decision by default is given under subsection (4)—

(a) the decision is taken to be a final decision of the tribunal in the proceeding; and

(b) the tribunal must assess the unliquidated damages.

(6) The applicant must prove the respondent has been given a copy of the application before a decision by default may be made under this section.

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51 Setting aside decision by default

The tribunal, on application by the respondent, may set aside or amend a decision by default on terms, including terms about costs and the giving of security, the tribunal considers appropriate.

51A Effect of application under s 51 on decision by default

(1) An application under section 51 to set aside or amend a decision by default does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) However, the tribunal may make an order staying the operation of the decision by default until the application to set aside or amend the decision is finally decided.

(3) The tribunal may act under subsection (2) on the application of a party to the decision by default or on its own initiative.

Division 3 Transfer

52 Transfer to more appropriate forum

(1) If the tribunal considers the subject matter of a proceeding or a part of a proceeding would be more appropriately dealt with by another tribunal, a court or another entity, the tribunal may, by order, transfer the matter to which the proceeding or part relates to the other tribunal, the court or the other entity.

(2) If the tribunal considers it does not have jurisdiction to hear all matters in a proceeding, the tribunal may, by order, transfer the matter or matters for which it does not have jurisdiction to—

(a) a court of competent jurisdiction; or

(b) another tribunal or entity having jurisdiction to deal with the matter or matters.

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(3) The tribunal may make an order under subsection (2)(a) even though the proceeding has previously been transferred from a court to the tribunal under section 53.

(4) If the tribunal transfers a matter to another tribunal, a court or another entity (the ***relevant entity***) under this section—

(a) a proceeding for the matter is taken to have been started before the relevant entity when it was started before the tribunal; and

(b) the tribunal may make the orders or give the directions it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under an Act or other law for starting a proceeding before the relevant entity.

(5) An order under subsection (4)(b) has effect despite any other Act or law.

(6) The tribunal may act under this section on the application of a party to the proceeding or on its own initiative.

(7) The tribunal's power to act under this section is exercisable only by a legally qualified member.

(8) In this section—

proceeding includes a process for the consideration of a matter.

53 Transfer from a court

(1) If a proceeding is started in a court and the subject matter of the proceeding could be heard by the tribunal under this Act, the court may, by order, transfer the proceeding to the tribunal.

(2) If a court transfers a proceeding to the tribunal under subsection (1)—

(a) the proceeding is taken to have been started before the tribunal when it was started in the court; and

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(b) the court may make the orders and give the directions it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under this Act, an enabling Act or the rules for starting a proceeding before the tribunal.

(3) An order under subsection (2)(b) has effect despite any provision of this Act, an enabling Act or the rules.

(4) A court may act under this section on the application of a party to the proceeding or on its own initiative.

Division 4 Consolidation or sequence directions

54 Consolidation

(1) The tribunal may direct that 2 or more proceedings concerning the same or related facts and circumstances be consolidated into 1 proceeding.

(2) The tribunal's power to give a direction under subsection (1) is exercisable only by a legally qualified member or an adjudicator.

(3) If 2 or more proceedings (each a ***pre-consolidation proceeding***) are consolidated under subsection (1), evidence given in a pre-consolidation proceeding may also be given in the consolidated proceeding in relation to each of the other pre-consolidation proceedings.

55 Sequence

(1) The tribunal may direct that 2 or more proceedings concerning the same or related facts and circumstances—

(a) remain as separate proceedings but be heard and decided together; or

(b) be heard in a particular sequence.

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(2) The tribunal's power to give a direction under subsection (1) is exercisable only by a legally qualified member or an adjudicator.

56 Variation of direction

(1) Before or during the hearing of a consolidated proceeding or of proceedings directed to be heard together or in a particular sequence, the tribunal may direct that the proceedings be separated or heard in another sequence.

(2) The tribunal's power to act under subsection (1) is exercisable only by—

(a) the tribunal as constituted for the proceeding or proceedings; or

(b) if the tribunal has not been constituted for the proceeding or proceedings—a legally qualified member or an adjudicator.

Part 6 Other provisions about a proceeding

Division 1 Procedural powers

57 General powers

(1) The tribunal may—

(a) take evidence on oath; or

(b) act in the absence of a party who has had reasonable notice of a proceeding; or

(c) adjourn a proceeding.

(2) The tribunal—

(a) may require a person appearing before the tribunal to give evidence on oath; and

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(b) may administer an oath to the person.

(3) The tribunal may permit a person appearing as a witness before the tribunal to give evidence by tendering a written statement, verified, if the tribunal directs, by oath.

58 Interim orders

(1) Before making a final decision in a proceeding, the tribunal may make an interim order it considers appropriate in the interests of justice, including, for example—

(a) to protect a party's position for the duration of the proceeding; or

(b) to require or permit something to be done to secure the effectiveness of the exercise of the tribunal's jurisdiction for the proceeding.

Note—

See also section 22(3) for the tribunal's power to stay the operation of a reviewable decision while it is being reviewed by the tribunal.

(2) The tribunal may make an interim order on the application of a party to the proceeding or on its own initiative.

(3) In making an interim order, the tribunal—

(a) may require an undertaking, including an undertaking as to costs or damages, it considers appropriate; or

(b) may provide for the lifting of the order if stated conditions are met.

(4) The tribunal may assess damages for subsection (3)(a).

(5) The tribunal's power to assess damages under subsection (4) is exercisable only by a legally qualified member.

(6) In this section—

interim order means an order that has effect for the duration of a proceeding or a shorter period.

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59 Injunctions

(1) The tribunal may, by order, grant an injunction, including an interim injunction, in a proceeding if it is just and convenient to do so.

(2) The tribunal may make an order granting an interim injunction whether or not it has given any person whose interests may be affected by the order an opportunity to be heard.

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

(4) The tribunal's power to act under subsection (1) is exercisable only by a legally qualified member.

(5) The tribunal's power under subsection (1) is in addition to, and does not limit, any power of the tribunal under an enabling Act to make an order in the nature of an injunction.

(6) In making an order under subsection (1), the tribunal—

(a) may require an undertaking, including an undertaking as to costs or damages, it considers appropriate; or

(b) may provide for the lifting of the order if stated conditions are met.

(7) The tribunal may assess damages for subsection (6)(a).

(8) The tribunal's power to assess damages under subsection (7) is exercisable only by a legally qualified member.

(9) In this section—

interim injunction means an injunction that has effect for the duration of a proceeding or a shorter period.

60 Declarations

(1) The tribunal may make a declaration about a matter in a proceeding—

(a) instead of making an order it could make about the matter; or

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(b) in addition to an order it could make about the matter.

(2) The tribunal may make an order it considers necessary or desirable to give effect to a declaration under subsection (1).

(3) A declaration under subsection (1) is binding on the parties to the proceeding mentioned in the declaration.

(4) The tribunal's power under subsection (1) is in addition to, and does not limit, any power of the tribunal under an enabling Act to make a declaration.

(5) The tribunal's power to act under subsection (1) or (2) is exercisable only by a legally qualified member.

61 Relief from procedural requirements

(1) The tribunal may, by order—

(a) extend a time limit fixed for the start of a proceeding by this Act or an enabling Act; or

(b) extend or shorten a time limit fixed by this Act, an enabling Act or the rules; or

(c) waive compliance with another procedural requirement under this Act, an enabling Act or the rules.

(2) An extension or waiver may be given under subsection (1) even if the time for complying with the relevant requirement has passed.

(3) The tribunal can not extend or shorten a time limit or waive compliance with another procedural requirement if to do so would cause prejudice or detriment, not able to be remedied by an appropriate order for costs or damages, to a party or potential party to a proceeding.

(4) The tribunal may act under subsection (1) on the application of a party or potential party to the proceeding or on its own initiative.

(5) The tribunal's power to act under subsection (1) is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

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(b) a legally qualified member, an adjudicator or the principal registrar.

62 Directions

(1) The tribunal may give a direction at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding.

(2) The tribunal may hold a directions hearing for giving the direction before any other hearing is held for the proceeding.

(3) Without limiting subsection (1), the tribunal may give a direction under this section requiring a party to the proceeding to produce a document or another thing, or provide information to—

(a) the tribunal; or

(b) another party to the proceeding.

(4) A party must comply with a direction given under this section within—

(a) the period stated in the direction; or

(b) if the tribunal has extended the period within which the direction must be complied with—the extended period.

(5) However, subsection (4) does not apply to a document or thing, a part of a document or thing, or information for which there is a valid claim to privilege from disclosure.

(6) The tribunal may act under this section on the application of a party to a proceeding or on the tribunal's own initiative.

(7) The tribunal's power to act under this section is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

(b) a legally qualified member, an adjudicator or the principal registrar.

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63 Obtaining a document or thing from third parties

(1) The tribunal may make an order requiring a person who is not a party to a proceeding but who has, or is likely to have, in the person's possession or control a document or other thing relevant to the proceeding to produce the document or thing to—

(a) the tribunal; or

(b) a party to the proceeding.

(2) The person in relation to whom the order is made must comply with the order within the period stated in the order.

(3) However, subsection (2) does not apply to a document or thing, or a part of a document or thing, for which there is a valid claim to privilege from disclosure.

(4) In making an order on the application of a party, the tribunal must consider whether it is appropriate to make an order requiring the party to pay the costs of producing the document or thing to which the order relates.

(5) The tribunal may act under this section on the application of a party or on the tribunal's own initiative.

(6) The tribunal's power to act under this section is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

(b) a legally qualified member, an adjudicator or the principal registrar.

64 Amending particular documents

(1) The tribunal may, at any time in a proceeding, make an order requiring that a relevant document be amended.

(2) The tribunal may make the order on the application of the party who filed the document or on its own initiative.

(3) The tribunal's power to make an order under subsection (1) is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

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(b) if the tribunal has not been constituted for the proceeding—a legally qualified member, an adjudicator or the principal registrar.

(4) In this section—

relevant document means—

(a) an application or referral; or

(b) a document responding to an application or referral.

65 Dealing with documents and other things

(1) This section applies if a document or other thing is produced to the tribunal in a proceeding.

(2) The tribunal may inspect the document or thing.

(3) The tribunal may—

(a) keep the document or thing for a reasonable period; and

(b) make copies of or take extracts from the document, or take photographs of the thing.

(4) If the tribunal keeps a document or other thing, the tribunal must permit a person otherwise entitled to possession of the document or thing—

(a) for a document—to inspect, make a copy of or take an extract from the document at a reasonable time and place the tribunal decides; or

(b) for another thing—to inspect or photograph the thing at a reasonable time and place the tribunal decides.

(5) If the tribunal has made a copy of a document under subsection (3)(b) and the principal registrar certifies the copy as a true copy of the original document, the certified copy is admissible in evidence before any court, tribunal or person acting judicially as if it were the original document.

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66 Non-publication orders

(1) The tribunal may make an order prohibiting the publication of the following other than in the way and to the persons stated in the order—

(a) the contents of a document or other thing produced to the tribunal;

(b) evidence given before the tribunal;

(c) information that may enable a person who has appeared before the tribunal, or is affected by a proceeding, to be identified.

(2) The tribunal may make an order under subsection (1) only if the tribunal considers the order is necessary—

(a) to avoid interfering with the proper administration of justice; or

(b) to avoid endangering the physical or mental health or safety of a person; or

(c) to avoid offending public decency or morality; or

(d) to avoid the publication of confidential information or information whose publication would be contrary to the public interest; or

(e) for any other reason in the interests of justice.

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

(4) The tribunal's power to act under subsection (1) is exercisable only by—

(a) the tribunal as constituted for the proceeding; or

(b) if the tribunal has not been constituted for the proceeding—a legally qualified member or an adjudicator.

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Division 1A Conciliation

66A Referral by tribunal or principal registrar

(1) The tribunal or the principal registrar may refer the parties to a proceeding to attend conciliation.

(2) A referral under subsection (1) may be made with or without the consent of the parties to the proceeding.

(3) The principal registrar must give each party to the proceeding written notice of the referral for conciliation as stated in the rules.

66B Personal or representative attendance

(1) The relevant entity may direct a party to a proceeding to attend a conciliation in person or to be represented by a person who has authority to settle the dispute the subject of the proceeding for the party.

(2) In this section—

relevant entity means—

(a) before the conciliation starts—the entity that referred the parties to attend conciliation; or

(b) from the start of the conciliation—the conciliator.

66C Purpose

The purpose of conciliation for a proceeding is to promote the settlement of the dispute the subject of the proceeding.

66D Function of conciliator

The function of a conciliator under this division is to promote the settlement of the dispute the subject of the proceeding by—

(a) identifying and clarifying—

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(i) the issues in dispute in the proceeding; and

(ii) how the law applies to the issues; and

(b) arranging negotiations between the parties to the proceeding and assisting in the conduct of the negotiations; and

(c) promoting the open exchange of information between the parties to the proceeding; and

(d) giving parties to the proceeding information about how this Act, enabling Acts and the rules apply to the proceeding.

66E Procedure

(1) Conciliation must be held in private unless the conciliator directs otherwise.

(2) Conciliation may be conducted in the way decided by the conciliator, which must be a way complying with the rules.

66F Who may be a conciliator

(1) A person may be a conciliator for a proceeding only if the person is—

(a) a member; or

(b) an adjudicator; or

(c) the principal registrar; or

(d) a person approved by the principal registrar as a conciliator for the tribunal.

(2) The principal registrar may approve a person as a conciliator for the tribunal only if the principal registrar is satisfied, having regard to the person's qualifications and experience, the person is a suitable person to conduct conciliation.

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66G Disclosure of interests

(1) This section applies if a conciliator who is to conduct conciliation has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the conciliator's functions in the conciliation.

(2) The conciliator must—

(a) disclose the nature of the interest to the president; and

(b) not take part in the conciliation or exercise powers for it, unless all parties to the proceeding and the president agree otherwise.

66H Member or adjudicator conducting conciliation

(1) This section applies if the person conducting conciliation for a proceeding is a member or adjudicator.

(2) The person must not constitute the tribunal for the proceeding unless all the parties to the proceeding agree otherwise.

66I Notification of outcome

(1) This section applies in relation to conciliation conducted by a conciliator other than the principal registrar.

(2) If the parties to a proceeding agree to settle the proceeding or a part of the proceeding at conciliation, the conciliator must notify the principal registrar that the parties have agreed to settle the dispute the subject of the proceeding or part.

(3) If a conciliator has attempted unsuccessfully to settle a proceeding by conciliation, the conciliator must notify the principal registrar that the conciliation was unsuccessful.

66J Inadmissibility of particular evidence

(1) Evidence of anything said or done during conciliation for a proceeding is not admissible—

(a) at any stage of the proceeding; or

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(b) in another civil proceeding before a court or another tribunal.

(2) Subsection (1) does not apply to—

(a) evidence that all parties to the proceeding have agreed may be admitted into evidence; or

(b) evidence of an order made or direction given at conciliation or the reasons for the order or direction; or

(c) evidence of anything said or done that is relevant to a proceeding—

(i) for an offence relating to the giving of false or misleading information; or

(ii) for contempt.

Division 2 Compulsory conferences

67 Direction by tribunal or principal registrar

(1) The tribunal or the principal registrar may direct the parties to a proceeding to attend 1 or more compulsory conferences.

(2) The principal registrar must give each party to the proceeding written notice of the compulsory conference, as stated in the rules.

68 Personal or representative attendance

(1) The relevant entity may direct a party to a proceeding to attend a compulsory conference in person or to be represented by a person who has authority to settle the dispute the subject of the proceeding for the party.

(2) In this section—

relevant entity means—

(a) before the compulsory conference starts—

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(i) the entity that directed the parties to attend the conference; or

(ii) the person who is to preside over the conference; or

(b) from the start of the compulsory conference—the person presiding over the conference.

69 Purposes

The purposes of a compulsory conference for a proceeding are as follows—

(a) to identify and clarify the issues in dispute in the proceeding;

(b) to promote a settlement of the dispute the subject of the proceeding;

(c) to identify the questions of fact and law to be decided by the tribunal;

(d) if the proceeding is not settled, to make orders and give directions about the conduct of the proceeding;

(e) to make orders and give directions the person presiding over the conference considers appropriate to resolve the dispute the subject of the proceeding.

70 Procedure generally

(1) A compulsory conference must be heard by 1 of the following persons chosen by the president—

(a) a member;

(b) an adjudicator;

(c) the principal registrar.

Note—

See section 169 (for members and adjudicators) or 212 (for the principal registrar) for the requirement to disclose interests that may conflict with the performance of functions in a compulsory conference.

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(2) A compulsory conference must be held in private unless the person presiding over the conference directs otherwise.

(3) A compulsory conference may be conducted in the way decided by the person presiding over the conference, which must be a way complying with this Act, an enabling Act and the rules.

(4) Sections 28, 29 and 32(1) apply to a compulsory conference as if—

(a) the compulsory conference were a proceeding before the tribunal; and

(b) subject to paragraph (c), a reference in the sections to the tribunal included a reference to the person presiding over the compulsory conference; and

(c) a reference to the practices and procedures of the tribunal in section 29(1)(a)(i) included a reference to the practices and procedures for the compulsory conference.

71 Orders and directions generally

(1) This section applies if the person presiding over a compulsory conference is a person who may exercise a power of the tribunal to make an order or give a direction under section 61, 62, 63 or 64.

(2) The person may exercise a power mentioned in section 61, 62, 63 or 64 to make an order or give a direction in the conference.

(3) An order or direction made under subsection (2) is taken to be an order or direction made in the proceeding to which the conference relates.

72 Party fails to attend

(1) If a party to a proceeding does not attend a compulsory conference—

(a) the conference may proceed in the party's absence; and

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(b) if the person presiding is a member or an adjudicator, and all the parties present agree, the person may—

(i) make a decision adverse to the absent party and make any appropriate orders, including orders about costs; or

(ii) order that the absent party be removed from the proceeding, and pay another party's costs reasonably incurred by the other party as a result of the absent party's involvement in the proceeding.

(2) Subsection (1) applies only if the person presiding over the compulsory conference is satisfied the absent party has been given notice of the conference under section 67(2).

(3) If a decision or order is made under subsection (1)(b), this Act applies to the decision or order as if—

(a) the compulsory conference were a proceeding before the tribunal; and

(b) the decision or order were a decision or order made by the tribunal constituted for the proceeding.

(4) A person the subject of an order under subsection (1)(b)(ii) may apply to the tribunal to be reinstated as a party to the proceeding.

(5) The tribunal may reinstate the person as a party to the proceeding if satisfied the person had a reasonable excuse for not attending the compulsory conference.

73 Member or adjudicator presiding

(1) This section applies if the person presiding at a compulsory conference for a proceeding is a member or an adjudicator.

(2) At the end of the compulsory conference, the person presiding must advise the parties to the proceeding of their rights to object to the person constituting the tribunal for the proceeding.

(3) A party may object to the person constituting the tribunal for the proceeding.

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(4) An objection under subsection (2), must be filed in the registry—

(a) within 2 business days after the compulsory conference ends; or

(b) if the hearing of the proceeding is to start before the end of the period mentioned in paragraph (a), before the start of the hearing.

(5) The person presiding—

(a) may disqualify himself or herself from constituting the tribunal for the proceeding, whether or not an objection is filed; and

(b) must not constitute the tribunal for the proceeding if a party objects to the person constituting the tribunal for the proceeding.

74 Inadmissibility of particular evidence

(1) Evidence of anything said or done during a compulsory conference for a proceeding is not admissible at any stage in the proceeding.

(2) Subsection (1) does not apply to—

(a) evidence that all parties to the proceeding have agreed may be admitted into evidence; or

(b) evidence of an order made or direction given at a compulsory conference or the reasons for the order or direction; or

(c) evidence of anything said or done that is relevant to a proceeding—

(i) for an offence relating to the giving of false or misleading information; or

(ii) for contempt; or

(iii) relating to an order made under section 72(1)(b).

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Division 3 Mediation

75 Referral by tribunal or principal registrar

(1) The tribunal or the principal registrar may refer the subject matter, or a part of the subject matter, of a proceeding for mediation by a mediator appointed by the tribunal or principal registrar.

(2) A referral under subsection (1) may be made with or without the consent of the parties to the proceeding.

(3) The principal registrar must give each party to the proceeding written notice of the referral for mediation as stated in the rules.

(4) If the tribunal or principal registrar decides to refer the subject matter or part for mediation by a mediator under the *Dispute Resolution Centres Act 1990*, it is sufficient if the tribunal or principal registrar appoints the director of a specified dispute resolution centre as mediator.

76 Personal or representative attendance

(1) The relevant entity may direct a party to a proceeding to attend mediation in person or to be represented by a person who has authority to settle the dispute the subject of the proceeding for the party.

(2) In this section—

relevant entity means—

(a) before the mediation starts—

(i) the entity that referred the subject matter, or a part of the subject matter, of the proceeding for mediation; or

(ii) the mediator who is to conduct the mediation; or

(b) from the start of the mediation—the mediator conducting the mediation.

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77 Purpose

The purpose of mediation for a proceeding is to promote the settlement of the dispute the subject of the proceeding.

78 Procedure generally

(1) Unless the entity that referred a matter, or a part of a matter, for mediation directs otherwise, the mediation must be held in private.

(2) Mediation may be conducted in the way decided by the mediator, which must be a way complying with the rules.

79 Who may be a mediator

(1) A person may be a mediator for a proceeding only if the person is—

(a) a member; or

(b) an adjudicator; or

(c) the principal registrar; or

(d) a mediator under the *Dispute Resolution Centres Act 1990*; or

(e) a person, including, for example, a registrar or registry staff member, approved by the principal registrar as a mediator for the tribunal.

(2) The principal registrar may approve a person as a mediator for the tribunal only if the principal registrar is satisfied, having regard to the person's qualifications and experience, the person is a suitable person to conduct mediation.

80 Disclosure of interests

(1) This section applies if a mediator who is to conduct mediation has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the mediator's functions in the mediation.

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(2) The mediator must—

(a) disclose the nature of the interest to the president; and

(b) not take part in the mediation or exercise powers for it, unless all parties to the proceeding and the president agree otherwise.

81 Member or adjudicator conducting mediation

(1) This section applies if the person conducting mediation for a proceeding is a member or adjudicator.

(2) The person must not constitute the tribunal for the proceeding unless all the parties to the proceeding agree otherwise.

82 Notification of outcome

(1) This section applies in relation to mediation conducted by a mediator other than the principal registrar.

(2) If the parties to a proceeding agree to settle the proceeding or a part of the proceeding at mediation, the mediator must notify the principal registrar that the parties have agreed to settle the dispute the subject of the proceeding or part.

(3) If a mediator has attempted unsuccessfully to settle a proceeding by mediation, the mediator must notify the principal registrar that the mediation was unsuccessful.

83 Inadmissibility of particular evidence

(1) Evidence of anything said or done during mediation for a proceeding is not admissible at any stage of the proceeding.

(2) Subsection (1) does not apply to—

(a) evidence that all parties to the proceeding have agreed may be admitted into evidence; or

(b) evidence of anything said or done that is relevant to a proceeding—

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(i) for an offence relating to the giving of false or misleading information; or

(ii) for contempt.

Division 4 Settlement and accepted offers to settle

84 Settlement in compulsory conference

(1) This section applies if a settlement is reached in a compulsory conference by the parties to a proceeding.

(2) The person presiding at the compulsory conference may—

(a) record the terms of the settlement in writing; and

(b) make the orders necessary to give effect to the settlement.

(3) This Act applies to an order made under subsection (2) as if—

(a) the compulsory conference were a proceeding before the tribunal; and

(b) the order were an order made by the tribunal constituted for the proceeding.

85 Settlement at conciliation or mediation

(1) This section applies if a settlement is reached by the parties to a proceeding at conciliation or mediation.

(2) If the conciliator or mediator is a member, an adjudicator or the principal registrar, the conciliator or mediator may record the terms of the settlement in writing and make the orders necessary to give effect to the settlement.

(3) This Act applies to an order made under subsection (2) as if—

(a) the conciliation or mediation were a proceeding before the tribunal; and

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(b) the order were an order made by the tribunal constituted for the proceeding.

(4) If the conciliator or mediator is not a member, an adjudicator or the principal registrar, the conciliator or mediator may—

(a) record the terms of the settlement in writing and have the parties sign the written terms; and

(b) file the signed written terms in the registry.

(5) If signed written terms of the settlement are filed in the registry under subsection (4), the tribunal may make the orders necessary to give effect to the settlement.

86 Settlement other than in compulsory conference or at conciliation or mediation

(1) This section applies if a settlement is reached by the parties to a proceeding other than in a compulsory conference or at conciliation or mediation.

(2) The parties may—

(a) record the terms of the settlement in writing and sign the written terms; and

(b) file the signed written terms in the registry.

(3) If no party to the proceeding notifies the tribunal of the party's intention to withdraw from the settlement within 7 days after the written terms are filed in the registry, the tribunal may make the orders necessary to give effect to the settlement.

(4) The tribunal's power to make an order under subsection (3) is exercisable only by a legally qualified member or an adjudicator.

87 Limitation on making order giving effect to settlement

An order under this division giving effect to a settlement for a proceeding may be made only if the entity making the order is satisfied the tribunal could make a decision in the terms of the settlement or in terms consistent with the settlement.

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88 Effect of order giving effect to settlement

(1) An order under this division giving effect to a settlement for a proceeding has the same effect as if it were an order made by the tribunal after deciding the proceeding.

(2) The parties to the proceeding may apply to the tribunal for an amendment of the order if the order does not reflect the intention of the parties in the settlement.

(3) An application under subsection (2) must be made jointly by all the parties to the proceeding.

(4) The tribunal may, on the application of the parties under this section, amend the terms of the order if the tribunal is satisfied—

(a) the amendment reflects the intention of the parties; and

(b) the tribunal could make a decision in the terms of the settlement after the amendment, or consistent with the terms of the settlement after the amendment.

89 Consequences if accepted offer to settle is not complied with

(1) This section applies if an offer to settle the dispute the subject of a proceeding is accepted, but the party who made the offer does not comply with its terms.

(2) The tribunal, on the application of the party who accepted the offer (the ***relevant party***), may—

(a) make an order giving effect to the terms of the offer; or

(b) if the party making the offer was the applicant—

(i) dismiss the proceeding; or

(ii) if the relevant party responded to the application for the proceeding before the offer was made, make an order awarding the relevant party any or all of the things asked for in the response; or

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(c) if the relevant party is the applicant, make an order awarding the relevant party any or all of the things asked for in the proceeding.

Division 5 Hearings

90 Public hearing

(1) Unless an enabling Act that is an Act provides otherwise, a hearing of a proceeding must be held in public.

(2) However, the tribunal may direct a hearing or a part of a hearing be held in private if the tribunal considers it is necessary—

(a) to avoid interfering with the proper administration of justice; or

(b) to avoid endangering the physical or mental health or safety of a person; or

(c) to avoid offending public decency or morality; or

(d) to avoid the publication of confidential information or information whose publication would be contrary to the public interest; or

(e) for another reason in the interests of justice.

(3) The tribunal may make directions about the persons who may attend a hearing or a part of a hearing to be held in private.

(4) The tribunal may make a direction under this section on the application of a party to the proceeding or on its own initiative.

91 Support person may be allowed in private hearing

(1) This section applies if a hearing of a proceeding is to be held in private.

(2) The tribunal must—

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(a) ask each party to the proceeding whether the party needs the support of someone else for the hearing; and

(b) ask each witness whether the witness needs the support of someone else for giving evidence at the hearing.

(3) If a party or witness tells the tribunal that the party or witness needs the support of someone else (the ***support person***), the tribunal must allow the support person to attend the hearing with the party or witness.

(4) If the support person is to be a witness at the hearing, the tribunal may direct the times the support person may attend the hearing under subsection (3).

(5) The support person—

(a) must not be a party to the proceeding; and

(b) must not represent the party or witness at the hearing or address the tribunal.

92 Notice

The principal registrar must give notice, as stated in the rules, of the time and place for the hearing of a proceeding to—

(a) each party to the proceeding; and

(b) each other person to whom notice of the hearing must be given under an enabling Act or the rules; and

(c) any other person the tribunal directs to be given notice of the hearing.

93 Deciding in absence of person

(1) This section applies if—

(a) a person has not attended a hearing and the tribunal is satisfied the person has been given notice of the hearing under section 92; or

(b) the tribunal is satisfied a person can not be found after reasonable inquiries have been made.

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(2) The tribunal may hear and decide the matter in the person's absence.

(3) This section applies even if the absent person is a party to the proceeding.

94 Expedited hearing

(1) The tribunal may conduct an expedited hearing for—

(a) a minor civil dispute; or

(b) a matter an enabling Act that is an Act states is a matter for which an expedited hearing may be conducted.

(2) The expedited hearing must be conducted in the way stated in the rules.

95 Evidence

(1) The tribunal must allow a party to a proceeding a reasonable opportunity to—

(a) call or give evidence; and

(b) examine, cross-examine and re-examine witnesses; and

(c) make submissions to the tribunal.

(2) Despite subsection (1)—

(a) the tribunal may refuse to allow a party to a proceeding to call evidence on a matter if the tribunal considers there is already sufficient evidence about the matter before the tribunal; and

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

(i) there is sufficient evidence about the matter before the tribunal; and

(ii) the evidence has been sufficiently tested by cross-examination; and

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(c) for an expedited hearing under section 94, cross-examination or re-examination of witnesses is at the discretion of the tribunal, subject to the rules.

(3) Also, the tribunal may place time limits on the giving of evidence and on the examination, cross-examination and re-examination of witnesses.

(4) Evidence in a hearing—

(a) may be given orally or in writing; and

(b) if the tribunal requires, must be given on oath or by affidavit.

(5) A member or adjudicator may administer or cause to be administered an oath for the purpose of taking evidence at a hearing.

(6) A child can not be compelled to take an oath.

96 Authorising taking of evidence

(1) The tribunal may authorise, in writing, a person (whether or not a member or adjudicator) to take evidence on behalf of the tribunal for a proceeding.

(2) The tribunal's power to give an authorisation under subsection (1) is exercisable only by a legally qualified member or an adjudicator.

(3) A person may be authorised to take evidence under this section outside Queensland.

(4) The tribunal may give directions about the taking of evidence under this section.

(5) If a person other than a member or adjudicator is authorised to take evidence under this section, the person has all the powers of a member for taking the evidence.

(6) Evidence taken under this section—

(a) is taken to be evidence given to the tribunal; and

(b) for evidence taken outside Queensland, is taken to have been given in Queensland.

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97 Requiring witness to attend or produce document or thing

(1) The tribunal or the principal registrar may, by written notice, require a person to—

(a) attend at a stated hearing of a proceeding to give evidence; or

(b) produce a stated document or other thing to the tribunal.

Note—

See section 214 for consequences of failing to comply with a notice under this subsection.

(2) The tribunal may give a notice under subsection (1) on the application of a party to a proceeding or on its own initiative.

(3) The principal registrar may give a notice under subsection (1) on the application of a party to a proceeding.

(4) A person who is given a notice under subsection (1) is entitled to be paid the fees and allowances prescribed under a regulation or, if no fees and allowances are prescribed, the fees and allowances decided by the tribunal.

(5) Fees and allowances payable to a person under subsection (4) must be paid—

(a) if the person was given the notice on the application of a party to the proceeding—by the party; or

(b) otherwise—by all of the parties in the proportions decided by the tribunal.

(6) The fees and allowances must be paid at the time prescribed under a regulation.

98 Powers relating to witnesses

(1) In a hearing of a proceeding, the tribunal may—

(a) on its own initiative call any person to give evidence; or

(b) examine a witness on oath or require a witness to give evidence by affidavit; or

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(c) examine or cross-examine a witness to the extent the tribunal considers appropriate to obtain information relevant to performing its functions in the proceeding; or

(d) compel a witness to answer questions the tribunal considers relevant to the proceeding.

(2) Subsection (1) does not allow the tribunal to compel a witness to answer a question if the witness has a reasonable excuse for refusing to answer the question.

(3) Without limiting subsection (2), it is a reasonable excuse for a witness to refuse to answer a question if answering the question might tend to incriminate the person.

99 Dealing with special witnesses

(1) This section applies in relation to a special witness giving evidence at a hearing of a proceeding.

(2) The tribunal may make any of the following orders—

(a) that only particular persons may be present when the special witness gives evidence;

(b) that only particular persons may ask questions of the special witness;

(c) that the questioning of the special witness must be restricted to a stated time limit;

(d) that a particular person must be obscured from the view of the special witness while the special witness is giving evidence;

(e) that a particular person must be excluded from the place where the hearing is held while the special witness is giving evidence;

(f) that the special witness must give evidence in a place other than where the hearing is held and in the presence of only stated persons or with stated persons being excluded from the room;

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(g) that a person, including, for example, a support person under section 91, must be present while the special witness is giving evidence to give emotional support to the special witness;

(h) that an audiovisual record of the evidence given by the special witness be made and that the record be viewed and heard at the hearing instead of the special witness giving direct testimony at the hearing.

(3) The tribunal may make an order under subsection (2) on the application of a party to the proceeding or on its own initiative.

(4) In this section—

relevant matter, for a person, means—

(a) the person's age, education, level of understanding or cultural background; or

(b) the person's relationship to a party to the proceeding; or

(c) the nature of the subject matter of the evidence; or

(d) another matter the tribunal considers relevant.

special witness means a witness who is—

(a) a child; or

(b) another person who the tribunal considers would be likely, if the person were required to give evidence according to the tribunal's usual practices and procedures, to—

(i) be disadvantaged as a witness because of the person's mental, intellectual or physical impairment or a relevant matter; or

(ii) suffer severe emotional trauma; or

(iii) be so intimidated as to be disadvantaged as a witness.

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Division 6 Costs

100 Each party usually bears own costs

Other than as provided under this Act or an enabling Act, each party to a proceeding must bear the party's own costs for the proceeding.

101 Limitation for children

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

(2) Subsection (1) does not prevent the tribunal from making an order under section 103 against a representative of a child.

102 Costs against party in interests of justice

(1) The tribunal may make an order requiring a party to a proceeding to pay all or a stated part of the costs of another party to the proceeding if the tribunal considers the interests of justice require it to make the order.

(2) However, the only costs the tribunal may award under subsection (1) against a party to a proceeding for a minor civil dispute are the costs stated in the rules as costs that may be awarded for minor civil disputes under this section.

(3) In deciding whether to award costs under subsection (1) or (2) the tribunal may have regard to the following—

(a) whether a party to a proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding, including as mentioned in section 48(1)(a) to (g);

(b) the nature and complexity of the dispute the subject of the proceeding;

(c) the relative strengths of the claims made by each of the parties to the proceeding;

(d) for a proceeding for the review of a reviewable decision—

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(i) whether the applicant was afforded natural justice by the decision-maker for the decision; and

(ii) whether the applicant genuinely attempted to enable and help the decision-maker to make the decision on the merits;

(e) the financial circumstances of the parties to the proceeding;

(f) anything else the tribunal considers relevant.

103 Costs against representative in interests of justice

(1) If the tribunal considers a representative of a party to a proceeding, rather than the party, is responsible for unnecessarily disadvantaging another party to the proceeding as mentioned in section 102(3)(a), the tribunal may make a costs order requiring the representative to pay a stated amount to the other party as compensation for the unnecessary costs.

(2) Before making a costs order under subsection (1), the tribunal must give the representative a reasonable opportunity to be heard in relation to making the order.

104 Costs against intervening parties

(1) If the Attorney-General intervenes in a proceeding for the State, the tribunal may make a costs order requiring the State to pay a stated amount to a party to the proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

(2) If the tribunal gives leave to a person to intervene in a proceeding, the tribunal may make a costs order requiring the person to pay a stated amount to a party to the proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

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105 Other power to award costs

The rules may authorise the tribunal to award costs in other circumstances, including, for example, the payment of costs in a proceeding if an offer to settle the dispute the subject of the proceeding has been made but not accepted.

106 Costs awarded at any stage

If the tribunal may award costs under this Act or an enabling Act, the costs may be awarded at any stage of a proceeding or after the proceeding has ended.

107 Fixing or assessing costs

(1) If the tribunal makes a costs order under this Act or an enabling Act, the tribunal must fix the costs if possible.

(2) If it is not possible to fix the costs having regard to the nature of the proceeding, the tribunal may make an order requiring that the costs be assessed under the rules.

(3) The rules may provide that costs must be assessed by reference to a scale under the rules applying to a court.

108 Staying proceeding

(1) Subsection (2) applies if the tribunal makes a costs order under this Act or an enabling Act before a proceeding ends.

(2) The tribunal may make an order requiring that the costs be paid before it continues with the proceeding.

(3) Subsection (4) applies if a party has been ordered to pay the costs of another party under this Act or an enabling Act, and the party, before paying the costs, starts another proceeding before the tribunal against the other party.

(4) The tribunal may make an order staying the other proceeding until the costs are paid.

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109 Security

(1) This section applies if, under this Act or an enabling Act, the tribunal may award a party's costs for a proceeding.

(2) On the application of a party (***applicant party***) to the proceeding against whom a claim is made or an outcome or decision sought in a proceeding, the tribunal may make an order—

(a) requiring another party to the proceeding to give security for the applicant party's costs within the period stated in the order; and

(b) staying the proceeding, or the part of the proceeding against the applicant party, until the security is given.

(3) If the security is not given within the period stated in the order, the tribunal may make an order dismissing the proceeding, or the part of the proceeding against the applicant party.

(4) In deciding whether to make an order under subsection (1), the tribunal may have regard to any of the following matters—

(a) the financial circumstances of the parties to the proceeding;

(b) the prospects of success or merits of the proceeding or the part of the proceeding against the applicant party;

(c) the genuineness of the proceeding or the part of the proceeding against the applicant party;

(d) anything else the tribunal considers relevant.

Division 7 Assessors

110 Appointment

(1) The president may appoint a person with relevant knowledge, expertise and experience to help the tribunal in relation to a proceeding.

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(2) Assessors are appointed under this Act and not under the *Public Sector Act 2022*.

(3) An appointment of an assessor must be made in writing.

(4) An assessor is entitled to be paid the remuneration and allowances decided by the president and stated in the assessor's instrument of appointment.

111 Helping the tribunal

(1) The tribunal may—

(a) ask an assessor to give expert evidence in a proceeding; or

(b) engage an assessor to help the tribunal in a proceeding, including, for example—

(i) to help the tribunal comply with section 29; or

(ii) to sit with the tribunal for giving advice about the proceeding; or

(c) refer a question of fact arising in a proceeding to an assessor for the assessor to decide the question and give the tribunal a written report stating the decision and the reasons for it; or

(d) ask an assessor to give advice to the tribunal.

(2) In asking an assessor to give advice under subsection (1)(d), the tribunal may ask the assessor to conduct an inquiry or investigation into a matter and give a written report of the assessor's findings in the inquiry or investigation.

(3) If an assessor gives the tribunal a written report of the assessor's decision under subsection (1)(c), or the assessor's findings in an inquiry or investigation under subsection (2), the tribunal—

(a) must give a copy of the report to—

(i) each party to the proceeding; and

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(ii) each other person to whom a copy of the report is required to be given under an enabling Act or the rules; and

(b) must give each party to the proceeding an opportunity to make written submissions about the report; and

(c) after considering any submissions made under paragraph (b), may either—

(i) adopt the assessor's decision or findings, in whole or in part; or

(ii) reject the decision or findings.

112 Costs for assessor

(1) The tribunal may make an order requiring a party to a proceeding, other than a child, to pay or contribute to the tribunal's costs of obtaining an assessor's help.

(2) However, subsection (1) applies in relation to a party only if—

(a) before obtaining the help the tribunal advised the party of—

(i) the tribunal's intention of obtaining the help; and

(ii) the likely costs of obtaining the help; and

(iii) the likely amount of the party's payment or contribution; and

(b) the tribunal gave the party an opportunity to be heard on the matter of obtaining the help.

113 Disclosure of interests

(1) This section applies if an assessor who is to help the tribunal in a particular proceeding has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the assessor's functions.

(2) The assessor must—

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(a) disclose the nature of the interest to the president; and

(b) not take part in the proceeding or exercise powers for it, unless all parties to the proceeding and the president agree otherwise.

Part 7 Decisions and enforcement

Division 1 Making decision

114 Conditions and ancillary orders and directions

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

(a) to impose conditions on the decision; and

Example of a condition—

that something required to be done by the decision be done within a stated period

(b) to make an ancillary order or direction the tribunal considers appropriate for achieving the purpose for which the tribunal may exercise the primary power.

Examples of ancillary orders or directions—

- an order adjourning the proceeding
- an order or direction that a person give an undertaking to the tribunal

115 More than 1 member constitutes tribunal

(1) If the tribunal for a particular matter is constituted by 2 members and the decisions of the members differ, the tribunal's decision is the decision of the presiding member.

(2) If the tribunal for a particular matter is constituted by 3 members and the decisions of the members differ, the tribunal's decision is the decision of the majority.

(3) This section is subject to section 116.

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116 Deciding question of law

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

(2) If the presiding member is a legally qualified member or an adjudicator, the tribunal's decision on the question is the decision of the presiding member.

(3) If the presiding member is not a legally qualified member or an adjudicator and the tribunal as constituted for the proceeding includes 1 legally qualified member, the tribunal's decision on the question is the decision of the legally qualified member.

(4) If the presiding member is not a legally qualified member or an adjudicator and the tribunal as constituted for a proceeding includes 2 legally qualified members, the tribunal's decision on the question is the decision of the legally qualified member nominated by the president to decide questions of law arising in the proceeding.

(5) If the presiding member is not a legally qualified member or an adjudicator and the tribunal as constituted for a proceeding does not include a legally qualified member—

(a) the tribunal's decision on the question is the decision of a legally qualified member nominated by the president; and

(b) for that purpose only, the tribunal is taken to have been reconstituted to include the legally qualified member.

117 Referring question of law to president

(1) The presiding member may refer a question of law before the tribunal to the president.

(2) Subsection (1) applies whether or not the question has been decided by the tribunal under section 116.

(3) If the president decides a question of law referred to the president under subsection (1), the decision of the president is the tribunal's decision on the question.

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118 Referring question of law to Court of Appeal

(1) The president may refer a question of law in a proceeding before the tribunal to the Court of Appeal.

Note—

See also section 155 (Particular documents to be given to Court of Appeal).

(2) The president, or the appeal tribunal with the president's consent, may refer a question of law in a proceeding before the appeal tribunal to the Court of Appeal.

(3) A referral under subsection (1) or (2) may be made on the application of a party to the proceeding or on the president's or appeal tribunal's own initiative.

(4) If a question of law is referred to the Court of Appeal under subsection (1) or (2)—

(a) the Court of Appeal may decide the question and make consequential or ancillary orders and directions; and

(b) the tribunal or appeal tribunal must not make a decision about the matter for which the question arose or is relevant until it receives the Court of Appeal's decision on the question; and

(c) the tribunal or appeal tribunal must not proceed in a way, or make a decision, that is inconsistent with the Court of Appeal's decision on the question.

(5) If the Court of Appeal decides a question of law referred to it under subsection (1) or (2), the tribunal's or appeal tribunal's decision on the question is the decision of the Court of Appeal.

119 Decision to be given within a reasonable time

The tribunal must give its decision in a proceeding, including its final decision, within a reasonable time.

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Division 2 Giving decision etc.

120 Giving decision or notice to particular persons

(1) This section applies if—

(a) the tribunal gives a written decision or notice to a person; and

(b) the tribunal is aware that the person—

(i) is blind or apparently illiterate in English; or

(ii) is a child or person with impaired capacity.

(2) The tribunal must do everything reasonably practicable to communicate the information in the decision or notice to the person.

121 Giving final decision other than in an appeal

(1) The tribunal must give its final decision in a proceeding in writing to—

(a) each party to the proceeding; and

(b) each other person to whom notice of the decision is required to be given under an enabling Act or the rules; and

(c) for a proceeding for a review of a reviewable decision—the chief executive of the entity in which the reviewable decision was made (if the chief executive is not a party to the proceeding); and

(d) any other person the tribunal reasonably considers notice of the decision should be given.

(2) Also, the tribunal must give each party to the proceeding a written notice stating—

(a) part 8 provides for appeals against particular decisions of the tribunal; and

(b) a brief summary of the application of part 8; and

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(c) if the final decision given under subsection (1) does not include the tribunal's reasons for the decision—the party may request that the tribunal give written reasons for the final decision under section 122.

(3) The tribunal complies with subsection (1)(b), (c) or (d) in relation to a person if the tribunal orders a party to the proceeding to give a copy of the final decision to the person.

(4) Without limiting section 122, the tribunal must give reasons for its final decision in a proceeding either orally or in writing.

(5) This section does not apply to an appeal before the appeal tribunal.

Note—

See section 148 for how the appeal tribunal is to give its final decision in an appeal.

(6) In this section—

chief executive includes chief executive officer.

122 Request for written reasons

(1) This section applies if the tribunal makes a decision in a proceeding, including its final decision, and does not give written reasons for the decision.

(2) A party to the proceeding may, within 14 days after the decision takes effect under section 127, request that the tribunal give written reasons for the decision.

(3) The tribunal must comply with a request under subsection (2) within 45 days after the request is made or, if the president extends the period, the extended period.

(4) However, the tribunal is not required to comply with a request for written reasons for a decision made under section 51, 54(1), 55(1), 56(1), 57, 61(1), 62(1) or (3), 63(1) or (4) or 64(1).

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123 Transcript or audio recording is sufficient

(1) This section applies if the tribunal is required to give in writing a decision in a proceeding, or the reasons for a decision in a proceeding, to a person.

(2) It is enough for the tribunal to give the person a written transcript, or an audio recording, of the part of the proceeding in which the decision is, or the reasons are, given orally.

124 Confidentiality

In giving its decision or reasons, whether orally or in writing, the tribunal must ensure the decision or reasons do not include something the subject of a non-publication order if including the thing in the decision or reasons would contravene the order.

125 Publication

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

(2) However, the tribunal must ensure the publication of its final decision, or the reasons for its final decision, do not include something the subject of a non-publication order if including the thing in the publication would contravene the order.

Division 3 Effect of decision and its validity

126 Effect of decision

(1) A decision of the tribunal in a proceeding is binding on all parties to the proceeding.

(2) The making, by the tribunal, of a final decision in a proceeding for a minor civil dispute does not prevent a court or another tribunal making a decision about an issue considered (whether or not decided) by the tribunal in the

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proceeding if the issue is relevant to a proceeding for another matter before the court or other tribunal.

127 When decision takes effect

A decision of the tribunal in a proceeding takes effect—

(a) when it is made; or

(b) if the decision states a later date or time when the decision is to take effect—the later date or time.

Example—

If a party to the proceeding is not present before the tribunal when the decision is made, a decision may state it takes effect from a future date or when a future event happens.

Note—

If, under part 8, a party to a proceeding appeals against a decision in the proceeding, the operation of the decision may be stayed under section 145 or 152.

128 Procedural defects etc.

(1) A failure of the tribunal to comply with a requirement of division 2 for a decision or notice does not affect the validity of the decision or notice.

(2) A decision of the tribunal is not invalid only because—

(a) of a vacancy in the office of a member or adjudicator; or

(b) of a defect or irregularity in, or in connection with, the appointment of—

(i) a member or acting member; or

(ii) an adjudicator or acting adjudicator; or

(iii) the principal registrar; or

(iv) a registry staff member or Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2); or

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(v) a registrar performing a function of the principal registrar under section 211(1); or

(c) in relation to a person appointed to act as the president or deputy president, the occasion for the person to act as the president or deputy president had not arisen or had ceased.

Division 4 Enforcing final decision

129 Definition for div 4

In this division—

final decision, of the tribunal in a proceeding, includes—

(a) an interim order under section 58; and

(b) an injunction under section 59; and

(c) a monetary decision made other than as part of the tribunal's final decision in the proceeding.

130 Application of Limitation of Actions Act 1974

The *Limitation of Actions Act 1974*, section 10(4) applies in relation to a final decision of the tribunal in a proceeding as if the decision were a judgment becoming enforceable when the decision takes effect under this Act.

131 Monetary decisions

(1) This section applies to a final decision of the tribunal in a proceeding that is a monetary decision, to the extent the decision requires payment of an amount to a person.

(2) A person may enforce the final decision by filing a copy of the decision in the registry of a court of competent jurisdiction.

(3) On filing a copy of the final decision under subsection (2), the decision is taken to be a money order of the court in which it is filed and may be enforced accordingly.

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Note—

See the *Uniform Civil Procedure Rules 1999*, chapter 19.

132 Non-monetary decisions

(1) This section applies to a final decision of the tribunal in a proceeding that—

(a) is not a monetary decision; or

(b) is a monetary decision, to the extent the decision does not require payment of an amount to a person.

(2) A person may enforce the final decision by filing a copy of the decision in the registry of the relevant court.

(3) On filing a copy of the final decision under subsection (2), the decision is taken to be a non-money order of the relevant court in which it is filed and may be enforced accordingly.

Note—

See the *Uniform Civil Procedure Rules 1999*, chapter 20.

(4) The Supreme Court may transfer to a lower court a proceeding for the enforcement of a non-money order pending in the Supreme Court if—

(a) the order is of a kind that may be made by the lower court; or

(b) the order is otherwise capable of being enforced in the lower court.

(5) If a proceeding is transferred to a lower court under subsection (4)—

(a) the order is taken to be an order of the lower court and may be enforced accordingly; and

(b) the proceeding for the enforcement of the order is taken to have been started before the lower court when it was started in the Supreme Court.

(6) In this section—

lower court means the District Court or a Magistrates Court.

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relevant court means—

(a) for a final decision of the tribunal relating to a minor civil dispute—a Magistrates Court; or

(b) for another final decision of the tribunal—the Supreme Court.

Division 5 Renewal of final decision

133 Application for renewal

(1) This section applies if—

(a) it is not possible for the tribunal's final decision in a proceeding to be complied with; or

(b) there are problems with interpreting, implementing or enforcing the tribunal's final decision in a proceeding.

(2) A party to the proceeding may apply to the tribunal for a renewal of the final decision.

(3) The application must—

(a) be in a form substantially complying with rules; and

(b) state the reason for the application; and

(c) be made—

(i) within the period stated in the rules; and

(ii) by filing it in the registry.

(4) The party must give a copy of the application to—

(a) each other party to the proceeding; and

(b) each other person to whom notice of the application or referral for the proceeding was given under section 37; and

(c) any person the tribunal directs to be given notice of the application.

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(5) Subsection (4) does not require the party to give a copy of the application to a person if the principal registrar has given or undertaken to give the copy to the person.

(6) A party can not make an application under this section in relation to a final decision the subject of an appeal, or an application for leave to appeal, under part 8.

(7) Subsection (6) applies whether or not the appeal or application has been decided.

134 Renewed final decision

(1) This section applies if, under section 133, a person applies for a renewal of the tribunal's final decision in a proceeding.

(2) The tribunal may make—

(a) the same final decision it made when the proceeding was originally decided; or

(b) any other appropriate final decision that it could have made, under this Act or an enabling Act, when the proceeding was originally decided.

(3) For this Act or an enabling Act, the final decision of the tribunal under subsection (2) is the tribunal's final decision in the proceeding.

(4) The tribunal's final decision can not be renewed again under this division.

Division 6 Correcting mistakes

135 Tribunal may correct mistake

(1) The tribunal may correct a decision made by it in a proceeding if the decision contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

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(c) a material miscalculation of figures or a material mistake in the description of a matter, person or thing mentioned in the decision; or

(d) a defect of form.

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

(3) An application under subsection (2) must be made within the period, and in the way, stated in the rules.

(4) A party can not make an application under subsection (2) in relation to a decision the subject of an appeal, or an application for leave to appeal, under part 8.

(5) Subsection (4) applies whether or not the appeal or application has been decided.

Division 7 Reopening

136 Application of div 7

This division applies to a proceeding, other than an appeal under part 8, division 1, that has been heard and decided by the tribunal.

137 Definition for div 7

In this division—

hearing, of a proceeding, includes a compulsory conference for a proceeding if the person presiding over the conference decides the proceeding under section 72(1)(b).

138 Application to reopen

(1) A party to a proceeding may apply to the tribunal for the proceeding to be reopened if the party considers a reopening ground exists for the party.

(2) The application must—

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(a) state the reopening ground on which it is made; and

(b) be made within the period and in the way stated in the rules; and

(c) be accompanied by the prescribed fee (if any).

(3) The party must give a copy of the application to—

(a) each other party to the proceeding; and

(b) each other person to whom notice of the application is required to be given under an enabling Act or the rules; and

(c) any person the tribunal directs to be given notice of the application.

(4) Subsection (3) does not require the party to give a copy of the application to a person if the principal registrar has given or undertaken to give a copy of the application to the person.

(5) A party can not make an application under this section in relation to a decision the subject of an appeal, or an application for leave to appeal, under part 8.

(6) Subsection (5) applies whether or not the appeal or application has been decided.

138A Effect of application under s 138 on decision in proceeding

(1) An application under section 138 to reopen a proceeding does not affect the operation of a decision made by the tribunal in the proceeding or prevent the taking of action to implement the decision.

(2) However, the tribunal may make an order staying the operation of the decision made by the tribunal in the proceeding until the application to reopen the proceeding is finally decided.

(3) The tribunal may act under subsection (2) on the application of a party to the decision to reopen the proceeding or on its own initiative.

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139 Deciding whether to reopen

(1) This section applies if a party (the ***applicant party***) to a proceeding makes an application under section 138 for a proceeding to be reopened.

(2) Each party to the proceeding must be given an opportunity to make, within the period stated in the rules, written submissions about the application.

(3) The tribunal—

(a) must consider any written submissions made under subsection (2) about the application; and

(b) may decide whether or not to reopen the proceeding entirely on the basis of documents, without a hearing or meeting of any kind.

(4) The tribunal may grant the application only if the tribunal considers—

(a) a reopening ground exists for the applicant party; and

(b) the ground could be effectively or conveniently dealt with by reopening the proceeding under this division, whether or not an appeal under part 8 relating to the ground may also be started.

(5) The tribunal's decision on the application is final and can not be challenged, appealed against, reviewed, set aside, or called in question in another way, under the *Judicial Review Act 1991* or otherwise.

140 Effect of decision to reopen

(1) If, under section 139, the tribunal decides a proceeding should be reopened, the tribunal must decide the issues in the proceeding that must be heard and decided again.

(2) The issues must be heard and decided by way of a fresh hearing on the merits, and subsection (1) does not prevent the tribunal from hearing and deciding other related issues in the proceeding.

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(3) The hearing and deciding of the issues and any related issues are taken to be a part of the original proceeding.

(4) The tribunal may—

(a) confirm or amend the tribunal's previous final decision in the proceeding; or

(b) set aside the tribunal's previous final decision in the proceeding and substitute a new decision.

(5) For this Act or an enabling Act, the decision of the tribunal as confirmed, amended or substituted under subsection (4) is the tribunal's final decision in the proceeding.

(6) The proceeding can not be reopened again under this division.

141 No appeal until application finally dealt with

(1) This section applies if a party to a proceeding has made an application under section 138 about the tribunal's final decision in the proceeding.

(2) An appeal, or an application for leave to appeal, against the final decision can not be made until the application under section 138 is finally dealt with under this division.

Part 8 Appeals etc.

Division 1 Appeals to appeal tribunal

142 Party may appeal

(1) A party to a proceeding may appeal to the appeal tribunal against a decision of the tribunal in the proceeding if a judicial member did not constitute the tribunal in the proceeding.

Note—

See section 149 for appeals against decisions of the tribunal if a judicial member constituted the tribunal.

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(2) However, a party to a proceeding can not appeal to the appeal tribunal against the following decisions of the tribunal—

(a) a decision under section 35;

(b) a decision to set aside a decision by default under section 51;

(c) a cost-amount decision.

Note—

See section 149 for appeals against cost-amount decisions.

(3) Also—

(a) an appeal under subsection (1) against any of the following decisions of the tribunal may be made only if the party has obtained the appeal tribunal's leave to appeal—

(i) a decision in a proceeding for a minor civil dispute;

(ii) a decision that is not the tribunal's final decision in a proceeding;

(iii) a costs order; and

(b) an appeal under subsection (1) on a question of fact, or a question of mixed law and fact, may be made only if the party has obtained the appeal tribunal's leave to appeal.

Note—

An enabling Act that is an Act may confer appeal jurisdiction on the tribunal for decisions of other entities. See, for example, the *Body Corporate and Community Management Act 1997*.

143 Appealing or applying for leave to appeal

(1) This section applies to—

(a) an application for the appeal tribunal's leave to appeal to the appeal tribunal against a decision of the tribunal or a decision of another entity under an enabling Act; or

(b) an appeal to the appeal tribunal against—

(i) a decision of the tribunal; or

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(ii) a decision of another entity under an enabling Act.

(2) The application or appeal must—

(a) be in a form substantially complying with the rules; and

(b) state the reasons for the application or appeal; and

(c) be accompanied by the prescribed fee (if any).

(3) An application for the appeal tribunal's leave to appeal must be filed in the registry within 28 days after the relevant day.

(4) An appeal must be filed in the registry within—

(a) if the appeal tribunal's leave is required for the appeal—21 days after the leave is given; or

(b) otherwise—28 days after the relevant day.

Notes—

1 Under section 6(7), an enabling Act that is an Act may provide for a different period for applying for the appeal tribunal's leave to appeal or for making an appeal.

2 Under section 61, the tribunal may extend the period within which a person may apply for the appeal tribunal's leave to appeal or make an appeal.

(5) In this section—

relevant day, for an application or appeal, means—

(a) if a person makes an application under part 7, division 5, 6 or 7 about the decision being appealed against within 28 days after the person is given written reasons for the decision—the day that application is finally dealt with under that division; or

(b) if written reasons have not been given for the decision being appealed against and reasons have not been requested under section 122 or are not required to be given—the day the person received notice of the decision; or

(c) the day the person is given written reasons for the decision being appealed against.

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143A Referring matter to tribunal to consider reopening

(1) This section applies if—

(a) an application or appeal is filed under section 143; and

(b) the appeal tribunal considers—

(i) the reasons for the application or appeal may constitute a reopening ground for the applicant or appellant in the proceeding to which the application or appeal relates; and

(ii) the application or appeal could be more effectively or conveniently dealt with if it were taken to be an application under part 7, division 7 for a proceeding to be reopened.

(2) The appeal tribunal may refer the matter to the tribunal to decide whether the proceeding should be reopened.

(3) If the appeal tribunal refers the matter—

(a) the applicant or appellant is taken—

(i) to have made an application for the proceeding to be reopened under section 138; and

(ii) not to have made an application or appeal under section 143; and

(b) the appeal tribunal must give notice of the referral to—

(i) each party to the proceeding; and

(ii) any other person the tribunal reasonably considers should be given notice of the referral.

144 Transfer to Court of Appeal

(1) This section applies if the president considers that—

(a) an appeal made to the appeal tribunal under this division could be more effectively or conveniently dealt with by the Court of Appeal; and

(b) it would be appropriate for the appeal to be transferred to the Court of Appeal.

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(2) The president may transfer the appeal to the Court of Appeal with the court's leave.

(3) If the president transfers the appeal to the Court of Appeal under subsection (2)—

(a) the appeal is taken to have been started before the Court of Appeal when it was started before the tribunal; and

(b) the president may make the orders or give the directions the president considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under an Act or other law for starting an appeal before the Court of Appeal.

(4) An order under subsection (3)(b)—

(a) is taken to be an order of the tribunal; and

(b) has effect despite any other Act or law.

145 Effect of appeal on decision

(1) The start of an appeal under this division against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) However, the tribunal may make an order staying the operation of the decision being appealed against until the appeal is finally decided.

(3) The tribunal may act under subsection (2) on the application of the appellant or on its own initiative.

(4) The tribunal's power to act under subsection (2) is exercisable only by—

(a) the tribunal constituted for the appeal; or

(b) if the tribunal has not been constituted for the appeal—a judicial member.

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146 Deciding appeal on question of law only

In deciding an appeal against a decision on a question of law only, the appeal tribunal may—

(a) confirm or amend the decision; or

(b) set aside the decision and substitute its own decision; or

(c) set aside the decision and return the matter to the tribunal or other entity who made the decision for reconsideration—

(i) with or without the hearing of additional evidence as directed by the appeal tribunal; and

(ii) with the other directions the appeal tribunal considers appropriate; or

(d) make any other order it considers appropriate, whether or not in combination with an order made under paragraph (a), (b) or (c).

147 Deciding appeal on question of fact or mixed law and fact

(1) This section applies to an appeal before the appeal tribunal against a decision on a question of fact only or a question of mixed law and fact.

(2) The appeal must be decided by way of rehearing, with or without the hearing of additional evidence as decided by the appeal tribunal.

(3) In deciding the appeal, the appeal tribunal may—

(a) confirm or amend the decision; or

(b) set aside the decision and substitute its own decision; or

(c) set aside the decision and return the matter to the tribunal or other entity who made the decision for reconsideration.

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148 Giving final decision in an appeal

The appeal tribunal must give its final decision in an appeal, and the reasons for the decision, in writing, to—

(a) each party to the appeal; and

(b) each other person to whom notice of the decision is required to be given under an enabling Act or the rules; and

(c) any other person the appeal tribunal reasonably considers should be given notice of the decision.

Division 2 Appeals to Court of Appeal

149 Party may appeal—decisions of tribunal

(1) A party to a proceeding (other than an appeal under division 1) may appeal to the Court of Appeal against a cost-amount decision of the tribunal in the proceeding, whether or not a judicial member constituted the tribunal in the proceeding.

(2) A party to a proceeding (other than an appeal under division 1) may appeal to the Court of Appeal against another decision of the tribunal in the proceeding if a judicial member constituted the tribunal in the proceeding.

(3) However—

(a) an appeal under subsection (1) may be made only on a question of law and only if the party has obtained the court's leave to appeal; and

(b) an appeal under subsection (2) on a question of fact, or a question of mixed law and fact, may be made only if the party has obtained the court's leave to appeal.

(4) Also, a party to a proceeding can not appeal to the Court of Appeal against a decision of the tribunal under section 35.

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Note—

An enabling Act may provide for appeals to the Court of Appeal against decisions of the tribunal in different circumstances. See, for example, the *Legal Profession Act 2007*, section 468.

150 Party may appeal—decisions of appeal tribunal

(1) A person may appeal to the Court of Appeal against a decision of the appeal tribunal to refuse an application for leave to appeal to the appeal tribunal.

(2) A party to an appeal under division 1 may appeal to the Court of Appeal against the following decisions of the appeal tribunal in the appeal—

(a) a cost-amount decision;

(b) the final decision.

(3) However, an appeal under subsection (1) or (2) may be made—

(a) only on a question of law; and

(b) only if the party has obtained the court's leave to appeal.

151 Appealing or applying for leave to appeal

(1) This section applies to—

(a) an application for the Court of Appeal's leave to appeal to the court against a decision of the tribunal, made under this Act or an enabling Act; or

(b) an appeal to the Court of Appeal against a decision of the tribunal, under this Act or an enabling Act.

(2) The application or appeal must be made—

(a) under the *Uniform Civil Procedure Rules 1999*; and

(b) within 28 days after the relevant day unless the Court of Appeal orders otherwise.

(3) In this section—

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relevant day, for an application or appeal by a person, means—

(a) if a person makes an application under part 7, division 5, 6 or 7 about the decision being appealed against within 28 days after the person is given written reasons for the decision—the day that application is finally dealt with under that division; or

(b) if written reasons have not been given for the decision being appealed against and reasons have not been requested under section 122 or are not required to be given—the day the person received notice of the decision; or

(c) the day the person is given written reasons for the decision being appealed against.

152 Effect of appeal on decision

(1) The start of an appeal, under this division or an enabling Act, against a decision of the tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) However, the Court of Appeal, or the tribunal as constituted when the decision was made, may make an order staying the operation of the decision until the appeal is finally decided.

(3) An order made by the Court of Appeal may be subject to the conditions the court considers appropriate.

Note—

Under section 114, an order made by the tribunal under this section may also be subject to conditions.

(4) The Court of Appeal or the tribunal may make an order under subsection (2) on the application of the appellant or on its own initiative.

(5) If the tribunal makes an order under subsection (2), the Court of Appeal may amend or revoke the order as if the order had been made by the Court of Appeal.

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153 Deciding appeal on question of law only

(1) This section applies to an appeal before the Court of Appeal against a decision of the tribunal on a question of law only.

(2) In deciding the appeal, the Court of Appeal may—

(a) confirm or amend the decision; or

(b) set aside the decision and substitute its own decision; or

(c) set aside the decision and return the matter to the tribunal for reconsideration—

(i) with or without the hearing of additional evidence as directed by the court; and

(ii) with the other directions the court considers appropriate; or

(d) make any other order it considers appropriate, whether or not in combination with an order made under paragraph (a), (b) or (c).

(3) If the Court of Appeal returns the matter to the tribunal for reconsideration, the court must give directions about whether or not the tribunal reconsidering the matter must be constituted by the same persons who constituted the tribunal when the decision was made.

154 Deciding appeal on question of fact or mixed law and fact

(1) This section applies to an appeal before the Court of Appeal against a decision of the tribunal on a question of fact only or a question of mixed law and fact.

(2) The appeal must be decided by way of rehearing, with or without the hearing of additional evidence as decided by the Court of Appeal.

(3) In deciding the appeal, the Court of Appeal may—

(a) confirm or amend the decision; or

(b) set aside the decision and substitute its own decision.

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Division 3 Miscellaneous

155 Particular documents to be given to Court of Appeal

(1) This section applies if—

(a) a question of law is referred to the Court of Appeal under section 118; or

(b) an appeal is transferred to the Court of Appeal under section 144; or

(c) a party to a proceeding appeals to the Court of Appeal under division 2, or an enabling Act, against a decision of the tribunal.

(2) The principal registrar must give the Court of Appeal—

(a) all documents and other things that were before the tribunal in connection with the proceeding to which the referral or appeal relates; and

(b) all other documents or things in the tribunal's possession that the tribunal is required by *Uniform Civil Procedure Rules 1999* to give to the court.

(3) The Court of Appeal must return the documents and other things to the tribunal when the proceeding before the court ends.

156 Application of Judicial Review Act 1991

The *Judicial Review Act 1991*, parts 3 to 5 do not apply to a decision or to the conduct of the tribunal in a proceeding other than to the extent the decision or conduct is affected by jurisdictional error.

Note—

The *Judicial Review Act 1991*, part 3 deals with statutory orders of review, part 4 deals with reasons for decisions and part 5 deals with prerogative orders and injunctions.

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Chapter 3 Reasons to be given for reviewable decisions

157 Information notice to be given

(1) The decision-maker for a reviewable decision must give written notice of the decision to each person who may apply to the tribunal for a review of the decision.

(2) The notice must state the following—

(a) the decision;

(b) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

(c) the person has a right to have the decision reviewed by the tribunal;

(d) how, and the period within which, the person may apply for the review;

(e) any right the person has to have the operation of the decision stayed under section 22.

(3) It is sufficient compliance with this section for the decision-maker to give the person, as required under the enabling Act, a written notice stating the matters mentioned in subsection (2)(a) to (e).

(4) A failure to comply with this section does not affect the validity of the reviewable decision.

158 Obtaining statement of reasons

(1) This section applies if a person who may apply to the tribunal for a review of a reviewable decision has not been given a written statement of the reasons for the decision.

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(2) The person may ask the decision-maker for the reviewable decision to give the person a written statement of the reasons for the decision.

(3) The request must be—

(a) in writing, whether by letter, facsimile or email; and

(b) made within 14 days after the person—

(i) was notified of the decision; or

(ii) is, under an enabling Act, taken to have been given notice of the decision by publication of the decision in the gazette, a newspaper or in another way; or

(iii) if subparagraph (i) or (ii) does not apply—the day the person became aware of the decision.

(4) The decision-maker must give the person the statement within a reasonable period of not more than 28 days after the request is made.

Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

(5) The person is entitled to receive a written statement of reasons for the reviewable decision whether or not the provision of the enabling Act under which the decision is made requires that the person be given a written statement of reasons for the decision.

159 Tribunal order requiring statement of reasons be given

(1) This section applies if—

(a) under section 158, a person has asked the decision-maker for a reviewable decision for a written statement of the reasons for the decision; and

(b) the decision-maker has not given the person the statement.

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(2) The person may apply to the tribunal for an order that the decision-maker give the person the statement.

(3) If the person applies for an order under subsection (2), the person must give written notice of the application to the decision-maker.

(4) If the tribunal is satisfied the person is entitled to receive the statement, the tribunal may make an order requiring the decision-maker to give the person the statement within the period of not more than 28 days stated in the order.

160 Further statement

(1) This section applies if, under this division, the decision-maker for a reviewable decision gives a written statement of reasons for the decision to a person.

(2) The person may apply to the tribunal for an order under this section against the decision-maker.

(3) If the tribunal considers the statement does not contain adequate particulars of the reasons for the decision, the tribunal may make an order requiring the decision-maker to give the person, within a stated period, an additional statement containing further and better particulars about stated matters.

Chapter 4 Establishment and administration

Part 1 Establishment of tribunal

161 Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal is established.

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162 Independence

In exercising its jurisdiction, the tribunal—

(a) must act independently; and

(b) is not subject to direction or control by any entity, including any Minister.

163 Operating throughout Queensland

(1) The tribunal may be constituted at any place in Queensland.

(2) More than 1 tribunal may sit at the same time.

(3) When more than 1 tribunal is sitting at the same time, each tribunal may exercise the jurisdiction and powers of the tribunal.

164 Tribunal is a court of record

(1) The tribunal is a court of record.

(2) The tribunal must have a seal.

(3) The seal must be kept under the direction of the principal registrar.

Part 2 Constitution of tribunal

165 Constitution generally

(1) The president must choose 1, 2 or 3 members, or an adjudicator, to constitute the tribunal for a particular matter.

(2) The person or persons chosen by the president under subsection (1) constitute, and may exercise all the jurisdiction and powers of, the tribunal in relation to the matter.

(3) For an appeal, or a proceeding relating to an application for leave to appeal to the appeal tribunal, a reference in this Act to the tribunal includes a reference to the appeal tribunal constituted, or to be constituted, for the appeal or proceeding.

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(4) Subsection (3) does not limit another reference in this Act to the tribunal being taken to include a reference to the tribunal as constituted by the appeal tribunal, if the context requires or permits.

166 Constitution of appeal tribunal

(1) The tribunal is to be constituted for an appeal or an application for leave to appeal, under chapter 2, part 8, division 1, by 1, 2 or 3 judicial members.

(2) If the president considers it appropriate for a particular appeal or application for leave to appeal, the president may choose 1, 2 or 3 suitably qualified members to constitute the tribunal for the appeal or application, whether or not in combination with a judicial member.

(3) Subsection (2) does not apply in relation to an appeal or an application for leave to appeal if the appeal or application relates to a decision of the tribunal as constituted by a magistrate.

167 Choosing persons

(1) In choosing the persons who are to constitute the tribunal for a particular matter, or the number of persons who are to constitute the tribunal, the president must consider the following—

(a) the nature, importance and complexity of the matter;

(b) the need for the tribunal hearing the matter to have special knowledge, expertise or experience relating to the matter;

(c) any provision of this Act, an enabling Act or the rules that may be relevant;

(d) any other matter the president considers relevant.

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Notes—

1 See sections 171(8) and 192(6) for arrangements providing for limitations on magistrates who are ordinary members, and supplementary members, performing their functions as members.

2 Under section 195, an adjudicator can hear and decide only particular matters.

3 A judicial registrar who is an adjudicator under section 198A can hear and decide only minor civil disputes.

(2) However, the president must not choose a person to constitute the tribunal for a review of a reviewable decision if the person—

(a) is an employee or officer of the entity in which the reviewable decision was made; or

(b) was, when the reviewable decision was made, an employee or officer of the entity in which the reviewable decision was made.

(3) Also, the president must not choose a person to constitute the tribunal for an appeal against a decision of the tribunal if the person constituted the tribunal that made the decision appealed against.

(4) Further, if an enabling Act that is an Act provides that the tribunal is to be constituted for a particular matter in a particular way, the president must ensure the tribunal is constituted in that way.

168 Reconstitution

(1) The president may change who is to constitute the tribunal for a matter, including a change from 1, 2 or 3 members to an adjudicator and a change from an adjudicator to 1, 2 or 3 members.

Examples of circumstances when the president may change who is to constitute the tribunal—

- a member constituting the tribunal becomes unavailable
- a member constituting the tribunal has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the member's functions

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- one of the parties to the proceeding objects to a member constituting the tribunal
- an adjudicator refers a matter to the president under section 197

(2) The tribunal as reconstituted must continue to hear the matter and decide it and, for that purpose, may have regard to the decisions and any records of proceedings of the tribunal as previously constituted, including any record of evidence.

169 Disclosure of interests

(1) This section applies if a member, or an adjudicator, who constitutes the tribunal, is to constitute the tribunal or is to carry out another function for a matter has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the person's functions in relation to the matter.

(2) The member or adjudicator—

(a) must not take part in a proceeding for the matter or exercise powers for it, unless all parties to the proceeding agree otherwise; and

(b) for a member, other than the president, or an adjudicator—must disclose the nature of the interest to the president.

(3) In this section—

proceeding includes a compulsory conference.

170 Presiding member

(1) If the tribunal is constituted by a single member, that member is the presiding member.

(2) If the tribunal is constituted by 2 or 3 members, the presiding member is the member nominated by the president.

(3) For a matter for which the tribunal is constituted by an adjudicator, a reference in this Act to the presiding member is taken to be a reference to the adjudicator.

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Part 3 Members of tribunal

Division 1 General

171 The members

(1) The members of the tribunal are—

(a) the president; and

(b) the deputy president; and

(c) the senior members; and

(d) the ordinary members; and

(e) the supplementary members.

(2) Every magistrate, while the magistrate holds the office of magistrate, is an ordinary member of the tribunal for minor civil disputes.

(3) The other members of the tribunal, other than supplementary members, are to be appointed by the Governor in Council.

(4) Supplementary members are to be appointed by the Minister.

(5) The members of the tribunal are appointed under this Act and not under the *Public Sector Act 2022*.

(6) An appointment of a member of the tribunal under subsection (3) or (4) must be made in writing.

(7) Divisions 3 and 4 do not apply to a magistrate who is an ordinary member under subsection (2).

(8) However, section 192(4)(c), (5)(b) and (c), (6) and (9) to (11) apply to a magistrate who is an ordinary member under subsection (2) as if a reference in the section to a magistrate appointed as a supplementary member included a reference to a magistrate who is an ordinary member under subsection (2).

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Division 2 The president and deputy president

172 President's functions generally

(1) The president has the functions conferred on the president under this Act or an enabling Act that is an Act.

(2) The functions of the president include—

(a) managing the business of the tribunal to ensure it operates efficiently; and

(b) giving directions about the practices and procedures to be followed by the tribunal; and

(c) managing the members of the tribunal and adjudicators including—

(i) developing a code of conduct for members and adjudicators; and

(ii) ensuring the members and adjudicators are adequately and appropriately trained to enable the tribunal to perform its functions effectively and efficiently; and

(iii) undertaking performance management for members and adjudicators; and

(iv) deciding selection criteria for appointment of members and adjudicators, and overseeing the selection process; and

(d) adjudicating in the tribunal; and

(e) advising the Minister about the appointment of members of the tribunal and adjudicators, and the suspension and removal of the members and adjudicators from office; and

(f) developing a positive cohesive culture throughout the tribunal's organisation.

(3) It is also a function of the president to advise the Minister about—

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(a) how the tribunal could improve the carrying out of its functions to ensure the way it deals with matters is fair, just, economical, informal and quick; and

(b) how this Act or an enabling Act could be made more effective.

(4) The president may do all things necessary or convenient to be done for the performance of the president's functions.

(5) In performing the president's functions, the president is not subject to direction or control by the Minister.

173 Directions for president's function about training

(1) The president may direct all members or adjudicators, a class of members or adjudicators, or a particular member or adjudicator, to participate in—

(a) particular professional development; or

(b) particular continuing education or training activity.

(2) The direction must be in writing.

(3) A person to whom a direction is given under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Notes—

1 Under section 188, a senior or ordinary member may be removed from office if the member contravenes this subsection.

2 Under section 203, an adjudicator may be removed from office if the adjudicator contravenes this subsection.

174 Deputy president's functions

(1) The deputy president has the functions conferred on the deputy president under this Act or an enabling Act that is an Act.

(2) The functions of the deputy president include the following—

(a) assisting the president in managing the business of the tribunal to ensure it operates efficiently;

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(b) assisting the president in managing the members of the tribunal and adjudicators, including the training of members and overseeing their activities;

(c) adjudicating in the tribunal.

(3) The deputy president is subject to the direction of the president in performing the deputy president's functions, other than adjudicating in the tribunal.

(4) The deputy president may do all things necessary or convenient to be done for the performance of the deputy president's functions.

175 Appointment of the president

(1) The president must be a Supreme Court judge who is recommended for appointment by the Minister after consultation with the Chief Justice.

(2) Subject to this Act, the president holds office for the period, of at least 3 years but not more than 5 years, stated in the president's instrument of appointment.

(3) A person appointed as president may be appointed as president for a further period if—

(a) the term of the appointment is at least 3 years, but not more than 5 years, and does not immediately follow the person's previous appointment as president; or

(b) the appointment is continuous on 1 or more of the person's previous appointments as president and the total period of the continuous appointments is not more than 5 years.

(4) The appointment of a Supreme Court judge as president does not affect any of the following—

(a) the judge's tenure of office or status as a judge;

(b) the payment of the judge's salary or allowances as a judge;

(c) any other right or privilege the judge has as a judge.

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(5) Service in the office of president is taken, for all purposes, to be service as a Supreme Court judge.

(6) Nothing in this Act prevents a person who holds office as the president from doing anything in the person's capacity as a Supreme Court judge.

176 Appointment of the deputy president

(1) The deputy president must be a District Court judge who is recommended for appointment by the Minister after consultation with the Chief Judge.

(2) Subject to this Act, the deputy president holds office for the period, of at least 3 years but not more than 5 years, stated in the deputy president's instrument of appointment.

(3) A person appointed as deputy president may be appointed as deputy president for a further period if—

(a) the term of the appointment is at least 3 years, but not more than 5 years, and does not immediately follow the person's previous appointment as deputy president; or

(b) the appointment is continuous on 1 or more of the person's previous appointments as deputy president and the total period of the continuous appointments is not more than 5 years.

(4) The appointment of a District Court judge as deputy president does not affect any of the following—

(a) the judge's tenure of office or status as a judge;

(b) the payment of the judge's salary or allowances as a judge;

(c) any other right or privilege the judge has as a judge.

(5) Service in the office of deputy president is taken, for all purposes, to be service as a District Court judge.

(6) Nothing in this Act prevents a person who holds office as deputy president from doing anything in the person's capacity as a District Court judge.

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177 Conditions of appointment

The president or deputy president holds office on the following conditions—

(a) the conditions stated in this division;

(b) the conditions decided by the Governor in Council and stated in the president's or deputy president's instrument of appointment, to the extent the conditions are not inconsistent with this division.

178 Vacancy of office

The office of the president or deputy president becomes vacant if—

(a) the member ceases to be—

(i) for the president—a Supreme Court judge; or

(ii) for the deputy president—a District Court judge; or

(b) the member resigns under section 179.

179 Resignation

(1) The president or deputy president may resign the president's or deputy president's office by giving the Minister a signed letter of resignation.

(2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

180 Acting president

(1) If there is a vacancy in the office of president or the president is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as president for a period of not more than 6 months.

(2) An appointment under this section must be made in writing.

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(3) The Minister may appoint only the deputy president or a Supreme Court judge to act as president.

(4) However, despite section 181(5)(b), the Minister can not appoint a senior member acting as the deputy president to act as president.

(5) The Minister must consult the Chief Justice before appointing a Supreme Court judge to act as president.

(6) A person appointed to act as president—

(a) has all the functions of the president; and

(b) is taken to be the president for all purposes relating to this Act or an enabling Act.

(7) Without limiting subsection (6)—

(a) section 175(4) to (6) applies to a Supreme Court judge acting as president as if the judge were the president; and

(b) sections 178 and 179 apply to a person acting as president as if the person were the president.

(8) If the deputy president is appointed to act as president, for the period of the acting the deputy president is entitled to be paid the remuneration and allowances payable to a Supreme Court judge.

(9) A person appointed to act as president may be appointed to act as president for a further period—

(a) by the Minister, if the appointment is continuous on 1 or more of the person's previous appointments as acting president and the total period of continuous appointments is not more than 6 months; or

(b) by the Governor in Council in other circumstances.

(10) The Governor in Council may at any time cancel the appointment of a person to act as president.

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181 Acting deputy president

(1) If there is a vacancy in the office of deputy president or the deputy president is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as deputy president for a period of not more than 6 months.

(2) An appointment under this section must be made in writing.

(3) The Minister may appoint only a District Court judge, or a senior member who is an Australian lawyer of at least 8 years standing, to act as deputy president.

(4) The Minister must consult the Chief Judge before appointing a District Court judge to act as deputy president.

(5) A person appointed to act as deputy president—

(a) has all the functions of the deputy president; and

(b) is taken to be the deputy president for all purposes relating to this Act or an enabling Act.

(6) Without limiting subsection (5)—

(a) section 176(4) to (6) applies to a District Court judge acting as deputy president as if the judge were the deputy president; and

(b) sections 178 and 179 apply to a person acting as deputy president as if the person were the deputy president.

(7) If a senior member is appointed to act as deputy president, for the period of the acting the senior member is entitled to be paid the salary, but not the allowances, payable to a District Court judge under the *Judicial Remuneration Act 2007*.

(8) A person appointed to act as deputy president may be appointed to act as deputy president for a further period—

(a) by the Minister, if the appointment is continuous on 1 or more of the person's previous appointments as acting deputy president and the total period of the continuous appointments is not more than 6 months; or

(b) by the Governor in Council in other circumstances.

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(9) The Governor in Council may at any time cancel the appointment of a person to act as deputy president.

182 Delegation

(1) The president may delegate a function of the president under this Act or an enabling Act to a member, adjudicator or the principal registrar.

(2) The deputy president may delegate a function of the deputy president under this Act or an enabling Act to a member, adjudicator or the principal registrar.

(3) Subsection (1) or (2) does not apply to the president's or deputy president's function of adjudicating in the tribunal.

(4) Also, the president or deputy president may delegate a function under subsection (1) or (2) only to a person the president or deputy president is satisfied is appropriately qualified to perform the function.

(5) In this section—

appropriately qualified, for a function, includes having the qualifications, experience or standing appropriate to perform the function.

Division 3 Senior members and ordinary members

183 Appointment of senior members and ordinary members

(1) As many senior members and ordinary members as are required for the proper functioning of the tribunal must be appointed.

(2) A senior member or ordinary member must be recommended for appointment by the Minister after consultation with the president.

(3) A person is eligible for appointment as a senior member only if the person—

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(a) is an Australian lawyer of at least 8 years standing; or

(b) has, in the Minister's opinion, extensive knowledge, expertise or experience relating to a class of matter for which functions may be exercised by the tribunal.

(4) A person is eligible for appointment as an ordinary member only if the person—

(a) is an Australian lawyer of at least 6 years standing; or

(b) has, in the Minister's opinion, special knowledge, expertise or experience relating to a class of matter for which functions may be exercised by the tribunal.

(5) In recommending persons for appointment as members, the Minister must have regard to the following—

(a) the need for balanced gender representation in the membership of the tribunal;

(b) the need for membership of the tribunal to include Aboriginal people and Torres Strait Islanders;

(c) the need for the membership of the tribunal to reflect the social and cultural diversity of the general community;

(d) the range of knowledge, expertise and experience of members of the tribunal.

(6) A senior member or ordinary member holds office for the period, of at least 3 years but not more than 5 years, stated in the member's instrument of appointment.

(7) A person appointed as a senior member or ordinary member may be reappointed.

(8) A senior member or ordinary member may be appointed on a full-time or part-time basis or on a sessional basis.

184 Criminal history checks

(1) This section applies in relation to the following persons—

(a) a senior member or ordinary member;

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(b) a person who is being considered for appointment as a senior member or ordinary member (a ***prospective member***).

(2) The Minister may ask the commissioner of the police service for—

(a) a written report about the person's criminal history; and

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

(3) However, if the request relates to a prospective member, the Minister may make the request only if the person has given the Minister written consent for the request.

(4) The commissioner of the police service must comply with the request.

(5) However, subsection (4) applies only to information in the commissioner's possession or to which the commissioner has access.

(6) Before using information obtained under subsection (2) to decide whether a person should continue to be a senior member or ordinary member or be nominated for appointment as a senior member or ordinary member, the Minister must—

(a) disclose the information to the person; and

(b) allow the person a reasonable opportunity to make representations to the Minister about the information.

(7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

185 Disclosure of changes in criminal history

(1) If there is a change in the criminal history of a senior member or ordinary member, the member must, unless the member has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units.

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(2) For a senior member or ordinary member who does not have a criminal history, there is taken to be a change in the member's criminal history if the member acquires a criminal history.

(3) To comply with subsection (1), the information disclosed by the senior member or ordinary member about a conviction for an offence in the member's criminal history must include the following—

(a) the existence of the conviction;

(b) when the offence was committed;

(c) details adequate to identify the offence;

(d) whether or not a conviction was recorded;

(e) the sentence imposed on the member.

186 Conditions of appointment

(1) A senior member or ordinary member holds office on the following conditions—

(a) the conditions stated in this division;

(b) the conditions decided by the Governor in Council and stated in the member's instrument of appointment, to the extent the conditions are not inconsistent with this division.

(2) A senior member or ordinary member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(3) However, it is a condition of appointment of a senior member or ordinary member that if the member is removed from office under section 188, the member is not entitled to any remuneration or allowances from the date of the removal.

(4) It is also a condition of appointment of a senior member or ordinary member who is appointed on a full-time basis that the member must not, without the president's consent, engage in the practice of any profession or in any paid employment

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(whether within or outside Queensland) outside the duties of the member's office.

187 Resignation

(1) A senior member or ordinary member may resign the member's office by giving the Minister a signed letter of resignation.

(2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

188 Removal from office

(1) The Governor in Council may, on the Minister's recommendation, remove a senior member or ordinary member from the member's office if—

(a) the member—

(i) is mentally or physically incapable of satisfactorily performing the member's functions; or

(ii) has performed the member's duties carelessly, incompetently or inefficiently, including by contravening a condition of the member's appointment or section 173(3); or

(iii) has engaged in conduct that would warrant dismissal from the public service if the member were a public service officer; or

(b) the member has been convicted of an indictable offence, whether dealt with on indictment or summarily; or

(c) the member becomes an insolvent under administration; or

(d) the member ceases to be eligible to be a senior member or ordinary member.

(2) If the member has been suspended under section 189, the Minister may make a recommendation under subsection (1)

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only if the member has been given an opportunity to make oral and written submissions to—

(a) the person conducting the investigation in relation to which the member has been suspended; and

(b) either the president or deputy president.

(3) Also, the Minister must consult the president before making a recommendation under subsection (1).

189 Suspension

(1) The president, with the Minister's approval, may suspend a senior member or ordinary member from the member's office if the president believes there may be grounds for the removal of the member from the member's office.

(2) If a senior member or ordinary member who is appointed on a full-time or part-time basis is suspended under subsection (1), the member remains entitled to the member's usual remuneration and allowances during the suspension.

190 Investigation of suspended member

(1) As soon as practicable after suspending a senior member or ordinary member from the member's office under section 189(1), the president must appoint a person (the ***investigator***) to undertake an investigation into the conduct or circumstances that led to the suspension.

(2) The investigator must—

(a) investigate the conduct or circumstances leading to the suspension; and

(b) report to the Minister on the investigation; and

(c) give a copy of the report to the member and the president.

(3) The investigator's report under subsection (2) may include a recommendation that the member be removed from office on a ground mentioned in section 188(1).

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(4) The Minister may use a report given to the Minister under subsection (2)(b) about a senior member or ordinary member to decide whether or not to make a recommendation under section 188 about the member.

(5) If the Minister decides not to make a recommendation under section 188 about a senior member or ordinary member, the Minister must notify the president and the member of the decision as soon as practicable.

(6) If the president is notified under subsection (5) that the Minister has decided not to make a recommendation under section 188 about a senior member or ordinary member, the president must immediately cancel the member's suspension.

191 Acting senior members

(1) The Minister must establish a pool of persons to act as senior members (the ***senior members pool***).

(2) The Minister may approve a person as a member of the senior members pool only if the person is eligible to be appointed to the office of senior member under section 183(3).

(3) The Minister may—

(a) approve a person as a member of the senior members pool for a specified time; and

(b) cancel the approval of a person as a member of the senior members pool at any time.

(4) The Minister may approve a person as a member of the senior members pool only after consultation with the president.

(5) The Minister may appoint a person to act as a senior member.

(6) The president may appoint a person from the senior members pool to act as a senior member.

(7) An appointment may be made under subsection (5) or (6) if—

(a) there is a vacancy in the office of a senior member; or

(b) a senior member is absent or for any other reason is unable to perform the functions of the office; or

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(c) the appointment is required for the proper functioning of the tribunal.

(8) A person appointed to act as a senior member—

(a) has all the functions and powers of a senior member; and

(b) is taken to be a senior member for all purposes relating to this Act or an enabling Act.

(9) Without limiting subsection (8), section 187 applies to a person acting as senior member as if the person were a senior member.

(10) An appointment to act as a senior member may be for a period of not more than 6 months.

(11) A person appointed to act as a senior member may be appointed to act as a senior member for a further period if—

(a) the term of the appointment does not immediately follow the person's previous appointment as acting senior member; or

(b) the appointment is continuous on 1 or more of the person's previous appointments as acting senior member and the total period of the continuous appointments is not more than 6 months.

(12) The Minister or president may at any time cancel the appointment of a person to act as a senior member.

191A Acting ordinary members

(1) The Minister must establish a pool of persons to act as ordinary members (the ***ordinary members pool***).

(2) The Minister may approve a person as a member of the ordinary members pool only if the person is eligible to be appointed to the office of ordinary member under section 183(4).

(3) The Minister may—

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(a) approve a person as a member of the ordinary members pool for a specified time; and

(b) cancel the approval of a person as a member of the ordinary members pool at any time.

(4) The Minister may approve a person as a member of the ordinary members pool only after consultation with the president.

(5) The Minister may appoint a person to act as an ordinary member.

(6) The president may appoint a person from the ordinary members pool to act as an ordinary member.

(7) An appointment may be made under subsection (5) or (6) if—

(a) there is a vacancy in the office of an ordinary member; or

(b) an ordinary member is absent or for any other reason is unable to perform the functions of the office; or

(c) the appointment is required for the proper functioning of the tribunal.

(8) A person appointed to act as an ordinary member—

(a) has all the functions and powers of an ordinary member; and

(b) is taken to be an ordinary member for all purposes relating to this Act or an enabling Act.

(9) Without limiting subsection (8), section 187 applies to a person acting as ordinary member as if the person were an ordinary member.

(10) An appointment to act as an ordinary member may be for a period of not more than 6 months.

(11) A person appointed to act as an ordinary member may be appointed to act as an ordinary member for a further period if—

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(a) the term of the appointment does not immediately follow the person's previous appointment as acting ordinary member; or

(b) the appointment is continuous on 1 or more of the person's previous appointments as acting ordinary member and the total period of the continuous appointments is not more than 6 months.

(12) The Minister or president may at any time cancel the appointment of a person to act as an ordinary member.

Division 4 Supplementary members

192 Appointment of supplementary members

(1) If the president considers it necessary for the functioning of the tribunal, the president may request the Minister to appoint a person to be a supplementary member for a stated period.

(2) Only a Supreme court judge, District Court judge, magistrate or member of the Land Court can be appointed as a supplementary member.

(3) Before appointing a person as a supplementary member, the Minister must consult—

(a) for appointing a Supreme Court judge—the Chief Justice; or

(b) for appointing a District Court judge—the Chief Judge; or

(c) for appointing a magistrate—the Chief Magistrate; or

(d) for appointing a member of the Land Court—the President of the Land Court.

(4) The president may enter into an arrangement—

(a) with the Chief Justice about using Supreme Court judges appointed as supplementary members to perform their functions under this Act; or

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(b) with the Chief Judge about using District Court judges appointed as supplementary members to perform their functions under this Act; or

(c) with the Chief Magistrate about using magistrates appointed as supplementary members to perform their functions under this Act; or

(d) with the President of the Land Court about using members of the Land Court appointed as supplementary members to perform their functions under this Act.

(5) The arrangement may provide for the following for a judge, magistrate or member of the Land Court to whom the arrangement applies—

(a) the matters the judge, magistrate or member may hear and decide;

(b) the time the judge, magistrate or member may allocate to performing functions as a supplementary member;

(c) the places at which the judge, magistrate or member may constitute the tribunal.

(6) A judge, magistrate or member of the Land Court to whom the arrangement applies may perform a function as a supplementary member only as authorised, and in the way provided, under the arrangement.

(7) Section 175(4) to (6) applies to a Supreme Court judge appointed as a supplementary member as if the judge were the president.

(8) Section 176(4) to (6) applies to a District Court judge appointed as a supplementary member as if the judge were the deputy president.

(9) The appointment of a magistrate or member of the Land Court as a supplementary member does not affect—

(a) the magistrate's or member's tenure of office or status as a magistrate or member of the Land Court; or

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(b) the payment of the magistrate's or member's salary or allowances as a magistrate or member of the Land Court; or

(c) any other right or privilege the magistrate or member has as a magistrate or member of the Land Court.

(10) Service by a magistrate in the office of supplementary member is taken, for all purposes, to be service as a magistrate or member of the Land Court.

(11) Nothing in this Act prevents a person who holds office as a supplementary member from doing anything in the person's capacity as a magistrate or member of the Land Court.

193 Vacancy of office

The office of a supplementary member becomes vacant if—

(a) the member ceases to be—

(i) for a supplementary member who is a Supreme Court judge—a Supreme Court judge; or

(ii) for a supplementary member who is a District Court judge—a District Court judge; or

(iii) for a supplementary member who is a magistrate—a magistrate; or

(iv) for a supplementary member who is a member of the Land Court—a member of the Land Court; or

(b) the supplementary member resigns under section 194.

194 Resignation

(1) A supplementary member may resign the member's office by giving the Minister a signed letter of resignation.

(2) A resignation does not have effect unless it is accepted by the Minister.

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(3) The resignation takes effect when the Minister accepts the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

Division 5 Miscellaneous

194A Period of office ends—finishing proceedings

(1) This section applies if the period of office for a member ends and the member is not appointed for a further period.

(2) If the member starts the hearing of a proceeding before the period of office ends, the member is taken to be a member after the period of office for the purposes of finishing the proceeding.

194B Member resigns—finishing proceedings

(1) This section applies if a member resigns under this part.

(2) If the member starts the hearing of a proceeding before the member resigns, the member is taken to be a member after the resignation for the purposes of finishing the proceeding.

Part 4 Adjudicators

195 Functions generally

An adjudicator may hear and decide any of the following matters if chosen by the president to constitute the tribunal for the matter—

(a) a minor civil dispute;

(b) a matter stated in this Act, the rules, or an enabling Act that is an Act, as a matter an adjudicator may hear and decide;

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(c) another matter the president considers can be appropriately heard and decided by an adjudicator having regard to—

(i) the nature, importance and complexity of the matter; and

(ii) any special circumstances relating to the matter.

196 Independence

(1) An adjudicator when constituting the tribunal is not subject to direction or control, other than as provided under this Act.

(2) However, an adjudicator must comply with the procedural directions given by the president.

Note—

Under section 203, an adjudicator may be removed from office if the adjudicator contravenes this subsection.

197 Referring matters to president

(1) This section applies if—

(a) a matter is before an adjudicator constituting the tribunal; and

(b) the adjudicator considers it would be more appropriate for the matter to be decided by the tribunal as constituted by 1, 2 or 3 members.

(2) The adjudicator must refer the matter to the president.

198 Appointment of adjudicators

(1) As many adjudicators as are required for the proper functioning of the tribunal must be appointed.

(2) An adjudicator must be appointed by the Governor in Council on recommendation from the Minister after consultation with the president.

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(3) An adjudicator is appointed under this Act and not under the *Public Sector Act 2022*.

(4) An appointment of an adjudicator must be made in writing.

(6) A person is eligible for appointment as an adjudicator only if the person is an Australian lawyer of at least 5 years standing.

(7) An adjudicator holds office for the period, of at least 3 but not more than 5 years, stated in the adjudicator's instrument of appointment.

(8) A person appointed as an adjudicator may be reappointed.

(9) An adjudicator may be appointed on a full-time or part-time basis.

198A Judicial registrars are adjudicators for minor civil disputes

(1) Every judicial registrar, while the judicial registrar holds the office of judicial registrar, is an adjudicator for minor civil disputes.

(2) The president may enter into an arrangement with the Chief Magistrate about using judicial registrars as adjudicators.

(3) An arrangement under subsection (2) may provide for the following for a judicial registrar the subject of the arrangement—

(a) the time the judicial registrar may allocate to hearing and deciding minor civil disputes;

(b) the places at which the judicial registrar may hear and decide minor civil disputes.

(4) If an arrangement under subsection (2) applies to a judicial registrar, the judicial registrar may perform a function as an adjudicator for a minor civil dispute only as authorised, and in the way provided, under the arrangement.

(5) This part, other than sections 195(a), 196 and 197, does not apply to a judicial registrar who is an adjudicator under subsection (1).

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(6) The appointment of a judicial registrar as an adjudicator does not affect any of the following—

(a) the judicial registrar's tenure of office or status as a judicial registrar;

(b) the payment of the judicial registrar's salary or allowances as a judicial registrar;

(c) any other right or privilege the judicial registrar has as a judicial registrar.

(7) Service by a judicial registrar in the office of an adjudicator is taken, for all purposes, to be service as a judicial registrar.

(8) Nothing in this Act prevents a judicial registrar who holds office as an adjudicator from doing anything in the judicial registrar's capacity as a judicial registrar.

199 Criminal history checks

(1) This section applies in relation to the following persons—

(a) an adjudicator;

(b) a person who is being considered for appointment as an adjudicator (a ***prospective adjudicator***).

(2) The Minister may ask the commissioner of the police service for—

(a) a written report about the person's criminal history; and

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

(3) However, if the request relates to a prospective adjudicator, the Minister may make the request only if the person has given the Minister written consent for the request.

(4) The commissioner of the police service must comply with the request.

(5) However, subsection (4) applies only to information in the commissioner's possession or to which the commissioner has access.

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(6) Before using information obtained under subsection (2) to decide whether a person should continue to be an adjudicator or be nominated for appointment as an adjudicator the Minister must—

(a) disclose the information to the person; and

(b) allow the person a reasonable opportunity to make representations to the Minister about the information.

(7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

200 Disclosure of changes in criminal history

(1) If there is a change in the criminal history of an adjudicator, the adjudicator must, unless the adjudicator has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units.

(2) For an adjudicator who does not have a criminal history, there is taken to be a change in the adjudicator's criminal history if the adjudicator acquires a criminal history.

(3) To comply with subsection (1), the information disclosed by an adjudicator about a conviction for an offence in the adjudicator's criminal history must include the following—

(a) the existence of the conviction;

(b) when the offence was committed;

(c) details adequate to identify the offence;

(d) whether or not a conviction was recorded;

(e) the sentence imposed on the adjudicator.

201 Conditions of appointment

(1) An adjudicator holds office on the following conditions—

(a) the conditions stated in this part;

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(b) the conditions decided by the Governor in Council and stated in the adjudicator's instrument of appointment, to the extent the conditions are not inconsistent with this part.

(2) An adjudicator is entitled to be paid the remuneration and allowances decided by the Governor in Council and stated in the adjudicator's instrument of appointment.

(3) However, it is a condition of appointment of an adjudicator that if the adjudicator is removed from office under section 203, the adjudicator is not entitled to any remuneration or allowances from the date of the removal.

(4) It is a condition of appointment of an adjudicator who is appointed on a full-time basis that the adjudicator must not, without the president's consent, engage in the practice of any profession or in any paid employment (whether within or outside Queensland) outside the duties of the adjudicator's office.

202 Resignation

(1) An adjudicator may resign the adjudicator's office by giving the Minister a signed letter of resignation.

(2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

203 Removal from office

(1) The Governor in Council may, on the Minister's recommendation, remove an adjudicator from the adjudicator's office if—

(a) the adjudicator—

(i) is mentally or physically incapable of satisfactorily performing the adjudicator's functions; or

(ii) has performed the adjudicator's duties carelessly, incompetently or inefficiently, including by

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contravening a condition of the adjudicator's appointment or section 173(3) or 196(2); or

(iii) has engaged in conduct that would warrant dismissal from the public service if the adjudicator were a public service officer; or

(b) the adjudicator has been convicted of an indictable offence, whether dealt with on indictment or summarily; or

(c) the adjudicator becomes an insolvent under administration; or

(d) the adjudicator ceases to be eligible to be an adjudicator.

(2) If the adjudicator has been suspended under section 204, the Minister may make a recommendation under subsection (1) only if the adjudicator has been given an opportunity to make oral and written submissions to—

(a) the person conducting the investigation in relation to which the adjudicator has been suspended; and

(b) either the president or deputy president.

(3) Also, the Minister must consult the president before making a recommendation under subsection (1).

204 Suspension

(1) The president, with the Minister's approval, may suspend an adjudicator from the adjudicator's office if the president believes there may be grounds for the removal of the adjudicator from the adjudicator's office.

(2) If an adjudicator is suspended under subsection (1), the adjudicator remains entitled to the adjudicator's usual remuneration and allowances during the suspension.

205 Investigation of suspended adjudicator

(1) As soon as practicable after suspending an adjudicator from the adjudicator's office under section 204, the president must

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appoint a person (the ***investigator***) to undertake an investigation into the conduct or circumstances that led to the suspension.

(2) The investigator must—

(a) investigate the conduct or circumstances leading to the suspension; and

(b) report to the Minister on the investigation; and

(c) give a copy of the report to the adjudicator and the president.

(3) The investigator's report under subsection (2) may include a recommendation that the adjudicator be removed from office on a ground mentioned in section 203(1).

(4) The Minister may use a report given to the Minister under subsection (2)(b) about an adjudicator to decide whether or not to make a recommendation under section 203 about the adjudicator.

(5) If the Minister decides not to make a recommendation under section 203 about an adjudicator, the Minister must notify the president and the adjudicator of the decision as soon as practicable.

(6) If the president is notified under subsection (5) that the Minister has decided not to make a recommendation under section 203 about an adjudicator, the president must immediately cancel the adjudicator's suspension.

206 Acting adjudicators

(1) The Minister must establish a pool of persons to act as adjudicators (the ***adjudicators pool***).

(2) The Minister may approve a person as a member of the adjudicators pool only if the person is eligible to be appointed to the office of adjudicator under section 198(6).

(3) The Minister may—

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(a) approve a person as a member of the adjudicators pool for a specified time; and

(b) cancel the approval of a person as a member of the adjudicators pool at any time.

(4) The Minister may approve a person as a member of the adjudicators pool only after consultation with the president.

(5) The Minister may appoint a person to act as an adjudicator.

(6) The president may appoint a person from the adjudicators pool to act as an adjudicator.

(7) An appointment may be made under subsection (5) or (6) if—

(a) there is a vacancy in the office of an adjudicator; or

(b) an adjudicator is absent or for any other reason is unable to perform the functions of the office; or

(c) the appointment is required for the proper functioning of the tribunal.

(8) A person appointed to act as an adjudicator—

(a) has all the functions and powers of an adjudicator; and

(b) is taken to be an adjudicator for all purposes relating to this Act or an enabling Act.

(9) Without limiting subsection (8), section 202 applies to a person acting as adjudicator as if the person were an adjudicator.

(10) An appointment to act as an adjudicator may be for a period of not more than 6 months.

(11) A person appointed to act as adjudicator may be appointed to act as adjudicator for a further period if—

(a) the term of the appointment does not immediately follow the person's previous appointment as acting adjudicator; or

(b) the term of the appointment is continuous on 1 or more of the person's previous appointments as acting

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adjudicator and the total period of the continuous appointments is not more than 6 months.

(12) The Minister or president may at any time cancel the appointment of a person to act as an adjudicator.

206AA Application of ss 194A and 194B

Sections 194A and 194B apply in relation to an adjudicator and the hearing of a proceeding before an adjudicator as if a reference in the sections to a member included a reference to an adjudicator.

Part 4A Dual appointments

206A Dual appointment

(1) A person may hold appointment as an ordinary member and an adjudicator.

(2) The appointment mentioned in subsection (1) may be made in the same instrument or separate instruments.

(3) Any thing done under this Act for removing or suspending a person from office as an ordinary member or adjudicator may be expressed to be done for the person holding another office under this Act.

Part 4B QCAT justices of the peace

Division 1 Preliminary

206B Purpose of pt 4B

The purpose of this part is to provide for matters about the hearing of particular minor civil disputes by justices of the peace.

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206C Definitions for pt 4B

In this part—

excluded minor civil dispute means any of the following minor civil disputes—

(a) a claim to recover a debt or liquidated demand of money, with or without interest, of more than $5,000;

(b) a claim arising out of a contract between a consumer and trader, or a contract between 2 or more traders, that is—

(i) for payment of money of a value of more than $5,000; or

(ii) for relief from payment of money of a value of more than $5,000; or

(iii) for performance of work of a value of more than $5,000 to rectify a defect in goods supplied or services provided; or

(iv) for return of goods of a value of more than $5,000; or

(v) for a combination of any 2 or more claims mentioned in subparagraphs (i) to (iv) where the total value of the combined claim is more than $5,000;

(c) a claim for an amount of more than $5,000 for damage to property caused by, or arising out of the use of, a vehicle;

(d) a tenancy matter that is—

(i) an urgent application under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 415; or

(ii) another application under the *Residential Tenancies and Rooming Accommodation Act 2008* for a claim for more than $5,000;

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(e) a claim that is the subject of a dispute under the *Neighbourhood Disputes Resolution Act 2011*, chapter 2 and is for an amount more than $5,000;

(f) a matter in relation to which a person may, under the *Building Act 1975*, chapter 8, part 2A apply to the tribunal for an order requiring any of the following—

(i) the performance of work of a value of more than $5,000;

(ii) the payment of a contribution of an amount of more than $5,000 for fencing work;

(iii) the payment of an amount of compensation of more than $5,000.

JPCD Act means the *Justices of the Peace and Commissioners for Declarations Act 1991*.

legally qualified QCAT justice of the peace means a QCAT justice of the peace who is an Australian lawyer.

presiding QCAT justice of the peace see section 206G.

QCAT justice of the peace means a person appointed under section 206O as a QCAT justice of the peace.

206D Relationship with other provisions of Act

For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, if there is an inconsistency between a provision of this part and another provision of this Act, the provision of this part prevails to the extent of the inconsistency.

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Division 2 Constitution of tribunal by QCAT justices of the peace

206E Tribunal may be constituted by QCAT justices of the peace

(1) Despite section 165(1), the president may choose 2 QCAT justices of the peace, at least 1 of whom must be a legally qualified QCAT justice of the peace, to constitute the tribunal—

(a) for a matter the QCAT justices of the peace may hear and decide under section 206L; and

(b) at a location prescribed under a regulation.

(2) The persons chosen by the president under subsection (1) constitute, and may exercise all the jurisdiction and powers of, the tribunal in relation to the matter.

206F Reconstitution

(1) The president may change who is to constitute the tribunal for a matter 2 QCAT justices of the peace may hear and decide, including a change from—

(a) 1, 2 or 3 members to 2 QCAT justices of the peace; or

(b) 2 QCAT justices of the peace to 1, 2 or 3 members; or

(c) an adjudicator to 2 QCAT justices of the peace; or

(d) 2 QCAT justices of the peace to an adjudicator.

Examples of circumstances in which the president may change who is to constitute the tribunal—

- a QCAT justice of the peace constituting the tribunal becomes unavailable
- a QCAT justice of the peace constituting the tribunal has or acquires an interest, financial or otherwise, that may conflict with the proper performance of his or her functions
- one of the parties to the proceeding objects to a QCAT justice of the peace constituting the tribunal

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- the presiding QCAT justice of the peace refers a matter to the president under section 206N.

(2) The tribunal as reconstituted must continue to hear the matter and decide it and, for that purpose, may have regard to the decisions and any record of proceedings of the tribunal as previously constituted, including any record of evidence.

206G Presiding QCAT justice of the peace

For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the presiding QCAT justice of the peace is—

(a) if only 1 of the 2 QCAT justices of the peace is a legally qualified QCAT justice of the peace—the legally qualified QCAT justice of the peace; or

(b) otherwise—the QCAT justice of the peace nominated by the president.

Division 3 Decisions of QCAT justices of the peace

206H Differing decisions of QCAT justices of the peace

If the tribunal for a particular matter is constituted by 2 QCAT justices of the peace and the decisions of the QCAT justices of the peace differ, the tribunal's decision is the decision of the presiding QCAT justice of the peace.

206I Deciding question of law

If a question of law arises in a proceeding for a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the tribunal's decision on the question is the decision of the presiding QCAT justice of the peace.

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206J Referring question of law to president

(1) For a matter for which the tribunal is constituted by 2 QCAT justices of the peace, the presiding QCAT justice of the peace may refer a question of law before the tribunal to the president.

(2) Subsection (1) applies whether or not the question has been decided by the tribunal under section 206I.

(3) If the president decides a question of law referred to the president under subsection (1), the decision of the president is the tribunal's decision on the question.

206K Giving decision

A document setting out the decision in a proceeding of the tribunal constituted by 2 QCAT justices of the peace may be signed by—

(a) if the rules provide for the document to be signed by the presiding member—the presiding QCAT justice of the peace; and

(b) if the rules provide for the document to be signed by a member of the tribunal—a QCAT justice of peace constituting the tribunal.

Division 4 General matters about tribunal constituted by QCAT justices of the peace

206L Functions generally

(1) Two QCAT justices of the peace may hear and decide a matter that is a minor civil dispute, other than an excluded minor civil dispute, if chosen by the president to constitute the tribunal for the matter.

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(2) If the tribunal is constituted for a matter by 2 QCAT justices of the peace, the tribunal can not make an order or decision under section 13(2) that—

(a) purports to require payment of an amount, performance of work or return of goods of a value of more than $5,000; or

(b) purports to grant relief of a value of more than $5,000 from the payment of an amount; or

(c) combines 2 or more orders mentioned in section 13(2)(a)(i) to (iv) and purports to award or declare entitlements or benefits (or both) of a total value of more than $5,000.

(3) This section has effect despite the JPCD Act, section 29(3) and (4).

206M Independence

(1) In constituting the tribunal, QCAT justices of the peace are not subject to direction or control, other than as provided under this Act.

(2) However, a QCAT justice of the peace must comply with the procedural directions given by the president.

Note—

Under section 206T a QCAT justice of the peace may be removed from office for contravening this subsection.

206N Referring matters to president

(1) This section applies if—

(a) a matter is before 2 QCAT justices of the peace constituting the tribunal; and

(b) the tribunal considers it would be more appropriate for the matter to be decided by the tribunal as constituted by—

(i) 1, 2 or 3 members; or

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(ii) an adjudicator.

(2) The presiding QCAT justice of the peace must refer the matter to the president.

206O Appointment

(1) As many QCAT justices of the peace as are required for the proper functioning of the tribunal must be appointed.

(2) A QCAT justice of the peace must be appointed by the Governor in Council on recommendation from the Minister after consultation with the president.

(3) A QCAT justice of the peace is appointed under this Act and not under the *Public Sector Act 2022*.

(4) An appointment of a QCAT justice of the peace must be made in writing.

(6) A person is eligible for appointment as a QCAT justice of the peace if the person is—

(a) a justice of the peace (qualified); or

(b) a justice of the peace (magistrates court); or

(c) a justice of the peace under the JPCD Act, section 19(1A); or

(d) a lawyer who is a justice of the peace under the JPCD Act, section 41(a).

(7) A person appointed as a QCAT justice of the peace holds office for the period, of at least 3 years but not more than 5 years, stated in the person's instrument of appointment.

(8) A person appointed as a QCAT justice of the peace may be reappointed.

(9) A QCAT justice of the peace may be appointed only on a sessional basis.

(10) In this section—

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justice of the peace (magistrates court) means a person appointed under the JPCD Act, section 15 to the category of justice of the peace (magistrates court).

justice of the peace (qualified) means a person appointed under the JPCD Act, section 15 to the category of justice of the peace (qualified).

206P Criminal history checks

(1) This section applies in relation to the following persons—

(a) a QCAT justice of the peace;

(b) a person who is being considered for appointment as a QCAT justice of the peace (a ***prospective QCAT justice of the peace***).

(2) The Minister may ask the commissioner of the police service for—

(a) a written report about the person's criminal history; and

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

(3) However, if the request relates to a prospective QCAT justice of the peace, the Minister may make the request only if the person has given the Minister written consent for the request.

(4) The commissioner of the police service must comply with the request.

(5) However, subsection (4) applies only to information in the commissioner's possession or to which the commissioner has access.

(6) Before using information obtained under subsection (2) to decide whether a person should continue to be a QCAT justice of the peace, or be nominated for appointment as a QCAT justice of the peace, the Minister must—

(a) disclose the information to the person; and

(b) allow the person a reasonable opportunity to make representations to the Minister about the information.

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(7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

206Q Disclosure of changes in criminal history

(1) If there is a change in the criminal history of a person who is a QCAT justice of the peace, the person must, unless the person has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units.

(2) For a QCAT justice of the peace who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

(3) To comply with subsection (1), the information disclosed by the person about a conviction for an offence in the person's criminal history must include the following—

(a) the existence of the conviction;

(b) when the offence was committed;

(c) details adequate to identify the offence;

(d) whether or not a conviction was recorded;

(e) the sentence imposed on the person.

206R Conditions of appointment

(1) A QCAT justice of the peace holds office on the following conditions—

(a) the conditions stated in this part;

(b) the conditions decided by the Governor in Council and stated in the instrument of appointment of the QCAT justice of the peace, to the extent the conditions are not inconsistent with this part.

(2) A QCAT justice of the peace is entitled to be paid the daily sitting fee prescribed under a regulation.

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(3) Subsection (2) has effect despite the JPCD Act, section 35(1).

206S Resignation

(1) A QCAT justice of the peace may resign from office by giving the Minister a signed letter of resignation.

(2) The resignation takes effect when the Minister receives the resignation or, if a later day is stated in the letter of resignation, the later day stated in the letter.

206T Removal from office

(1) The Governor in Council may, on the Minister's recommendation, remove a person who is a QCAT justice of the peace from office if—

(a) the person—

(i) is mentally or physically incapable of satisfactorily performing the person's functions; or

(ii) has performed the person's functions carelessly, incompetently or inefficiently, including by contravening a condition of the person's appointment, section 173(3) (as applied under section 206Z) or section 206M; or

(iii) has engaged in conduct that would warrant dismissal from the public service if the person were a public service officer; or

(b) the person has been convicted of an indictable offence, whether dealt with on indictment or summarily; or

(c) the person becomes an insolvent under administration; or

(d) the person ceases to be eligible for appointment as a QCAT justice of the peace.

(2) If the person has been suspended under section 206U, the Minister may make a recommendation under subsection (1)

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only if the person has been given an opportunity to make oral and written submissions to—

(a) the person conducting the investigation in relation to which the person has been suspended; and

(b) either the president or deputy president.

(3) Also, the Minister must consult the president before making a recommendation under subsection (1).

206U Suspension

The president, with the Minister's approval, may suspend a QCAT justice of the peace from office if the president believes there may be grounds for the removal of the QCAT justice of the peace from office.

206V Investigation about suspension

(1) As soon as practicable after suspending a QCAT justice of the peace under section 206U, the president must appoint a person (the ***investigator***) to undertake an investigation into the conduct or circumstances that led to the suspension.

(2) The investigator must—

(a) investigate the conduct or circumstances leading to the suspension; and

(b) report to the Minister on the investigation; and

(c) give a copy of the report to the QCAT justice of the peace and the president.

(3) The investigator's report under subsection (2) may include a recommendation that the QCAT justice of the peace be removed from office on a ground mentioned in section 206T(1).

(4) The Minister may use a report given to the Minister under subsection (2)(b) about a QCAT justice of the peace to decide whether or not to make a recommendation under section 206T(1) about the QCAT justice of the peace.

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(5) If the Minister decides not to make a recommendation under section 206T(1) about a QCAT justice of the peace, the Minister must notify the president and the QCAT justice of the peace of the decision as soon as practicable.

(6) If the president is notified under subsection (5) that the Minister has decided not to make a recommendation under section 206T(1) about a QCAT justice of the peace, the president must immediately cancel the suspension of the QCAT justice of the peace.

206W Acting QCAT justices of the peace

(1) If there is a vacancy in the office of a QCAT justice of the peace or the QCAT justice of the peace is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as the QCAT justice of the peace for a period of not more than 6 months.

(2) The Minister may appoint only a person who is eligible to be appointed under section 206O.

(3) The Minister may appoint a person to act as a QCAT justice of the peace only after consultation with the president.

(4) A person appointed to act as a QCAT justice of the peace—

(a) has all the functions of the office to which the person is appointed; and

(b) is taken to be a QCAT justice of the peace for all purposes relating to this Act or an enabling Act.

(5) Without limiting subsection (4), section 206S applies to a person acting as a QCAT justice of the peace as if the person were a QCAT justice of the peace.

(6) A person appointed to act as a QCAT justice of the peace may be appointed by the Minister to act as a QCAT justice of the peace for a further period if—

(a) the term of the appointment does not immediately follow the person's previous appointment as acting QCAT justice of the peace; or

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(b) the appointment is continuous on 1 or more of the person's previous appointments as acting QCAT justice of the peace and the total period of the continuous appointments is not more than 6 months.

(7) The Minister may at any time cancel the appointment of a person to act as a QCAT justice of the peace.

Division 5 Application of particular provisions for pt 4B

206X Purpose of div 5

This division provides for how particular provisions of this Act apply—

(a) in relation to the tribunal as constituted by 2 QCAT justices of the peace; and

(b) to ensure the effective operation of this part.

206Y Application of chs 1 and 2 provisions

(1) Section 4 applies as if a reference in section 4(f), (g) and (h) to adjudicators included a reference to QCAT justices of the peace.

(2) Sections 61, 62, 63 and 86 apply as if a reference in sections 61(5)(b), 62(7)(b), 63(6)(b) and 86(4) to a legally qualified member included a reference to a legally qualified QCAT justice of the peace.

(3) Section 95 applies as if the reference in section 95(5) to a member included a reference to a QCAT justice of the peace.

(4) Section 96 applies as if—

(a) a reference in section 96(1) and (5) to an adjudicator included a reference to a QCAT justice of the peace; and

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(b) the reference in section 96(2) to a legally qualified member included a reference to a legally qualified QCAT justice of the peace.

(5) Section 128 applies as if—

(a) the reference in section 128(2)(a) to the office of a member included a reference to the office of a QCAT justice of the peace; and

(b) section 128(2)(b) included a reference to a defect or irregularity in, or in connection with, the appointment of a QCAT justice of the peace or acting QCAT justice of the peace.

206Z Application of ch 4 provisions

(1) Section 169 applies as if—

(a) a reference in section 169(1) and (2) to a member included a reference to a QCAT justice of the peace; and

(b) the definition *proceeding* in section 169(3) did not include a compulsory conference.

(2) Sections 172, 173 and 174 apply as if the references in sections 172(2), 173(1) and 174(2)(b) to members included references to QCAT justices of the peace.

(3) Sections 173, 182 and 194A apply as if the references in sections 173(1), 182(1) and (2) and 194A to a member included a reference to a QCAT justice of the peace.

(4) Section 194B applies as if the reference in section 194B(1) to a member resigning under chapter 4, part 3 were a reference to a QCAT justice of the peace resigning under section 206S.

206ZA Application of ch 5 provisions

(1) Sections 216, 218, 235 and 236 apply as if a reference in the sections to an official included a reference to a QCAT justice of the peace.

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(2) Section 217 applies as if a reference in the section to a member included a reference to a QCAT justice of the peace.

(3) Section 219 applies as if the reference in section 219(6) and (7) to the presiding member included a reference to the presiding QCAT justice of the peace.

(4) Section 228 applies as if a reference in the section to an adjudicator included a reference to a QCAT justice of the peace.

(5) Sections 233 and 234 apply as if the reference in the sections to a prescribed person included a reference to a QCAT justice of the peace.

(6) Section 237 applies as if a reference in section 237(1) to a member included a reference to a QCAT justice of the peace.

Division 6 Other provision

206ZB Hearing of matter after location stops being prescribed location

(1) This section applies if—

(a) the tribunal, as constituted by 2 QCAT justices of the peace under division 2, is hearing a matter; and

(b) the location at which the tribunal is constituted stops being a prescribed location.

(2) For the purposes of the tribunal hearing and deciding the matter, the location is taken to be a prescribed location until the matter is finally dealt with under this Act.

(3) In this section—

prescribed location means a location prescribed by regulation for section 206E.

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Part 5 The Queensland Civil and Administrative Tribunal Registry and associates

207 Registry established

(1) The Queensland Civil and Administrative Tribunal Registry (the ***registry***) is established.

(2) The registry consists of the principal registrar and the registrars and other administrative staff of the registry.

(3) The registry is the registry for the tribunal.

208 Appointment of officers and staff

(1) The principal registrar, and the registrars and other administrative staff of the registry are to be appointed under the *Public Sector Act 2022*.

(2) A person is eligible for appointment as the principal registrar only if the person is appropriately qualified.

(3) Also, a person may be appointed as the principal registrar only after consultation with the president.

(4) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to perform the functions of the principal registrar under this Act.

209 Role of chief executive

(1) The chief executive's functions include—

(a) managing the administrative support services relating to the tribunal; and

(b) appointing, under section 208, the principal registrar and registrars and other administrative staff of the

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registry to help the president to manage the tribunal's business.

(2) The chief executive may do all things necessary or convenient to be done for the performance of the chief executive's functions under subsection (1).

210 Principal registrar's functions and power to delegate

(1) The principal registrar has the functions conferred on the principal registrar under this Act or an enabling Act that is an Act.

(2) The principal registrar may delegate a function mentioned in subsection (1) to—

(a) a registry staff member; or

(b) a Magistrates Court staff member.

(3) However, the principal registrar may delegate a function under subsection (2) only to a person the principal registrar is satisfied is appropriately qualified to perform the function.

(4) Also, the principal registrar can not delegate a function delegated to the principal registrar by the president or deputy president under section 182.

(5) A person performing a function mentioned in subsection (1) is, in performing the function, subject to the direction of the president.

(6) A person performing a function mentioned in subsection (1) may do all things necessary or convenient to be done for the performance of the function.

(7) A function delegated to the clerk of a Magistrates Court under subsection (2)(b) is a duty of the clerk for the *Justices Act 1886*, section 23.

(8) In this section—

appropriately qualified, for a function, includes having the qualifications, experience or standing appropriate to perform the function.

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211 Registrar's functions

(1) A registrar may perform the functions of the principal registrar subject to the direction of the president and the principal registrar.

(2) The registrar may do all things necessary or convenient to be done for the performance of the registrar's functions.

212 Principal registrar must disclose interests

(1) This section applies if the principal registrar who is to perform a function under this Act in relation to a particular proceeding has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the function.

(2) The principal registrar must—

(a) disclose the nature of the interest to the president; and

(b) not take part in the proceeding or exercise powers in relation to it, unless all parties to the proceeding agree otherwise.

(3) In this section—

principal registrar includes—

(a) a registry staff member or Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2); and

(b) a registrar performing a function of the principal registrar under section 211(1).

proceeding includes a compulsory conference.

212A Associates to senior members

(1) The president may appoint a person nominated by a senior member as an associate to the member.

(2) An associate is to be paid the remuneration and allowances decided by the Governor in Council.

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(3) An associate holds office on the terms and conditions decided by the Governor in Council.

(4) An associate is appointed under this Act and not the *Public Sector Act 2022*.

Chapter 5 General

Part 1 Offences and contempt

213 Contravening decision

(1) A person must not, without reasonable excuse, contravene a decision of the tribunal.

Note—

See also section 218 (Contempt of tribunal).

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply if or to the extent that the decision is a monetary decision.

214 Offences by witnesses

(1) A person given a notice under section 97 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) A person appearing as a witness at a hearing of a proceeding must not—

(a) fail to take an oath when required by the tribunal; or

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(b) fail, without reasonable excuse, to answer a question the person is required to answer by the tribunal; or

(c) fail, without reasonable excuse, to produce a document or other thing the person is required to produce by a notice under section 97.

Maximum penalty—100 penalty units.

(3) It is a reasonable excuse for an individual to refuse to answer a question or produce a document or other thing if the answer or the production of the document or thing might tend to incriminate the person.

Note—

See also section 237(9) (Immunity of participants etc.).

215 Warrant may be issued if witness does not attend

(1) If the tribunal gives a person a notice under section 97 requiring the person to attend at a stated hearing of a proceeding and the person does not attend as required by the notice, the tribunal may—

(a) issue a warrant directed to a police officer to bring the person at the time, and to the place, stated in the warrant to give evidence at a proceeding before the tribunal; and

Note—

For particular police powers under a warrant, see the *Police Powers and Responsibilities Act 2000*, sections 21 (General power to enter to arrest or detain someone or enforce warrant) and 615 (Power to use force against individuals).

(b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.

(2) A warrant issued under subsection (1) is sufficient authority for a police officer to execute it according to its terms.

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216 False or misleading information

(1) A person must not state to an official anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

(a) tells the official, 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.

(4) In this section—

official—

(a) includes—

(i) a registry staff member; and

(ii) a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2); and

(b) does not include a conciliator or mediator.

217 Influencing participants

A person must not improperly influence, or attempt to improperly influence, a person in relation to the person's participation in a proceeding, whether as a member, adjudicator, a party or a witness, to act other than in the course of the person's duty in relation to the proceeding.

Maximum penalty—100 penalty units.

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218 Contempt of tribunal

(1) The circumstances in which a person may be in contempt of the tribunal include if the person—

(a) insults an official while the official is—

(i) sitting on or with the tribunal in a proceeding; or

(ii) attending a proceeding; or

(iii) entering or leaving the place where the tribunal is sitting; or

(b) obstructs or assaults a person attending a proceeding, compulsory conference, conciliation or mediation; or

(c) obstructs or hinders a person from complying with a decision of the tribunal, or a notice given by the tribunal or the principal registrar under section 97; or

Editor's note—

Section 97 (Requiring witness to attend or produce document or thing)

(d) unreasonably interrupts a proceeding, compulsory conference, conciliation or mediation, or otherwise misbehaves at a proceeding, compulsory conference, conciliation or mediation; or

(e) creates or continues, or joins in creating or continuing, a disturbance in or near a place where the tribunal is sitting; or

(f) contravenes an undertaking the person has given to the tribunal; or

(g) commits an offence against this part.

Note—

See also section 222 (Court's powers relating to person contravening non-publication order).

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

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(3) In this section—

official means—

(a) a member; or

(b) an adjudicator; or

(c) an assessor; or

(d) the principal registrar; or

(e) a registrar; or

(f) a registry staff member; or

(g) a Magistrates Court staff member.

219 Punishment of contempt

(1) The tribunal has, for itself, all the protection, powers, jurisdiction and authority the Supreme Court has, for that court, in relation to contempt.

(2) The tribunal must comply with the *Uniform Civil Procedure Rules 1999* relating to contempt, with necessary changes, including changes prescribed under the rules.

(3) The principal registrar may apply to the tribunal for an order that a person be committed to prison for contempt of the tribunal.

(4) The tribunal's jurisdiction and powers to punish a contempt of the tribunal may be exercised on the application of a person or on its own initiative.

(5) The tribunal's jurisdiction and powers to punish a contempt of the tribunal may be exercised only by a judicial member.

(6) If contempt is committed in the face of the tribunal and the tribunal is not constituted by a judicial member, the presiding member of the tribunal may certify the contempt in writing to the president.

(7) For subsection (6), it is enough for the presiding member to be satisfied there is evidence of contempt.

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(8) The tribunal has jurisdiction to punish an act or omission as a contempt of the tribunal even though a penalty is prescribed for the act or omission.

220 Tribunal may exclude person

(1) The tribunal may make an order—

(a) excluding a disruptive person from the place the tribunal is sitting; and

(b) authorising 1 or more prescribed persons to remove a disruptive person from the place the tribunal is sitting.

(2) If the tribunal makes an order under subsection (1), the order is taken to be an authorising law for the purposes of the *Police Powers and Responsibilities Act 2000*, section 16.

Note—

The *Police Powers and Responsibilities Act 2000*, section 16 provides for a police officer, if a public official asks, to help the public official perform the public official's functions under an authorising law.

(3) If the tribunal makes an order under subsection (1)(b), it is lawful for the prescribed persons, and any person helping the prescribed persons, to remove the disruptive person from the place the tribunal is sitting, using necessary and reasonable force for the purpose.

(4) In this section—

prescribed person means—

(a) the principal registrar; or

(b) a registrar; or

(c) a registry staff member; or

(d) a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2).

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221 Person not to be punished twice for same conduct

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

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

222 Court's powers relating to person contravening non-publication order

(1) This section applies if—

(a) the tribunal makes a non-publication order prohibiting or restricting the publication or disclosure of a matter; and

(b) a court is hearing—

(i) a prosecution for an offence against section 213 or an enabling Act relating to a contravention of the order; or

(ii) an appeal about a prosecution for an offence against section 213 or an enabling Act relating to a contravention of the order; and

(c) the court considers that, in the circumstances, the court should prohibit or restrict the publication or disclosure of the matter.

(2) The court may make an order prohibiting or restricting the publication or disclosure of the matter.

(3) A contravention of an order made under subsection (2) is contempt of the court.

(4) In this section—

matter includes—

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(a) a document or other thing; and

(b) a part of, or the contents of, a document or other thing; and

(c) evidence; and

(d) information.

Part 2 Rules committee, rules and practice directions

223 The rules committee

(1) The president must establish a rules committee consisting of the following members—

(a) the president;

(b) the deputy president;

(c) a senior member or ordinary member who is appointed on a full-time basis;

(d) a member who is not an Australian lawyer;

(e) other members or adjudicators the president considers appropriate.

(2) The president is the chairperson of the rules committee.

(3) The functions of the rules committee include—

(a) developing and reviewing the rules under this Act; and

(b) approving forms for use under this Act; and

(c) the other functions conferred on the rules committee under this Act or an enabling Act that is an Act.

(4) The rules committee may conduct its business and proceedings at meetings in the way it decides.

(5) However, the chairperson has a deliberative vote and, in the event of an equality of votes, a casting vote.

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224 Rule-making power

(1) The Governor in Council may make rules under this Act for—

(a) the practices and procedures of the tribunal or its registry, including practices and procedures for jurisdiction conferred on the tribunal by an enabling Act; or

(b) a matter mentioned in schedule 2.

(2) A rule may only be made with the consent of the rules committee.

Note—

See, however, section 277 (Initial rules).

(3) The rules may provide that a person is disqualified from being a representative of a party to a proceeding if the person has been—

(a) the subject of a stated disciplinary proceeding under an Act, a law of the Commonwealth or another State, or the rules of a professional or occupational association or other body; and

(b) found guilty in the proceeding of a stated type of professional misconduct (however called) or a breach of another stated professional or occupational standard.

225 Rules are exempt from automatic expiry

The *Statutory Instruments Act 1992*, part 7 does not apply to the rules.

Editor's note—

Statutory Instruments Act 1992, part 7 (Staged automatic expiry of subordinate legislation)

226 Practice directions

(1) The president may make practice directions for the tribunal about the practices and procedures of the tribunal not

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provided for, or not sufficiently provided for, in this Act, an enabling Act or the rules.

(2) A practice direction must not be inconsistent with this Act, an enabling Act or the rules.

(3) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

(4) In this section—

enabling Act means an enabling Act that is an Act.

Part 3 Miscellaneous provisions

Division 1 Operation of tribunal

227 Arrangements with ombudsman

(1) The tribunal may enter into an arrangement with the ombudsman providing for—

(a) the applications or referrals under this Act that the tribunal should refer to the ombudsman because they—

(i) relate to administrative actions; and

(ii) would be more appropriately dealt with by the ombudsman under the *Ombudsman Act 2001*; or

(b) the complaints under the *Ombudsman Act 2001* that the ombudsman should refer to the tribunal because they—

(i) relate to decisions or other actions for which the tribunal has jurisdiction; and

(ii) would be more appropriately dealt with by the tribunal under this Act; or

(c) how to deal with an administrative action that is the subject of a complaint, preliminary inquiry or investigation under the *Ombudsman Act 2001* and an application or referral under this Act; or

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(d) the cooperative performance by the tribunal and the ombudsman of their respective functions relating to administrative actions.

(2) If an arrangement entered into under subsection (1) provides for referrals as mentioned in subsection (1)(a) or (b), the arrangement must also provide for how the referral is to be made.

(3) The tribunal and the ombudsman are empowered to perform their functions in accordance with any relevant arrangement entered into under this section.

(4) In this section—

administrative action has the meaning given by the *Ombudsman Act 2001*, section 7.

228 Oath of office

(1) This section applies to a person who, under this Act, holds any of the following offices or who is appointed to act in any of the following offices—

(a) president;

(b) deputy president;

(c) senior member;

(d) ordinary member, other than the office of an ordinary member held by a magistrate under section 171(2);

(e) supplementary member;

(f) adjudicator.

(2) Before the person performs any function of the office, the person must take or make the oath prescribed under a regulation before the following person—

(a) for a person appointed as president, deputy president or a supplementary member, or to act in the office of the president or deputy president—the Chief Justice;

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(b) for a person appointed as a senior member, ordinary member or adjudicator, or to act in the office of a senior member, ordinary member or an adjudicator—

(i) if the person is an Australian lawyer—the Chief Justice or, if the Chief Justice nominates the president to hear the oath, the president or deputy president; or

(ii) otherwise—the president or deputy president.

229 Register of proceedings

(1) The principal registrar must keep a register of proceedings (the ***register***) containing the matters stated in the rules.

(2) The principal registrar must ensure the register is available for inspection by the public at the main office of the registry during office hours on business days.

(3) A party to a proceeding may inspect the part of the register relating to the proceeding without charge.

(4) Another person may, on payment of the prescribed fee (if any)—

(a) inspect the register; or

(b) obtain a copy of a part of the register.

(5) This section does not authorise, entitle or permit a person to access a part of the register containing anything whose publication or disclosure to the person is prohibited by a non-publication order.

230 Record for proceeding

(1) The principal registrar must, for each proceeding, keep a record containing all documents filed in the registry for the proceeding.

(2) A party to a proceeding may, without charge, inspect the record kept for the proceeding under subsection (1).

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(3) Another person may, on payment of the prescribed fee (if any)—

(a) inspect a record kept under subsection (1); or

(b) obtain a copy of a part of a record kept under subsection (1).

(4) This section does not authorise, entitle or permit a person to access a part of a record containing anything whose publication or disclosure to the person is prohibited under a non-publication order.

231 Trust account

(1) The tribunal must maintain a trust account to receive and hold amounts ordered by the tribunal to be paid to the trust account for a proceeding.

(2) The tribunal must pay amounts from the trust account as ordered by the tribunal.

(3) Interest on the trust account is to be applied to the cost of keeping the account and administering the tribunal.

232 Annual report

(1) As soon as practicable after each financial year, but not later than 30 September, the president must give the Minister a report containing—

(a) a review of the operation of the tribunal during the preceding financial year; and

(b) details of the number, nature and outcome of matters that came before the tribunal during the preceding financial year; and

(c) details of the number and nature of matters before the tribunal that were outstanding at the end of the preceding financial year; and

(d) details of any trends or special problems that emerged during the preceding financial year; and

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(e) forecasts of the workload of the tribunal in the present financial year; and

(f) proposals for improving the operation of the tribunal in the present financial year; and

(g) proposals for improving the quality of decision-making across government.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Division 2 Confidentiality

233 Confidentiality generally

(1) This section applies to a prescribed person who has, in the course of administering this Act or because of an opportunity provided by involvement in administering this Act—

(a) acquired information about someone else; or

(b) gained access to a document about someone else.

(2) The prescribed person must not do either of the following—

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else.

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

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document, about a person—

(a) with the person's consent; or

(b) in connection with the performance of a function under this Act or an enabling Act; or

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(c) to a police officer for reporting a suspected offence or assisting in the investigation of a suspected offence, if the president consents to the disclosure or giving of access; or

(d) if the disclosure or access is necessary to prevent or, minimise the risk of, harm to a child or injury to a person; or

(e) to a person approved by the Minister if the disclosure or giving of access is of statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates; or

(f) as required or authorised under an Act or law.

(4) Also, subsection (2) does not apply to the disclosure of information, or the giving of access to a document, about a person if the information disclosed or accessed is only—

(a) something that was said or otherwise disclosed at a hearing of a proceeding that was held in public; or

(b) a decision, or reasons for the decision, of the tribunal.

(5) In this section—

prescribed person means a person who is or has been involved in the administration of this Act, including a person who is or has been any of the following—

(a) an official;

(b) a registry staff member;

(c) a person acting under the authority or direction of the tribunal or the chief executive;

(d) a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2).

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234 Further limitation on disclosure to a court etc.

(1) A court can not compel a prescribed person to do either of the following other than for the purpose of administering this Act or an enabling Act—

(a) produce to the court a document that—

(i) has come into the prescribed person's possession in the course of administering this Act or because of an opportunity provided by involvement in administering this Act; and

(ii) is or contains a protected item;

(b) disclose to the court information that—

(i) has come to the person's knowledge in the course of administering this Act or because of an opportunity provided by involvement in administering this Act; and

(ii) is or is a part of a protected item.

(2) In this section—

court includes a tribunal and any other entity that has the power to require a prescribed person to produce a document or answer a question.

prescribed person means a person who is or has been involved in the administration of this Act, including a person who is or has been any of the following—

(a) an official;

(b) a registry staff member;

(c) a person acting under the authority or direction of the tribunal or chief executive;

(d) a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2).

protected item means—

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(a) information, evidence, or a document or other thing obtained by the tribunal in a proceeding that was held in private; or

(b) something the subject of a non-publication order, if the production or disclosure of the thing to the court would contravene the order.

Division 3 Evidentiary provisions

235 Appointment and authority

(1) For a proceeding under an Act, the following must be presumed unless a party to the proceeding, by prescribed notice, requires proof of it—

(a) the appointment of an official;

(b) the authority of an official to do anything under this Act.

(2) In this section—

prescribed notice, for a proceeding under an Act, means notice at least 14 days before the day a court starts to hear the proceeding.

236 Signatures and documents

(1) A signature purporting to be the signature of an official is evidence of the signature it purports to be.

(2) A certificate purporting to be signed by the principal registrar stating either of the following is, on its production in any criminal, civil or other proceeding, evidence of the matter—

(a) that a stated document is a decision, or a copy of a decision, of the tribunal;

(b) that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act.

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Division 4 Protection from liability

237 Immunity of participants etc.

(1) A member has, in the performance of the member's functions as a member, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(2) An adjudicator has, in the performance of the adjudicator's functions as an adjudicator, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(3) A conciliator or mediator has, in the performance of the conciliator's or mediator's functions as a conciliator or mediator, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(4) A person who on behalf of the tribunal takes evidence under section 96 has, in taking the evidence, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(5) An assessor, in the performance of the assessor's functions as an assessor under this Act or an enabling Act, has the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions.

(6) The principal registrar has, in the performance of the following functions, the same protection and immunity as a Supreme Court judge has in the performance of a judge's functions—

(a) a function of the tribunal permitted to be performed by the principal registrar by this Act or an enabling Act that is an Act;

(b) a function under chapter 2, part 6, division 2.

(7) A person representing a party in a proceeding has the same protection and immunity as a legal practitioner appearing for a party in a proceeding before the Supreme Court.

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(8) A party to a proceeding has the same protection and immunity as a party to a proceeding before the Supreme Court.

(9) A person appearing before the tribunal as a witness has the same protection and immunity as a witness in a proceeding before the Supreme Court.

(10) A document produced at, or used for, a hearing before the tribunal has the same protection as a document produced at, or used for, a hearing before the Supreme Court.

(11) In this section—

assessor includes a person appointed by the tribunal to assess costs under the rules.

function, of an officer or other person on whom protection and immunity is conferred under subsection (1) to (6), includes an administrative function conferred on the officer or other person under an Act.

principal registrar includes—

(a) a registry staff member or Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2); and

(b) a registrar performing a function of the principal registrar under section 211(1).

238 Protection from civil liability

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act or an enabling Act.

(2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.

(3) This section is subject to section 237 to the extent it relates to the civil liability of the principal registrar or a registrar.

(4) In this section—

official means—

(a) the chief executive; or

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(b) the principal registrar, a registrar or a registry staff member; or

(c) a person acting under the authority or direction of the tribunal or chief executive; or

(d) a Magistrates Court staff member performing a function of the principal registrar delegated to the member under section 210(2).

Division 5 Other provisions

239 Contracting out prohibited

(1) A contract or agreement is void to the extent to which it—

(a) is contrary to this Act; or

(b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.

(2) Subsection (1) does not apply to an agreement that a dispute be referred to arbitration if the agreement is entered into after the dispute arises.

(3) Nothing in this section prevents the parties to a contract or agreement from including in the contract or agreement provisions that impose greater or more onerous obligations on an entity than are imposed under this Act.

(4) This section applies to contracts or agreements entered into before or after the commencement of this Act.

240 Review of Act

(1) The Minister must review this Act—

(a) within 3 years after the commencement of this section; and

(b) at further intervals of 5 years.

(2) The objects of the review include—

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(a) deciding whether the objects of this Act remain valid; and

(b) deciding whether this Act is meeting its objects; and

(c) deciding whether the provisions of this Act are appropriate for meeting its objects; and

(d) investigating any specific issue recommended by the Minister or the president, including, for example, whether any provision of an enabling Act affects the effective operation of the tribunal.

(3) The Minister must, as soon as practicable after finishing a review under subsection (1), table a report about the outcome of the review in the Legislative Assembly.

241 Approved forms

The rules committee may approve forms for use under this Act.

242 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation made under this Act may—

(a) prescribe fees payable under this Act; or

(b) provide for the form of an oath and how it is to be administered.

Chapter 6 Repeal provision

243 Repeals

The following Acts are repealed—

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- the Children Services Tribunal Act 2000, No. 59
- the Commercial and Consumer Tribunal Act 2003, No. 30
- the Misconduct Tribunals Act 1997, No. 59
- the Small Claims Tribunals Act 1973, No. 23.

Chapter 7 Transitional provisions for Act No. 23 of 2009

Part 1 Preliminary

244 Definitions for ch 7

In this chapter—

commencement means the commencement of this section.

continuing entity means—

(a) a court; or

(b) a Minister administering an enabling Act; or

(c) the Queensland Gaming Commission under the *Gaming Machine Act 1991*.

decision, of a former tribunal or court, includes an order made or direction given by the former tribunal or court.

decision, of QCAT, does not include a decision made in an appeal under chapter 2, part 8.

Note—

See also schedule 3, definition *decision* in relation to the tribunal.

enabling Act means an Act or subordinate legislation that is an enabling Act at the commencement.

existing court proceeding means a proceeding that—

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(a) was started in a court under a former Act before the commencement; and

(b) at the commencement, has not been withdrawn, or dismissed, struck out or otherwise disposed of by the court; and

(c) relates to a QCAT matter.

existing proceeding means—

(a) an existing court proceeding; or

(b) an existing tribunal proceeding.

existing tribunal proceeding means a proceeding that—

(a) was started before a former tribunal under a former Act before the commencement; and

(b) at the commencement, has not been withdrawn, dismissed, struck out or otherwise disposed of under the former Act.

final decision, of a former tribunal or a court in a proceeding, means the former tribunal's or court's decision that finally decides the matters the subject of the proceeding.

Note—

Final decision, of the tribunal in a proceeding, is defined in schedule 3.

former Act means any of the following Acts, as in force before the commencement—

(a) the repealed *Children Services Tribunal Act 2000*;

(b) the repealed *Commercial and Consumer Tribunal Act 2003*;

(c) the repealed *Misconduct Tribunals Act 1997*;

(d) the repealed *Small Claims Tribunals Act 1973*;

(e) an enabling Act.

former entity, for part 4, see section 270.

former tribunal means an entity mentioned in schedule 1.

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member, of a former tribunal, includes a person who under a former Act may constitute the former tribunal for matters, even though the person is not called a member.

Example—

a referee under the repealed *Small Claims Tribunals Act 1973*

pending proceeding see section 245.

proceeding includes—

(a) an action before a former tribunal or continuing entity without an application or referral being made; and

(b) a process under a former Act for the consideration of a matter, including, for example, a review of a decision, by a former tribunal or continuing entity.

QCAT means the tribunal.

QCAT Amendment Act means the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

QCAT matter means a matter for which this Act or an enabling Act confers jurisdiction on QCAT at the commencement.

245 What is a *pending proceeding*

An existing proceeding in a court or former tribunal is a ***pending proceeding*** if, at the commencement, the court or former tribunal—

(a) has not started to hear a matter the subject of the proceeding; or

(b) has started to hear a matter the subject of the proceeding but has not started to consider evidence for the purpose of making its final decision in the proceeding.

246 Acts Interpretation Act 1954, s 20 not limited

Subject to sections 255(7) and 267(7), this chapter does not limit the *Acts Interpretation Act 1954*, section 20.

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Part 2 Transitional provisions about former tribunals

Division 1 Abolition and related matters

247 Abolition of former tribunals

(1) At the commencement—

(a) each former tribunal is abolished; and

(b) the members of the former tribunal stop being members of the former tribunal.

Note—

Particular members of particular former tribunals become ordinary members of QCAT under section 263 for 2 years.

(2) Subsection (1) does not affect the member's appointment in any other office.

248 QCAT is legal successor

(1) QCAT is the successor in law of each former tribunal.

(2) Subsection (1) is not limited by another provision of this division.

249 Assets and liabilities etc. of a former tribunal

(1) At the commencement—

(a) the assets and liabilities of a former tribunal immediately before the commencement become assets and liabilities of QCAT; and

(b) any contracts, undertakings or other arrangements to which a former tribunal is a party, in force immediately before the commencement—

(i) are taken to have been entered into by QCAT; and

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(ii) may be enforced against or by QCAT; and

(c) any property that, immediately before the commencement, was held on trust or subject to a condition, by a former tribunal continues to be held on the same trust, or subject to the same condition, by QCAT.

(2) The registrar of titles or other person responsible for keeping a register for dealings in property must, if asked by QCAT, record the vesting of property under this section in QCAT.

250 Proceeding not yet started by or against a former tribunal

(1) This section applies if, immediately before the commencement, a proceeding could have been started by or against a former tribunal within a particular period (the ***prescribed period***).

(2) The proceeding may be started by or against QCAT within the prescribed period.

(3) In this section—

proceeding includes a proceeding under section 264.

251 Proceeding to which a former tribunal was a party

(1) This section applies to a proceeding that, immediately before the commencement, had not ended and to which a former tribunal was a party.

(2) At the commencement, QCAT becomes a party to the proceeding in place of the former tribunal.

(3) In this section—

proceeding includes a proceeding under section 264.

252 Existing final decisions of a former tribunal

(1) A final decision of a former tribunal in a proceeding made before the commencement—

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(a) is taken to be a final decision of QCAT; and

(b) this Act, and any relevant enabling Act, applies to the decision as if it were a final decision of QCAT.

Note—

Section 271 provides for decisions of former tribunals made in relation to a matter that has not been heard and decided at the commencement.

(2) However, subsection (1)(b) does not authorise QCAT to deal with a final decision of the former tribunal in a way that is inconsistent with the former Act under which the decision was made.

(3) If, under a former Act, a person has applied to a former tribunal to deal with a final decision of the former tribunal and the application has not been heard at the commencement—

(a) the application is taken to be an application made to QCAT under this Act; and

(b) in hearing the application, QCAT has, and only has, the functions of the former tribunal under the former Act.

(4) Without limiting subsection (1), (2) or (3), a reference in an Act to a final decision of QCAT is taken to include a reference to a final decision of a former tribunal taken to be a final decision of QCAT under subsection (1).

(5) In this section—

deal with, a final decision, includes—

(a) amend or correct the decision; and

(b) revoke the decision.

253 Records of former tribunals

All records of a former tribunal are records of QCAT under this Act.

254 References to former tribunals etc.

(1) In an Act or document—

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(a) a reference to a former tribunal is taken, if the context permits, to be a reference to QCAT; and

(b) a reference to a former president is taken, if the context permits, to be a reference to the president; and

(c) a reference to a former member is taken, if the context permits, to be a reference to a member of QCAT; and

(d) a reference to a former registrar is taken, if the context permits, to be a reference to the principal registrar; and

(e) a reference to a former registry is taken, if the context permits, to be a reference to the registry; and

(f) a reference to a referee under the repealed *Small Claims Tribunals Act 1973* is taken, if the context permits, to be a reference to QCAT as constituted under this Act.

(2) In this section—

former member means a member of a former tribunal under a former Act.

former president means a former member who has functions similar to the president's functions under this Act, whether the person's office is called president, chairperson, senior member or something else.

former registrar means a person appointed under a former Act to carry out functions similar to the principal registrar or a registrar under this Act, whether the person's office is called registrar, director or something else.

former registry means a registry for a former tribunal under a former Act.

Division 2 Proceeding not yet started before former tribunal

255 QCAT may deal with proceeding

(1) This section applies if—

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(a) immediately before the commencement, a person could have started a proceeding for a matter before a former tribunal within a particular period (the ***prescribed period***); and

(b) at the commencement, the person has not started the proceeding.

(2) QCAT has jurisdiction to deal with the matter under this Act.

(3) A proceeding for the matter may be started under this Act—

(a) within the prescribed period; and

(b) in the way the proceeding could be started if the matter had arisen after the commencement.

(4) If a proceeding for the matter is started under this Act, QCAT must deal with the matter under this Act and has, and only has, functions under this Act or an enabling Act in relation to the matter.

(5) If the matter is an appeal against a decision that could have been started as mentioned in subsection (1)(a), the decision that could have been appealed against is a reviewable decision for applying this Act to the proceeding under subsections (3) and (4).

(6) This section does not apply to an examination under the *Small Claims Tribunals Act 1973*, section 23A.

(7) Subsections (4) and (6) apply despite the *Acts Interpretation Act 1954*, section 20.

Division 3 Proceeding started before former tribunal

256 Pending proceeding

(1) This section applies to an existing tribunal proceeding that is a pending proceeding.

(2) At the commencement, the proceeding is taken to be a proceeding before QCAT.

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(3) QCAT has jurisdiction to deal with the matter the subject of the proceeding under this Act.

Note—

See part 4 for how QCAT is to conduct the proceeding.

257 Other proceeding

(1) This section applies to an existing tribunal proceeding that is not a pending proceeding.

(2) At the commencement, the proceeding is taken to be a proceeding before QCAT.

(3) QCAT has jurisdiction to deal with the matter the subject of the proceeding under this Act.

(4) QCAT must be constituted by the persons who constituted the former tribunal immediately before the commencement and, for that purpose, any of the persons who are not members of QCAT (or have not become members under section 263) are taken to be members of QCAT for the duration of the proceeding.

(5) A person taken to be a member of QCAT under subsection (4) is entitled to be paid the remuneration and allowances the person was entitled to under the former Act under which the former tribunal was constituted for the duration of the proceeding.

(6) If, for any reason, a person who constituted the former tribunal is unable to perform functions in the proceeding, the president must reconstitute QCAT by replacing the person with another member.

Example of when a person may be unable to perform functions in the proceeding—

if the person is ill or otherwise becomes unavailable

(7) Chapter 2, part 8 does not apply to a decision of QCAT in the proceeding, including a decision of the former tribunal taken to be a decision of QCAT in the proceeding under section 271(4).

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(8) However, a person may appeal to a court against the decision if, under the former Act, the person could have appealed to the court against the decision if it had been made by the former tribunal.

(9) An appeal under subsection (8) must be made within the period and in the way the appeal was required to be made under the former Act.

Division 4 Appeal against decision of a former tribunal

258 Appeal yet to be started

(1) This section applies if—

(a) immediately before the commencement, a person could, under a former Act, have appealed to a court against a decision of a former tribunal within a particular period (the ***appeal period***); and

(b) at the commencement, the person has not started the appeal.

(2) The person may, within the appeal period, appeal to the court against the decision, and the court must hear and decide the appeal, under the former Act as if it were still in force.

259 Appeal started

(1) This section applies if, before the commencement, a person has, under a former Act, appealed to a court against a decision of a former tribunal and the appeal has not been finally dealt with at the commencement.

(2) The court must hear, or continue to hear, and decide the appeal under the former Act as if it were still in force.

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260 Effect of court's decision in appeal

(1) This section applies to an appeal to which section 258 or 259 applies.

(2) The court's decision in the appeal must be dealt with in the way the court's decision would have been dealt with under the former Act if it were still in force.

(3) If the court's decision in the appeal is to remit the matter to the former tribunal, with or without directions—

(a) the court must remit the matter to QCAT; and

(b) QCAT must deal with the matter under the former Act as if it were still in force.

(4) For subsection (3)—

(a) QCAT has, and only has, the functions of the former tribunal; and

(b) QCAT can, and can only, make a decision the former tribunal could have made in relation to the matter under the former Act.

(5) For subsections (2) to (4), the former Act, and other relevant laws, continue to have effect as if they were still in force.

Division 5 Other matters

261 Particular request of former Children Services Tribunal

(1) Subsection (2) applies if—

(a) the president under the repealed *Children Services Tribunal Act 2000* has made a request under section 128 of that Act; and

(b) the period for complying with the request has not passed at the commencement.

(2) At the commencement, the request is taken to be a request made by QCAT under the *Child Protection Act 1999*,

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section 99ZI and that Act applies in relation to the request as if it were a request made by QCAT under that section.

Editor's note—

Child Protection Act 1999, section 99ZI (Requests to chief executive)

(3) Subsection (4) applies if—

(a) the president under the repealed *Children Services Tribunal Act 2000* has received a response from the chief executive of a government entity given under section 128 of that Act; and

(b) at the commencement, the president has not dealt with the response under that Act.

(4) QCAT may deal with the response under the *Child Protection Act 1999* as if the response had been given to a request made by QCAT under section 99ZI of that Act in relation to a decision of QCAT.

262 Annual reports for former tribunals

(1) As soon as practicable after the start of the financial year in which commencement happens, but not later than the following 30 September, the president must give the Minister the following—

(a) a report for the former Children Services Tribunal containing the matters mentioned in the repealed *Children Services Tribunal Act 2000*, section 146(2) as in force immediately before the commencement;

(b) a report for the former Consumer and Commercial Tribunal containing the matters mentioned in the repealed *Commercial and Consumer Tribunal Act 2003*, section 145(1) as in force immediately before the commencement;

(c) a report for the former Guardianship and Administration Tribunal containing the matters mentioned in the *Guardianship and Administration Act 2000*, section 98(1) as in force immediately before the commencement;

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(d) a report for a former misconduct tribunal containing the matters mentioned in the repealed *Misconduct Tribunals Act 1997*, section 39(1) as in force immediately before the commencement;

(e) a report for the former Racing Appeals Tribunal containing the matters mentioned in the *Racing Act 2002*, section 192(1) as in force immediately before the commencement.

(2) The Minister must table a copy of each report in the Legislative Assembly within 14 sitting days after receiving the report.

263 Transferring membership of particular members

(1) At the commencement, each person who, immediately before the commencement, was a sessional member becomes an ordinary member of QCAT.

(2) Subsection (1) applies only if the person consents to becoming an ordinary member of QCAT by giving written notice of the consent to the Minister.

(3) The person holds the appointment as an ordinary member—

(a) for 2 years after the commencement; and

(b) subject to this Act and the conditions decided by the Governor in Council.

(4) The Minister must, as soon as practicable after the commencement, give the person a written notice stating the conditions decided by the Governor in Council.

(5) Subsection (1) does not apply if, immediately after the commencement, the person is appointed as a member or adjudicator.

(6) Also, the person ceases to hold the appointment under subsection (1) if the person is appointed as a member or adjudicator.

(7) In this section—

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former tribunal does not include the following—

(a) an appeal tribunal formed under the *Local Government Act 1993*, section 942, as in force before the commencement;

(b) the Health Practitioners Tribunal established under the *Health Practitioners (Professional Standards) Act 1999*, section 26, as in force before the commencement;

(c) the Legal Practice Tribunal continued in existence under the *Legal Profession Act 2007*, section 599, as in force before the commencement;

(d) the Nursing Tribunal as continued under the *Nursing Act 1992*, section 84, as in force before the commencement;

(e) a small claims tribunal constituted under the repealed *Small Claims Tribunals Act 1973*, section 11;

(f) a surveyors disciplinary committee established under the *Surveyors Act 2003*, section 94, as in force before the commencement;

(g) a committee appointed under the *Valuers Registration Act 1992*, section 50, as in force before the commencement.

sessional member means—

(a) a member of a former tribunal other than a member appointed as a member on a full-time basis; or

(b) the independent assessor under the *Prostitution Act 1999*, as in force before the commencement.

264 Particular offences continue

(1) This section applies if—

(a) under a provision of an Act, as in force before the commencement (***relevant Act***), a person who did or omitted to do an act in relation to a former tribunal, or something required to be done, or done, by a former tribunal, committed an offence; and

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(b) the provision is—

(i) amended by the QCAT Amendment Act so that it no longer applies in relation to the former tribunal, or something required to be done, or done, by the former tribunal; or

(ii) repealed by this Act or the QCAT Amendment Act.

(2) A proceeding for the offence may be continued or started, and the provisions of the relevant Act that are necessary or convenient to be used in relation to the proceeding continue to apply, as if the QCAT Amendment Act and this Act had not commenced.

(3) For subsection (2), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

(4) Subsection (2) applies despite the Criminal Code, section 11.

265 Confidentiality

(1) Each confidentiality provision continues to apply, and a contravention of a confidentiality provision may be prosecuted, despite the repeal of the provision by this Act.

(2) Subsection (1) applies to a contravention of a confidentiality provision whether it happened before or after the commencement.

(3) In this section—

confidentiality provision means—

(a) the repealed *Children Services Tribunal Act 2000*, section 76(7), 88 or 142, as in force before the commencement; or

(b) the repealed *Commercial and Consumer Tribunal Act 2003*, section 120, as in force before the commencement; or

(c) the repealed *Misconduct Tribunals Act 1997*, section 44, as in force before the commencement.

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266 Particular penalties payable to particular entities

The repealed *Commercial and Consumer Tribunal Act 2003*, section 148, as in force before the commencement, continues to have effect in relation to penalties to which the section applied that are recovered after the commencement as if that Act had not been repealed.

Part 3 Transitional provisions about continuing entities

267 Proceeding not yet started

(1) This section applies if—

(a) immediately before the commencement, a person could, under an enabling Act or another Act as in force before the commencement, have started a proceeding before a continuing entity for a QCAT matter within a particular period (the ***prescribed period***); and

(b) at the commencement, the person has not started the proceeding.

(2) QCAT has jurisdiction to deal with the matter under this Act.

(3) A proceeding before the continuing entity for the matter can not be started after the commencement unless, under an enabling Act or another Act, the continuing entity has jurisdiction to deal with the matter after the commencement.

(4) However, a proceeding for the matter may be started before QCAT under this Act—

(a) within the prescribed period; and

(b) in the way the proceeding could be started if the matter arose after the commencement.

(5) If a proceeding for the matter is started before QCAT, QCAT must deal with the matter under this Act and has, and only has, functions under this Act or an enabling Act in relation to the matter.

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(6) If the matter is an appeal against a decision that could have been started as mentioned in subsection (1)(a), the decision that could have been appealed against is a reviewable decision for applying this Act to the proceeding under subsections (4) and (5).

(7) This section applies despite the *Acts Interpretation Act 1954*, section 20.

268 Proceeding started

(1) This section applies if, before the commencement, a person has, under an enabling Act or another Act as in force before the commencement (the ***former Act***), started a proceeding before a continuing entity for a QCAT matter.

(2) The continuing entity must hear, or continue to hear, and decide the matter under the former Act, and the former Act and other relevant laws apply as if the QCAT Amendment Act had not been enacted.

(3) The continuing entity's decision in the proceeding has effect, or must be given effect, in the way the continuing entity's decision would have had effect, or been given effect, under the former Act if the QCAT Amendment Act had not been enacted.

(4) However, for a proceeding before a court, if the proceeding is a pending proceeding and the court decides it would be practicable for QCAT to hear and decide the matter, the court may, by order, transfer the proceeding to QCAT.

(5) If a court transfers the proceeding to QCAT under subsection (4)—

(a) the proceeding is taken to have been started before QCAT; and

(b) the court may make the orders and give the directions it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under this Act, an enabling Act or the rules for starting a proceeding before QCAT.

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Note—

See part 4 for how QCAT is to conduct the proceeding.

(6) An order under subsection (5)(b) has effect despite any provision of this Act, an enabling Act or the rules.

(7) Subject to subsection (8), the continuing entity's final decision in the proceeding has effect under this Act, and any relevant enabling Act, as if it were a final decision of QCAT.

(8) Chapter 2, part 8 does not apply to a final decision of the continuing entity taken to be a decision of QCAT under subsection (7).

(9) However, a person may appeal to a court against the final decision if, under the former Act, the person could have appealed to the court against the decision if it had been made by the continuing entity.

(10) An appeal under subsection (9) must be made within the period and in the way the appeal was required to be made under the former Act.

Part 4 Conducting proceeding from former tribunal or continuing entity

269 Application of pt 4

This part applies in relation to—

(a) an existing tribunal proceeding taken under part 2, division 3, to be a proceeding before QCAT; and

(b) an existing court proceeding transferred to QCAT under section 268(4).

270 Definition for pt 4

In this part—

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former entity, for a proceeding in relation to which this part applies, means the former tribunal or the court the proceeding was before immediately before the commencement.

271 Conduct of proceeding generally

(1) QCAT must deal with the matter the subject of the existing proceeding under this Act or an enabling Act.

(2) However, in relation to the matter—

(a) QCAT has, and only has, the functions that the former entity had in relation to the matter under the former Act; and

(b) QCAT can, and can only, make a decision the former entity could have made in relation to the matter under the former Act.

(3) If the matter is an appeal against a decision, the decision appealed against is a reviewable decision for applying this Act to the proceeding under this section.

(4) Anything done or existing in relation to the existing proceeding continues and is taken to be done or existing in relation to the proceeding under this Act.

(5) Without limiting subsection (4), a prescribed interim decision of a former entity is taken to be a decision of QCAT and may be enforced—

(a) under chapter 2, part 7, division 4 as if it were a final decision mentioned in that division; or

(b) if the former Act under which the prescribed interim decision was made provides for enforcing the decision in a different way—in the way the decision was enforceable under the former Act.

Note—

Section 252 provides for final decisions of former tribunals.

(6) Also, without limiting subsection (4) and subject to any further decision by QCAT—

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(a) a notice given by the former entity to attend at a stated hearing of the proceeding is taken to be a notice given by QCAT under section 97(1)(a) to attend at a hearing at the same time and place before QCAT; and

(b) a notice given by the former entity to produce a stated document or other thing to the entity is taken to be a notice given by QCAT under section 97(1)(b) to produce the document or thing to QCAT.

Notes—

1 See section 97(3) and (4) for fees and allowances payable to a person who attends a hearing in compliance with a notice under section 97(1)(a).

2 See sections 214 and 215 for consequences of failing to comply with a notice under section 97.

(7) Further, without limiting subsection (4), a warrant issued under the repealed *Commercial and Consumer Tribunal Act 2003*, section 79 that has not been executed at the commencement continues to have effect according to its terms as if—

(a) a provision of this Act authorised QCAT to issue the warrant and a police officer to execute it; and

(b) QCAT issued the warrant under that provision.

(8) Without limiting subsection (4), (5), (6) or (7), a reference in an Act to a decision, act or omission of QCAT is taken to include a reference to a decision, act or omission of a former tribunal taken to be a decision, act or omission of QCAT under subsection (4).

(9) This section is subject to sections 272, 273 and 274.

(10) In this section—

prescribed interim decision, of a former entity, means—

(a) an order or injunction of the former entity that has effect for the duration of the proceeding or a shorter period; or

(b) a decision of the former entity requiring a person to pay an amount to someone else that is made before the end of the proceeding.

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272 Time limits

(1) If a former Act fixes a period for something to be done in relation to the existing proceeding, at the commencement the fixed period continues to apply to the doing of the thing in relation to the proceeding under this Act.

(2) Subsection (1) applies whether or not this Act, an enabling Act or the rules state a shorter or longer period for the doing of the thing in relation to a proceeding of the same kind under this Act.

(3) However, QCAT may, on the application of a party to the proceeding or on its own initiative, extend or shorten the period fixed by the former Act to the extent the period could have been extended or shortened under the former Act by the former entity.

273 Withdrawal of existing proceeding

(1) If a former Act provides for the withdrawal of an existing proceeding, from the commencement the withdrawal may be made—

(a) by filing a notice of withdrawal in the registry; but

(b) if the former Act limits the circumstances or period within which the existing proceeding could have been withdrawn under the former Act—only if the withdrawal is within the limitations under the former Act.

(2) If a former Act does not provide for the withdrawal of an existing proceeding, the existing proceeding may be withdrawn by withdrawing the application or referral for the existing proceeding in the way stated in the rules for section 46(1) if—

(a) QCAT gives leave for the withdrawal; and

(b) the withdrawal is made before the matter the subject of the proceeding is heard and decided by QCAT.

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(3) If a person withdraws an existing proceeding, the person can not make a further application or referral, or request, require or otherwise seek a further referral, relating to the same facts or circumstances without leave of QCAT.

(4) In this section—

withdrawal, of an existing proceeding, includes withdrawal of an application or referral for the existing proceeding.

274 Related proceedings

(1) If a related proceeding for the existing proceeding has been started under a former Act—

(a) the related proceeding must be continued under the former Act until it is finished; and

(b) the person who was conducting the related proceeding under the former Act may continue to conduct it until it is finished; and

(c) the former Act continues to apply in relation to the related proceeding and the person conducting the related proceeding as if—

(i) for a former Act that has been repealed—the former Act were still in force; or

(ii) for another former Act—the QCAT Amendment Act had not been enacted.

(2) When the related proceeding is finished—

(a) it is taken to have been conducted under this Act as if this Act authorised or permitted the related proceeding to be conducted; and

(b) QCAT must deal with the result of the related proceeding in the way the former entity would have been required to deal with the result under the former Act if that Act were still in force.

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(3) QCAT may make the orders or directions necessary or convenient to facilitate dealing with the result of the related proceeding under subsection (2)(b).

(4) In this section—

related proceeding means a proceeding or other action taken in relation to an existing proceeding, and includes—

(a) mediation; and

(b) a pre-hearing conference (however named); and

(c) another alternative dispute resolution process; and

(d) an inquiry, examination or investigation.

Examples of inquiries or investigations—

- an independent inquiry under the repealed *Children Services Tribunal Act 2000*, part 5
- a medical examination under the repealed *Children Services Tribunal Act 2000*, sections 106 and 107
- an investigation under the repealed *Misconduct Tribunals Act 1997*, section 27

275 Inconsistencies and other difficulties

(1) If a provision of this Act or an enabling Act is inconsistent with QCAT's ability to perform a function under a former Act in relation to the proceeding, for the purpose of performing the function to the fullest extent practicable QCAT may disregard the inconsistent provision.

(2) Without limiting subsection (1), to the extent that this Act or an enabling Act does not provide or sufficiently provide for the transition from the application of the former Act to the application of this Act to the proceeding, QCAT has all necessary or convenient powers to provide for the transition, including by making an order or giving a direction about QCAT's practices, procedures or powers in relation to the proceeding.

(3) In making an order or giving a direction under subsection (2), QCAT must, so far as is practicable, ensure the order or

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direction does not cause prejudice or detriment to a party and causes the least inconvenience to QCAT and the parties.

(4) An order under subsection (2) has effect despite any Act or law.

(5) QCAT may make an order or give a direction under subsection (2) on the application of a party to the proceeding or on its own initiative.

(6) QCAT's powers under subsection (2) are exercisable only by a judicial member.

Part 5 Other transitional provisions

276 Information notices

(1) This section applies in relation to a reviewable decision made before the commencement if—

(a) immediately before the commencement, a person could, under a former Act, have applied for a review of the decision by, or appeal against the decision to, a former tribunal or continuing entity; and

(b) at the commencement—

(i) the person has not made the application or appeal; and

(ii) the period within which the application or appeal could have been made under the former Act has not passed.

(2) The person who made the decision (the ***decision-maker***) must give the person mentioned in subsection (1)(a) a written notice stating the following—

(a) the decision;

(b) the reasons for the decision;

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Note—

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

(c) from the commencement, the person has a right to have the decision reviewed by QCAT under this chapter;

(d) how, and the period within which, the person may apply for the review;

(e) any right the person has to have the operation of the decision stayed under this chapter.

(3) The decision-maker is taken to have complied with subsection (2) if, before the commencement, the decision-maker gave the person a written notice stating the matters mentioned in subsection (2)(a) to (e).

(4) Subsection (3) applies whether or not the written notice was combined with a written notice given under the former Act stating the person's right, before the commencement, to have the decision reviewed by, or to appeal against the decision to, a former tribunal or continuing entity.

(5) A failure to comply with subsection (2) does not affect the validity of the reviewable decision.

(6) In this section—

reviewable decision means a decision of a kind that, if it were made after the commencement, would be a reviewable decision to which section 157 applies.

277 Initial rules

Section 224(2) does not apply to the rules made under this Act commencing at the commencement.

277A The chief executive may approve forms for limited period

(1) The chief executive may, during the prescribed period, approve forms for use under this Act.

(2) This section is not limited by section 241.

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(3) In this section—

prescribed period means the period—

(a) starting on the day this section commences; and

(b) ending 3 months after the day section 241 commences.

Chapter 8 Validating provision for particular decisions by default

280 Declaration and validation concerning particular decisions by default

(1) Section 50, as amended by the amending Act, is taken always to have applied during the transitional period in relation to a non-legal costs decision by default.

(2) In this section—

amending Act means the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*.

non-legal costs decision by default means a decision by default, relating to a minor civil dispute, that does not include an amount for legal costs.

transitional period means the period starting at the beginning of 1 December 2009 and ending at the end of the day before the commencement of this section.

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Chapter 9 Transitional and validation provisions for Justice and Other Legislation Amendment Act 2010

282 Validation relating to dual appointments

(1) This section applies to the purported appointment, at any time before the commencement of this section, of a person as an ordinary member and an adjudicator.

(2) The purported appointment is taken to be, and to have always been, as valid as if section 206A had been in force at the time of the appointment.

(3) Every decision, order or declaration made or direction given by the person is taken to be, and to have always been, as valid as if section 206A had been in force at the time the decision, order or declaration was made or the direction was given.

Chapter 10 Other transitional and validation provisions

Part 1 Transitional provision for Civil Proceedings Act 2011

284 Application of Civil Proceedings Act 2011

The *Civil Proceedings Act 2011*, section 239 applies, and is taken on and from 30 November 2011 to have applied, to the hearing of a proceeding that was started but not finished before 30 November 2011.

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Part 2 Transitional provisions for Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2019

285 Definitions for part

In this part—

motor vehicle see the *Motor Dealers and Chattel Auctioneers Act 2014*, section 12.

motor vehicle matter means—

(a) an action under a provision mentioned in the *Fair Trading Act 1989*, section 50 relating to a motor vehicle; or

(b) a claim for repair of a defect in a motor vehicle under the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 1, section 13 or 14.

relevant Act means—

(a) for an action under a provision mentioned in the *Fair Trading Act 1989*, section 50—the *Fair Trading Act 1989*; or

(b) for a claim for repair of a defect in a motor vehicle under the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 1, section 13 or 14—the *Motor Dealers and Chattel Auctioneers Act 2014*.

286 Existing motor vehicle matters before the tribunal

(1) This section applies in relation to—

(a) a motor vehicle matter that, on the commencement, is the subject of a proceeding before the tribunal exercising its original jurisdiction; or

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(b) a motor vehicle matter that is the subject of a decision of the tribunal exercising its original jurisdiction made before the commencement, if, on the commencement—

(i) an appeal against the decision has started before a relevant appeal entity but has not been finally dealt with; or

(ii) the period within which an appeal against the decision may be started before a relevant appeal entity has not passed.

(2) This Act and the relevant Act, as unamended, continue to apply in relation to the matter as if the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2019* had not been enacted.

(3) Without limiting subsection (2), the tribunal and the relevant appeal entity—

(a) must deal with the matter under this Act as unamended; and

(b) have, and only have, functions under this Act or the relevant Act, as unamended, in relation to the matter.

(4) In this section—

relevant appeal entity means the appeal tribunal or the Court of Appeal.

unamended, in relation to this Act or a relevant Act, means as in force before the commencement.

287 Existing motor vehicle matters if proceeding not started

(1) This section applies if—

(a) immediately before the commencement, a person could have started a proceeding before the tribunal exercising its original jurisdiction for a motor vehicle matter within a particular period (the ***prescribed period***); and

(b) on the commencement, the person has not started a proceeding before the tribunal for the matter.

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(2) A proceeding for the matter may be started under this Act, as amended—

(a) within the prescribed period; and

(b) in the way the proceeding could be started if the matter had arisen after the commencement.

(3) If a proceeding for the matter is started under this Act—

(a) this Act and the relevant Act, as amended, apply in relation to the matter; and

(b) the tribunal must deal with the matter under this Act, as amended, and has, and only has, functions under this Act or the relevant Act, as amended, in relation to the matter.

(4) This section applies despite the *Acts Interpretation Act 1954*, section 20.

(5) In this section—

amended, in relation to this Act or a relevant Act, means as in force on the commencement.

288 Additional jurisdiction for existing motor vehicle matters if proceeding not started

(1) This section applies to a motor vehicle matter arising before the commencement if—

(a) the tribunal did not have jurisdiction to hear and decide the matter immediately before the commencement; and

(b) the tribunal would have jurisdiction to hear and decide the matter if the matter had arisen after the commencement; and

(c) immediately before the commencement, a person could have started a proceeding before a court for the matter within a particular period (the ***prescribed period***); and

(d) on the commencement, the person has not started the proceeding.

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(2) The tribunal has jurisdiction to deal with the matter under this Act.

(3) A proceeding for the matter may be started under this Act—

(a) within the prescribed period; and

(b) in the way the proceeding could be started if the matter had arisen after the commencement.

(4) If a proceeding for the matter is started under this Act, the tribunal must deal with the matter under this Act and has, and only has, functions under this Act or the relevant Act in relation to the matter.

(5) This section applies despite the *Acts Interpretation Act 1954*, section 20.

289 Transfer of particular tenancy matters

(1) This section applies in relation to a relevant tenancy matter the subject of a proceeding before the tribunal exercising its original jurisdiction if, on the commencement, the tribunal has not made its final decision in the proceeding.

(2) The relevant tenancy matter is transferred to the relevant court.

(3) The proceeding for the matter is taken to have been started before the court when it was started before the tribunal.

(4) The tribunal may make the orders or give the directions it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under an Act or other law for starting a proceeding before the court.

(5) An order under subsection (4) has effect despite any other Act or law.

(6) In this section—

relevant court means the court having the lowest monetary limit to its jurisdiction that is not less than the amount or other relief sought.

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relevant tenancy matter means a tenancy matter for which a person seeks the payment of an amount or other relief of a value greater than the prescribed amount.

Part 3 Transitional provision for Justice and Other Legislation Amendment Act 2023

290 Existing associates to senior members

(1) This section applies to a person who, immediately before the commencement, held an appointment under the *Public Sector Act 2022* as an associate to a senior member.

(2) From the commencement—

(a) the person's appointment as an associate to the senior member continues on the same terms that applied immediately before the commencement; and

(b) despite section 212A, the person continues to be a public service employee under the *Public Sector Act 2022*.

Part 4 Validation

291 Failure of member to take or make oath

(1) This section applies in relation to a person who—

(a) was appointed to the office of supplementary member during the relevant period; and

(b) did not take or make the prescribed oath before performing a function of the office.

(2) It is declared that, despite section 228, a relevant exercise of jurisdiction by the member is, and always has been, as valid as it would be or would have been had the member taken or

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made the prescribed oath before performing a function of the office.

(3) In this section—

prescribed oath means the oath prescribed under section 228(2).

relevant exercise of jurisdiction means an exercise of the jurisdiction, powers and functions conferred on a supplementary member by or under any law of the State (including the making of any decision or order) by the member during the relevant period.

relevant period means the period from 1 February 2017 to 15 May 2024.

Part 5 Transitional provision for Respect at Work and Other Matters Amendment Act 2024

292 Retrospective operation of amended s 237

(1) Amended section 237 is taken to have always applied in relation to the performance of a protected person's functions.

(2) The rights and liabilities of a protected person in relation to the performance of a function of the protected person before the commencement are the same, and are taken to have always been the same, as they would be or would have been if amended section 237 had been in force at the time of the performance of the function.

(3) However, subsections (1) and (2) do not apply for the purposes of a proceeding against a protected person started before the introduction day.

(4) In this section—

amended section 237 means section 237 as amended by the *Respect at Work and Other Matters Amendment Act 2024*.

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introduction day means the day the Bill for the *Respect at Work and Other Matters Amendment Act 2024* was introduced into the Legislative Assembly.

protected person means an officer or other person on whom protection and immunity is conferred under section 237(1) to (6).

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Schedule 1 Former tribunals

section 244, definition *former tribunal*

1 the Anti-Discrimination Tribunal established under the *Anti-Discrimination Act 1991*, section 247, as in force before the commencement of this schedule

2 the Children Services Tribunal established under the repealed *Children Services Tribunal Act 2000*, section 8

3 the Commercial and Consumer Tribunal established under the repealed *Commercial and Consumer Tribunal Act 2003*, section 6

4 the Teachers Disciplinary Committee established under the *Education (Queensland College of Teachers) Act 2005*, section 124, as in force before the commencement of this schedule

5 a panel of referees convened under the *Fire and Rescue Service Act 1990*, section 104SC, as in force before the commencement of this schedule

6 the Fisheries Tribunal established under the *Fisheries Act 1994*, section 185, as in force before the commencement of this schedule

7 the Guardianship and Administration Tribunal established under the *Guardianship and Administration Tribunal Act 2000*, section 81, as in force before the commencement of this schedule

8 the Health Practitioners Tribunal established under the *Health Practitioners (Professional Standards) Act 1999*, section 26, as in force before the commencement of this schedule

9 the Legal Practice Tribunal continued in existence under the *Legal Profession Act 2007*, section 599, as in force before the commencement of this schedule

10 an appeal tribunal formed under the *Local Government Act 1993*, section 942, as in force before the commencement of this schedule

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11 a misconduct tribunal established under the repealed *Misconduct Tribunals Act 1997*, section 11

12 the Nursing Tribunal as continued under the *Nursing Act 1992*, section 84, as in force before the commencement of this schedule

13 the Racing Appeals Tribunal established under the *Racing Act 2002*, section 150, as in force before the commencement of this schedule

14 a retail shop lease tribunal appointed under the *Retail Shop Leases Act 1994*, section 66A or 90, as in force before the commencement of this schedule

15 a small claims tribunal constituted under the repealed *Small Claims Tribunals Act 1973*, section 11

16 a surveyors disciplinary committee established under the *Surveyors Act 2003*, section 94, as in force before the commencement of this schedule

17 a committee appointed under the *Valuers Registration Act 1992*, section 50, as in force before the commencement of this schedule

18 the Veterinary Tribunal of Queensland constituted under the *Veterinary Surgeons Act 1936*, section 15A, as in force before the commencement of this schedule

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Schedule 2 Subject matter for rules

section 224

1 Functions of principal registrar and registrars

The functions of the principal registrar and registrars.

2 Divisions and lists of the tribunal

(1) Establishing divisions of the tribunal and lists within the divisions.

(2) Operational and procedural matters about the lists within the divisions of the tribunal.

3 Constitution of the tribunal

(1) Constitution of the tribunal for particular classes of matters.

(2) The hearing and deciding of matters by an adjudicator.

4 Starting proceedings

(1) Applications or referrals to the tribunal, including, for example—

(a) the form of the application or referral; and

(b) the way applications or referrals by groups of individuals or businesses are to be made.

(2) Bringing proceedings against a person who carries on a business under a name other than the person's own name, whether or not the name is—

(a) registered on the register established and maintained under the *Business Names Registration Act 2011* (Cwlth), section 22; or

(b) held under the *Business Names Registration Act 2011* (Cwlth), section 54; or

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(c) held under the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.

(3) The conditions that may be imposed on the acceptance of an application or referral under chapter 2, part 3, including, for example—

(a) requiring that notice of the application or referral be given to a stated person in a stated way; and

(b) requiring that the application or referral be amended in a stated way and the amended application or referral be filed in the registry within a stated period.

5 Transfers of matters and appeals

Matters to be taken into account for, and the regulation of—

(a) the transfer of a matter from the tribunal to another tribunal, a court or another entity under section 52; or

(b) the transfer of an appeal from the appeal tribunal to the Court of Appeal under section 144.

6 Representation

(1) How a party that is not an individual may appear before the tribunal.

(2) Parties who may be represented by someone else in a proceeding.

(3) Persons who are disqualified from representing a party to a proceeding.

Note—

See section 224(3) for who may be disqualified from representing a party to a proceeding.

7 Service of notices or other documents

(1) Additional persons who must be given a notice or other document under this Act or an enabling Act.

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(2) The period within which a notice or document must be given.

(3) The way a notice or document must or may be given, including substituted service.

(4) Exemption from the requirement to give a copy of an application or referral to a particular person.

8 Responses to applications

Responses to an application or referral to the tribunal, including—

(a) restrictions on the making of responses for particular classes of matters; and

(b) the way a response must be made, including, for example, the way a response to a proceeding brought against a person under a name other than the person's own name must be made; and

(c) the period within which a response must be made.

9 Ending proceedings early

(1) Ending a proceeding or a part of a proceeding early, including, for example, the following—

(a) withdrawal of an application or referral;

(b) withdrawal of a response to an application or referral;

(c) dismissal or striking out of a proceeding or a part of a proceeding, or deciding of a proceeding early, including how an application for the dismissal, striking out or decision must be made;

(d) decisions by default, including how an application for a decision by default must be made;

(e) agreements to settle arising out of a compulsory conference or mediation;

(f) offers to settle and acceptance of offers to settle.

(2) Rules under subsection (1)(a) may provide for the following—

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(a) the applicant giving written notice of the withdrawal to other parties to the proceeding;

(b) tribunal orders requiring the applicant to pay all, or a part of, the costs of other parties to the proceeding;

(c) refunding fees for the application or referral.

10 Documents or evidence to be filed or produced

(1) Documents required to be filed in the registry before a compulsory conference, mediation or a hearing of a proceeding.

(2) Documents or evidence required to be produced at a compulsory conference, mediation or a hearing of a proceeding.

11 Disclosure

Disclosure by parties and non-parties, including disclosure and inspection of documents.

12 Evidence

The taking of evidence, including—

(a) the way evidence may be given (including the use of technology); and

(b) notices to attend and produce documents; and

(c) statements and the use of correspondence; and

(d) alternative ways the tribunal may inform itself; and

(e) calling witnesses.

13 Compulsory conferences

Compulsory conferences generally, including—

(a) the way a compulsory conference must be conducted; and

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(b) confidentiality agreements.

14 Mediation

Mediation generally, including—

(a) the persons who are appropriate to be a mediator by reference to qualifications and experience; and

(b) the way mediation must be conducted; and

(c) confidentiality agreements.

14A Conciliation

Conciliation generally, including—

(a) the persons who are appropriate to be a conciliator by reference to qualifications and experience; and

(b) the way conciliation must be conducted; and

(c) confidentiality agreements.

15 Reserved decisions

The period for which the tribunal may reserve its decision in a proceeding.

16 Hearings

(1) The way an expedited hearing must be conducted.

(2) The form or content of notices of a hearing.

17 Costs

Costs generally, including—

(a) additional circumstances for which costs may be awarded; and

(b) the way costs are to be assessed, including by reference to a scale of costs; and

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(c) the way security for a party's costs must be given and the way the security must be dealt with if the tribunal makes an order requiring the party to pay all or a part of the costs of another party.

18 Renewing final decision

Practices and procedure for renewing the tribunal's final decision in a proceeding under chapter 2, part 7, division 5, including, the period within which, and the way, a party to a proceeding may apply to the tribunal for a renewal of the final decision.

19 Correcting mistakes

Correcting mistakes under section 135, including the way, and the period within which, a party may apply to the tribunal to make the correction.

20 Reopening proceedings

Practices and procedure for hearing and deciding a proceeding that has been reopened under chapter 2, part 7, division 7, including—

(a) the period within which, and the way, a party to a proceeding may apply to the tribunal for the proceeding to be reopened; and

(b) the period within which a party to a proceeding may make written submissions in response to an application of another party for the proceeding to be reopened.

21 Appeals

(1) Giving of leave to appeal.

(2) Appeals generally, including the way they must be heard.

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22 Applying court rules about contempt

The application of the *Uniform Civil Procedure Rules 1999* to the tribunal punishing a contempt under section 219, including changes to the rules to apply them to the tribunal.

23 Register of proceedings

The register of proceedings kept under section 229, including—

(a) the form and content of the register; and

(b) procedures for inspecting the register or obtaining copies of a part of the register.

24 Electronic transmissions etc.

Filing, receipt, service, issue or transmission electronically of approved forms and other documents and material for use in, or in connection with, proceedings, including electronic representations or equivalents of seals, stamps and signatures and their validity.

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Schedule 3 Dictionary

section 8

adjudicator means—

(a) a person appointed as an adjudicator under section 198; or

(b) a person who is an adjudicator under section 198A.

appeal tribunal means the tribunal constituted, or to be constituted, under section 165 for the purpose of—

(a) hearing and deciding an appeal against—

(i) a decision of the tribunal; or

(ii) a decision of another entity under an enabling Act for which the enabling Act confers appeal jurisdiction on the tribunal; or

(b) deciding an application for leave to appeal against a decision mentioned in paragraph (a)(i) or (ii).

applicant means—

(a) for an application or a proceeding to be started on application—the person who makes the application; or

(b) for a referral or a proceeding to be started on referral—

(i) the person who makes the referral; or

(ii) if the enabling Act under which the referral is made states another person is the applicant for the referral or proceeding—the person stated in the enabling Act.

application means an application to the tribunal under this Act or an enabling Act.

assessor means an assessor appointed under section 110.

Australian lawyer has the meaning given by the *Legal Profession Act 2007*.

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child means an individual under 18 years.

commencement, for chapter 7, see section 244.

compulsory conference means a compulsory conference under chapter 2, part 6, division 2.

conciliator means a person who conducts conciliation under this Act.

constitute, the tribunal—

(a) in relation to a member—means to constitute the tribunal whether by sitting alone or with other members; or

(b) in relation to an adjudicator—means to constitute the tribunal by sitting alone.

consumer means an individual—

(a) who buys or hires goods other than—

(i) for resale or letting on hire; or

(ii) in a trade or business carried on by the individual; or

(iii) as a member of a business partnership; or

(b) for whom services are supplied for fee or reward other than—

(i) in a trade or business carried on by the individual; or

(ii) as a member of a business partnership; or

(c) who is or was the tenant of premises let to the individual as a dwelling other than for—

(i) assigning or subletting the premises to someone else; or

(ii) a trade or business carried on by the individual.

continuing entity, for chapter 7, see section 244.

contract includes all agreements, whether written or oral.

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cost-amount decision means a decision of the tribunal about the amount of costs fixed or assessed by it under section 107.

costs order means an order awarding costs.

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.

deal with, a matter, includes hear and decide the matter.

decision, of the tribunal—

(a) means—

(i) an order made or direction given by the tribunal; or

(ii) the tribunal's final decision in a proceeding; and

(b) for chapter 7—see section 244.

decision by default, in relation to an application made under section 50(2) or 50A(2) claiming a debt, liquidated demand of money or unliquidated damages, means an order in favour of the applicant for the debt, liquidated demand or unliquidated damages claimed.

decision-maker, for a reviewable decision, see section 17(2).

deputy president means the deputy president of the tribunal.

enabling Act—

(a) generally—see section 6(2); or

(b) for chapter 7—see section 244.

existing court proceeding, for chapter 7, see section 244.

existing proceeding, for chapter 7, see section 244.

existing tribunal proceeding, for chapter 7, see section 244.

final decision, of a former tribunal or a court in a proceeding, for chapter 7, see section 244.

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final decision, of the tribunal in a proceeding—

(a) means the tribunal's decision that finally decides the matters the subject of the proceeding; and

(b) for chapter 2, part 7, division 4—see section 129.

former Act, for chapter 7, see section 244.

former acting judge or member means a person who has acted as a Supreme Court judge, District Court judge or member of the Land Court.

former entity, for chapter 7, part 4, see section 270.

former judge means—

(a) a former Supreme Court judge or District Court judge; or

(b) a former judge of a court of the Commonwealth or another State other than a magistrates court of another State.

former tribunal, for chapter 7, see section 244.

function includes power.

goods includes everything that is the subject of trade or manufacture or merchandise.

hearing, for chapter 2, part 7, division 7, see section 137.

impaired capacity has the meaning under the *Guardianship and Administration Act 2000*.

judicial member—

(a) means—

(i) the president; or

(ii) the deputy president; or

(iii) a supplementary member who is a Supreme Court judge, District Court judge or member of the Land Court; and

(b) for the exercise of a power of the tribunal to make an order or give a direction—includes a senior member or ordinary member who is a former judge or former acting

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judge or member and is nominated by the president to exercise the power; and

(c) includes a senior member or ordinary member who is a former judge or former acting judge or member and is nominated by the president to constitute the tribunal for a matter or class of matters.

judicial registrar means a person who is a judicial registrar under the *Magistrates Act 1991*.

legally qualified member means—

(a) a judicial member; or

(b) an ordinary member or supplementary member who is a magistrate; or

(c) a senior member or ordinary member who is an Australian lawyer of at least 6 years standing.

Magistrates Court staff member means—

(a) the clerk of a Magistrates Court; or

(b) a person employed in the registry of a Magistrates Court.

mediator means a person who conducts mediation under this Act.

member—

(a) generally—means a member of the tribunal under section 171; or

(b) for chapter 7—see section 244.

minor civil dispute—

1 *Minor civil dispute* means—

(a) a claim to recover a debt or liquidated demand of money of up to the prescribed amount; or

(b) a claim arising out of a contract between a consumer and trader, or a contract between 2 or more traders, that is—

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(i) for payment of money of a value not more than the prescribed amount; or

(ii) for relief from payment of money of a value not more than the prescribed amount; or

(iii) for performance of work of a value not more than the prescribed amount to rectify a defect in goods supplied or services provided; or

(iv) for return of goods of a value not more than the prescribed amount; or

(v) for a combination of any 2 or more claims mentioned in subparagraphs (i) to (iv) where the total value of the combined claim is not more than the prescribed amount; or

(c) a claim for an amount of not more than the prescribed amount for damage to property caused by, or arising out of the use of, a vehicle; or

(d) a tenancy matter; or

(e) a claim that is the subject of a dispute under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, chapter 2 and is for an amount not more than the prescribed amount; or

(f) a matter in relation to which a person may, under the *Building Act 1975*, chapter 8, part 2A apply to the tribunal for an order.

Note—

A matter mentioned in paragraph (f) would relate to part of a barrier for a swimming pool along a common boundary.

2 However, if an enabling Act confers jurisdiction on the tribunal to deal with a claim (however called) within the meaning of paragraph 1(a), the claim is not a minor civil dispute unless the enabling Act expressly states it is a minor civil dispute.

3 A claim mentioned in paragraph 1(b) does not include a claim in a proceeding to which the *Fair Trading Act 1989*, section 50A applies.

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4 A claim mentioned in paragraph 1(a) does not include a claim under the *Fair Work Act 2009* (Cwlth), section 539.

Note—

See the *Fair Work Act 2009* (Cwlth), section 539 for the conferral of jurisdiction on eligible State or Territory courts in relation to the contravention of civil remedy provisions under that Act. In relation to Industrial Magistrates Courts, see the *Industrial Relations Act 2016*, chapter 11, part 3, division 4. In relation to Magistrates Courts, see the *Magistrates Courts Act 1921*.

monetary decision means a decision of the tribunal in a proceeding requiring a person to pay an amount to someone else, whether or not the decision is, or is a part of, the tribunal's final decision in the proceeding.

non-publication order means—

(a) an order under section 66; or

(b) a confidentiality order under the repealed *Adoption of Children Act 1964*, section 36M(1); or

(c) a confidentiality order under the *Adoption Act 2009*, section 307N(1); or

(d) a confidentiality order under the *Child Protection Act 1999*, section 99ZD(1); or

(e) a non-publication order or confidentiality order under the *Guardianship and Administration Act 2000*; or

(f) an order under the *Legal Profession Act 2007*, section 656D(1) or (4).

official means—

(a) a member; or

(b) an adjudicator; or

(c) a conciliator; or

(d) a mediator; or

(e) an assessor; or

(f) the chief executive; or

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(g) the principal registrar; or

(h) a registrar.

ordinary member means an ordinary member of the tribunal.

outside Queensland includes in a foreign country.

pending proceeding, for chapter 7, see section 245.

perform a function includes exercise a power.

prescribed amount means $25000.

prescribed fee means a fee prescribed under a regulation.

president means the president of the tribunal.

presiding member see section 170.

principal registrar means the principal registrar of the registry.

proceeding—

(a) generally—means a proceeding before the tribunal, including an appeal before the appeal tribunal and a proceeding relating to an application for leave to appeal to the appeal tribunal; or

(b) for chapter 7—see section 244.

QCAT, for chapter 7, see section 244.

QCAT Amendment Act, for chapter 7, see section 244.

QCAT matter, for chapter 7, see section 244.

referral means a referral of a matter to the tribunal under this Act or an enabling Act.

registry see section 207.

registry staff member means a member of the administrative staff of the registry other than the principal registrar or a registrar.

reopening ground, for a party to a proceeding, means—

(a) the party did not appear at the hearing of the proceeding and had a reasonable excuse for not attending the hearing; or

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(b) the party would suffer a substantial injustice if the proceeding was not reopened because significant new evidence has arisen and that evidence was not reasonably available when the proceeding was first heard and decided.

reviewable decision see section 17(2).

rules means rules made under section 224.

rules committee means the rules committee established under section 223.

senior member means a senior member of the tribunal.

State agency means—

(a) the State, a Minister or a person representing the State; or

(b) a government entity within the meaning of the *Government Owned Corporations Act 1993* or the chief executive of a government entity; or

(c) a local government or a chief executive officer of a local government; or

(d) a statutory authority or another entity established under an Act or the holder of a statutory office.

supplementary member means a supplementary member of the tribunal.

tenancy matter means a matter in relation to which a person may, under the *Residential Tenancies and Rooming Accommodation Act 2008*, apply to the tribunal for a decision.

the tribunal means the Queensland Civil and Administrative Tribunal established under section 161.

Note—

See also section 165.

trader—

1 A *trader*—

(a) means a person who in trade or commerce—

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(i) carries on a business of supplying goods or providing services; or

(ii) regularly holds himself, herself or itself out as ready to supply goods or to provide services of a similar nature; and

(b) includes a person who is or was the landlord of premises let to a tenant as a dwelling other than for—

(i) assigning or subletting the dwelling to someone else; or

(ii) a trade or business carried on by the tenant.

2 However, a person is not a trader in relation to goods or services if in supplying the goods or providing the services—

(a) the person acts in the exercise of a discipline that is not ordinarily regarded as within the field of trade or commerce; or

(b) the person is giving effect to the instructions of someone else who in providing the instructions acts in the exercise of a discipline that is not ordinarily regarded as within the field of trade or commerce, and the goods supplied or the services provided are in all respects in accordance with the instructions.

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