

South Australia

## South Australian Employment Tribunal Act 2014

An Act to establish a tribunal with jurisdiction to review certain decisions relating to rights or circumstances arising out of or in the course of employment; to confer powers on the tribunal; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Employment Tribunal Act 2014*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Interpretation

(1) In this Act, unless the contrary intention appears—

***appear***, at a hearing, means to appear in person or participate in a way allowed under this Act or a relevant Act;

***applicant*** means the person who—

- (a) brings a matter before the Tribunal; or
- (b) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal,

except to the extent that the regulations or the rules otherwise provide;

***conciliation officer*** means a person holding office as a conciliation officer of the Tribunal;

**decision**, of the Tribunal, includes a direction, determination or order of the Tribunal but, in prescribed circumstances, does not include an interlocutory direction, determination or order;

**decision-maker**—see section 27(2);

**Department** means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**Deputy President** means a Deputy President of the Tribunal;

**District Court** means the District Court of South Australia;

**evidentiary material** includes any document, object or substance of evidentiary value in proceedings before the Tribunal and includes any other document, object or substance that should, in the opinion of the Tribunal, be produced for the purpose of enabling the Tribunal to determine whether or not it has evidentiary value;

**Industrial Relations Court** means the Industrial Relations Court of South Australia;

**legally qualified member** means—

- (a) a Presidential member; or
- (b) a magistrate who is a member of the Tribunal; or
- (c) another member of the Tribunal who is a legal practitioner of at least 5 years standing;

**Magistrates Court** means the Magistrates Court of South Australia;

**monetary order** means an order of the Tribunal requiring the payment of money and includes—

- (a) an order made for the payment of a fine or other pecuniary penalty; and
- (b) an order as to the payment of any costs; and
- (c) an order for the payment of compensation for breach of an Act;

**President** means the President of the Tribunal;

**Presidential member** means the President or a Deputy President of the Tribunal;

**registrar** means the Registrar or a Deputy Registrar of the Tribunal;

**relevant Act** means an Act which confers jurisdiction on the Tribunal;

**rules** means the rules of the Tribunal in force under this Act;

**Tribunal** means the South Australian Employment Tribunal established by this Act.

- (2) If under a relevant Act a person's failure or omission to do something is reviewable under this Act as a decision—
  - (a) this Act applies as if that person had made that decision; and
  - (b) any provision of the relevant Act as to when the decision is taken to have been made has effect.
- (3) The members of the staff of the Tribunal are—
  - (a) the registrars; and

- (b) the other members of staff appointed or made available for the purposes of the Tribunal under this Act.
- (4) The officers of the Tribunal are—
  - (a) the registrars; and
  - (b) members of the staff of the Tribunal who are designated as officers of the Tribunal by the Registrar of the Tribunal; and
  - (c) other persons who are designated as officers of the Tribunal under this Act.

#### **4—Relevant Acts prevail**

If there is an inconsistency between this Act and a relevant Act, the relevant Act prevails to the extent of the inconsistency.

## **Part 2—South Australian Employment Tribunal**

### **Division 1—Establishment of Tribunal**

#### **5—Establishment of Tribunal**

The *South Australian Employment Tribunal* is established.

#### **6—Jurisdiction of Tribunal**

- (1) The Tribunal has the jurisdiction conferred by statute.
- (2) Without limiting subsection (1), if a provision of an Act enables an application, referral or appeal to be made to the Tribunal, or a claim to be brought before the Tribunal, the Act will be taken to confer jurisdiction on the Tribunal to deal with the matter concerned.

#### **7—Tribunal to operate throughout State**

- (1) The Tribunal is to facilitate access to its services throughout the State and may sit at any place (either within or outside the State).
- (2) Registries of the Tribunal will be at the places determined by the President after consultation with the Minister.

### **Division 2—Main objectives of Tribunal**

#### **8—Main objectives of Tribunal**

The main objectives of the Tribunal in dealing with matters within its jurisdiction are—

- (a) in the exercise of its jurisdiction, to promote the best principles of decision-making, including—
  - (i) independence in decision-making; and
  - (ii) natural justice and procedural fairness; and
  - (iii) high-quality, consistent decision-making; and

- (iv) transparency and accountability in the exercise of statutory functions, powers and duties; and
- (b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and
- (c) to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and
- (d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- (e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- (f) to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and
- (g) to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

## **Division 3—Members of Tribunal**

### **Subdivision 1—The members**

#### **9—The members**

The members of the Tribunal are—

- (a) the President; and
- (b) the Deputy President or Deputy Presidents; and
- (c) the magistrates who are designated as members of the Tribunal under this Act; and
- (d) the conciliation officers.

### **Subdivision 2—The President**

#### **10—Appointment of President**

The Senior Judge of the Industrial Relations Court is the President of the Tribunal.

#### **11—President's functions generally**

- (1) The President of the Tribunal has the functions conferred on the President under this Act or any other Act.
- (2) The functions of the President include—
  - (a) participating as a member of the Tribunal; and
  - (b) having primary responsibility for the administration of the Tribunal; and

- (c) managing the business of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions; and
  - (d) providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal; and
  - (e) giving directions about the practices and procedures to be followed by the Tribunal; and
  - (f) developing and implementing performance standards and setting benchmarks for the Tribunal; and
  - (g) being responsible for promoting the training, education and professional development of members of the Tribunal; and
  - (h) overseeing the proper use of the resources of the Tribunal; and
  - (i) providing advice about—
    - (i) the membership of the Tribunal; and
    - (ii) the operations and activities of the Tribunal.
- (3) The President may do all things necessary or convenient to be done in the performance of the President's functions.
- (4) In the performance of the President's functions, the President is not subject to direction or control by the Minister.

## **12—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 office, the Governor may, by proclamation, appoint a Deputy President to act as President of the Tribunal.
- (2) Until an appointment is made under subsection (1) (or unless such an appointment is made) the most senior Deputy President who is also a Judge of the Industrial Relations Court will be taken to hold an appointment to act as President of the Tribunal.
- (3) 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 related to this Act or a relevant Act.

## **Subdivision 3—The Deputy Presidents**

### **13—Appointment of Deputy Presidents**

- (1) A Judge (other than the Senior Judge) of the Industrial Relations Court is a Deputy President of the Tribunal.
- (2) The Governor may, on the nomination of the Minister, appoint a person who is eligible for appointment as a Judge of the Industrial Relations Court to be a Deputy President of the Tribunal.
- (3) A person may be appointed under subsection (2) on a permanent or acting basis.

- (4) A person appointed as a Deputy President of the Tribunal under subsection (2) ceases to hold that office if the person—
  - (a) dies; or
  - (b) reaches the age of 70 years; or
  - (c) in the case of a Deputy President appointed on an acting basis—completes the term of appointment and is not reappointed; or
  - (d) resigns by written notice given to the Minister; or
  - (e) is removed from office by the Governor for—
    - (i) misconduct; or
    - (ii) neglect of duty; or
    - (iii) incompetence; or
    - (iv) incapacity to carry out official duties satisfactorily.
- (5) A Deputy President appointed under subsection (2) is entitled to remuneration allowances and expenses on a basis approved by the Governor.
- (6) This section does not derogate from the operation of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*.

#### **14—Deputy President's functions generally**

- (1) A Deputy President of the Tribunal has the functions conferred on the Deputy President under this Act or any other Act.
- (2) The functions of a Deputy President include—
  - (a) participating as a member of the Tribunal; and
  - (b) assisting the President in the management of the business of the Tribunal; and
  - (c) assisting the President in managing the members of the Tribunal, including in connection with the training, education and professional development of members of the Tribunal; and
  - (d) other functions assigned by the President.
- (3) A Deputy President may do all things necessary or convenient to be done in the performance of the Deputy President's functions.
- (4) A Deputy President is subject to the direction of the President in performing the Deputy President's functions, other than adjudicating in the Tribunal.

#### **Subdivision 4—Magistrates**

##### **15—Magistrates**

- (1) Any magistrate holding office under the *Magistrates Act 1983* who is designated by the Governor, by proclamation, as a member of the Tribunal on a recommendation of the Attorney-General will (while he or she continues to hold office as a magistrate) be a member of the Tribunal.
- (2) The Attorney-General must consult with the President of the Tribunal and the Chief Magistrate before making a recommendation under subsection (1).

- (3) A magistrate appointed under this section will act as a full-time, part-time or sessional member of the Tribunal under an arrangement established by the President and the Chief Magistrate (being an arrangement that may be varied from time to time).
- (4) The designation of a magistrate under this section does not affect—
  - (a) the magistrate's tenure of office or status as a magistrate; or
  - (b) the payment of the magistrate's salary or allowances as a magistrate; or
  - (c) the ability of the person from doing anything in the person's capacity as a magistrate; or
  - (d) any other right or privilege that the magistrate has as a magistrate.

## **Subdivision 5—Conciliation officers**

### **16—Appointment of conciliation officers**

- (1) The Governor may, on the recommendation of the Minister, appoint a person as a conciliation officer.
- (2) The Minister may from time to time appoint a panel of persons who will, at the request of the Minister—
  - (a) after consultation with the President, recommend the selection criteria for conciliation officers;
  - (b) assess a candidate or candidates for appointment as a conciliation officer (and, as appropriate, to provide advice to the Minister for the purposes of subsection (1)).
- (3) A person is eligible for appointment as a conciliation officer only if the person—
  - (a) is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State); 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) In recommending persons for appointment as conciliation officers, the Minister must have regard to—
  - (a) any criteria applying under subsection (2)(a); and
  - (b) any advice provided under subsection (2)(b); and
  - (c) the following:
    - (i) the need for balanced gender representation in the membership of the Tribunal;
    - (ii) the need for the membership of the Tribunal to reflect social and cultural diversity;
    - (iii) the range of knowledge, expertise and experience required within the membership of the Tribunal.

- (5) The Minister must consult with the President of the Tribunal before making a recommendation under subsection (1).
- (6) A conciliation officer will be appointed for a term of office, not exceeding 5 years, specified in the instrument of appointment.
- (7) A person appointed as a conciliation officer is eligible for reappointment at the expiration of a term of office (and without the need for seeking advice from a panel established under subsection (2)).
- (8) A conciliation officer is appointed on conditions specified in the instrument of appointment.
- (9) A conciliation officer may be appointed on a full-time, part-time or sessional basis (and this may be altered from time to time with the agreement of the Minister).
- (10) A conciliation officer—
  - (a) must advise the President of the Tribunal of the nature of any paid employment or professional work undertaken outside his or her duties as a member of the Tribunal; and
  - (b) must not engage in any such employment or work if the President informs the member that, in the President's opinion, to do so would or may conflict with the proper performance of the member's duties of office.
- (11) The Minister must consult with the President about—
  - (a) the conditions of an appointment under subsection (8); and
  - (b) the basis of an appointment under subsection (9).

### **17—Conciliation officer ceasing to hold office and suspension**

- (1) The Governor may, on the recommendation of the Minister, remove a conciliation officer from office for—
  - (a) misconduct; or
  - (b) neglect of duty; or
  - (c) incompetence; or
  - (d) incapacity to carry out official duties satisfactorily.
- (2) A person ceases to be a conciliation officer if the person—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the Tribunal; or
  - (e) is removed from office under subsection (1).
- (3) The Minister must consult with the President before making a recommendation under subsection (1).

- (4) The President may, on his or her own initiative or at the request of the Minister, suspend a conciliation officer from office if it appears that there may be grounds for the removal of the member from the member's office.
- (5) If a conciliation officer who is appointed on a full-time or part-time basis is suspended under subsection (4), the member remains entitled to the member's usual remuneration and allowances during the period of suspension.

## **18—Supplementary conciliation officers**

- (1) The Minister may, at the request or with the agreement of the President of the Tribunal, temporarily appoint a person to act as a supplementary conciliation officer in relation to a particular matter or matters or for a specified period.
- (2) The Minister may only appoint a person under this section if he or she is eligible for appointment as a conciliation officer.
- (3) An appointment under this section must be made in writing.
- (4) The person may act as a member of the Tribunal in relation to a matter, or for the period, for which the person is appointed, and when acting under the appointment the person is to be regarded as a conciliation officer for the purposes of this Act and any relevant Act (and the other provisions of this Subdivision apply with any necessary modifications in relation to a person appointed under this section).
- (5) A person appointed under this section is, for the period of appointment, entitled to be paid any salary or allowances determined by the Minister after consultation with the President of the Tribunal.
- (6) A person appointed under this section for a particular period may be appointed to act for a further period by the Minister after consultation with the President of the Tribunal.
- (7) The Governor may at any time, on the recommendation of the Minister, cancel the appointment of a person under this section.
- (8) Before the Governor acts under subsection (7), the Minister must consult with the President of the Tribunal (unless the Minister is acting at the request of the President).

## **Division 4—Constitution of Tribunal and its decision-making processes**

### **19—Constitution of Tribunal**

- (1) Subject to this section, the President may determine, in relation to a particular matter or matters, or particular classes of matters, which member or members of the Tribunal will constitute the Tribunal.
- (2) The Tribunal is not to be constituted by more than 3 members.
- (3) A Full Bench of the Tribunal consists of 3 Presidential members.
- (4) The President may, as he or she thinks fit—
  - (a) alter who is to constitute the Tribunal for the purpose of dealing with a matter, or anything relating to a matter, and the Tribunal as constituted after the alteration can have regard to any record of the proceedings of the Tribunal in relation to the matter before the alteration or any evidence taken in the proceedings before the alteration;

- (b) provide that different aspects of the same matter may be dealt with by different members of the Tribunal, and the members of the Tribunal may then come together and have regard to any evidence taken by the respective members of the Tribunal for the purposes of the proceedings of the Tribunal.
- (5) In addition, the Tribunal may be constituted of—
  - (a) a registrar for the purpose of adjourning proceedings; or
  - (b) a registrar or other member of the staff of the Tribunal for any other purpose specified by this Act or a relevant Act, prescribed by the rules of the Tribunal, or determined by the President.
- (6) The Tribunal may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.
- (7) The Tribunal may, if it considers it appropriate to do so, organise its business and regulate proceedings before the Tribunal in such a way that 2 or more proceedings in respect of the same matter are heard together.
- (8) Where a registrar or other member of the staff of the Tribunal exercises the jurisdiction of the Tribunal, the registrar or other member of the staff may, and must if the Tribunal or the President of the Tribunal so directs, refer the matter to the Tribunal for determination by the Tribunal.
- (9) If a provision of this Act and the provisions of a relevant Act deal with the manner in which the Tribunal is to be constituted for the purposes of proceedings or any other business under a relevant Act, this section applies subject to those provisions of the relevant Act.

## **20—Who presides at proceedings of Tribunal**

- (1) If, for dealing with a particular matter, the Tribunal is constituted by 2 or more members, the most senior of them is to preside at the proceedings of the Tribunal.
- (2) The seniority of members of the Tribunal depends on which of the offices held takes precedence and, if that does not determine a member's seniority, the matter is to be resolved by the President of the Tribunal.
- (3) The order of precedence of offices is as follows:
  - (a) President;
  - (b) Deputy President;
  - (c) magistrate;
  - (d) conciliation officer.

## **21—Decision if 2 or more members constitute Tribunal**

If the Tribunal is constituted by 2 or more members, a question they are required to decide is resolved, unless section 22 applies, according to the opinion of the majority of them but, if their opinions on the question are equally divided, the question is to be resolved according to the opinion of the presiding member.

## **22—Determination of questions of law**

- (1) The member of the Tribunal constituting the Tribunal or, if the Tribunal is constituted by 2 or more members, the presiding member, may refer a question of law to a Full Bench of the Tribunal.
- (2) If a question of law is referred under this section—
  - (a) the question is decided by the Tribunal according to the opinion of the Full Bench of the Tribunal; or
  - (b) the Full Bench may refer the question to the Supreme Court for decision by the Full Court of the Supreme Court.
- (3) If a Full Bench of the Tribunal decides a question of law under subsection (2), the Full Bench may, in addition—
  - (a) decide any other questions remaining between the parties; and
  - (b) make such orders that are necessary to dispose of the matter.

## **Division 5—Related matters**

### **23—Streams**

Without limiting any other provisions, the President of the Tribunal may, in order to facilitate the expeditious conduct of its proceedings, and the proper and effective resolution of matters before the Tribunal, establish various streams or lists that reflect the areas of jurisdiction of the Tribunal or the classes of matters that may come before the Tribunal.

### **24—Validity of acts of Tribunal**

An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in the membership of, or a defect in the appointment of a person to, the Tribunal or a panel from which members of the Tribunal are drawn, or a defect in the appointment of any other person to act on behalf of the Tribunal.

### **25—Disclosure of interest by members of Tribunal**

If the Tribunal is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's functions in proceedings before the Tribunal, the member—

- (a) must disclose the interest to the parties to the proceedings and to the President of the Tribunal; and
- (b) must not take part in the proceedings or exercise powers affecting the proceedings—
  - (i) if the President directs the member to withdraw from the proceedings; or
  - (ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

## 26—Delegation

- (1) The President of the Tribunal may delegate a function or power of the President under this or any other Act—
  - (a) to another member of the Tribunal; or
  - (b) to a member of the staff of the Tribunal; or
  - (c) to the person (being either a member of the Tribunal or a member of the staff of the Tribunal) for the time being performing particular duties or holding or acting in a particular position.
- (2) A delegation under subsection (1)—
  - (a) must be made by instrument in writing; and
  - (b) may be conditional; and
  - (c) does not derogate from the ability of the President to act in any matter; and
  - (d) is revocable at will by the President.

## Part 3—Exercise of jurisdiction

### 27—General nature of proceedings

- (1) Subject to a relevant Act, a matter that comes before the Tribunal will be dealt with as a review of the decision that constitutes the matter.
- (2) Where the review of a decision is to be undertaken, the person or body that made or is taken to have made the decision is the *decision-maker* for the purposes of these provisions.
- (3) Subject to subsections (4), (5) and (6), the Tribunal will examine the decision of the decision-maker by way of rehearing.
- (4) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to the decision of the original decision-maker.
- (5) A procedure on a rehearing will include—
  - (a) an examination of the evidence or material before the decision-maker (unless any such evidence or material is to be excluded under another provision of this Act or under any other law); and
  - (b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.
- (6) In exercising its jurisdiction, the Tribunal is to deal with a matter in accordance with this Act and the relevant Act.
- (7) Furthermore, the relevant Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's jurisdiction.

### 28—Decision-maker must assist Tribunal

- (1) In proceedings for a review of a decision, the decision-maker 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 and in any event within the time prescribed by the regulations:
  - (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) The decision-maker must, in providing any document or thing under subsection (2), take reasonable steps to identify the documents or things that were taken into account in making the relevant decision.
- (4) If the Tribunal considers that 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.
- (5) 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.
- (6) The decision-maker must comply with a notice given under subsection (4) or (5) within the period stated in the notice.
- (7) A requirement under this section that the decision-maker give the Tribunal information or a document or thing applies despite any provision in another Act prohibiting or restricting the disclosure of the information or the information contained in the document or thing.
- (8) The Tribunal may examine any document or thing provided under this section and draw any conclusions of fact it considers proper.

## **29—Effect of review proceedings on decision being reviewed**

- (1) The commencement of proceedings for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless—
  - (a) the relevant Act states otherwise; or
  - (b) an order is made under subsection (2).
- (2) On or after the commencement of proceedings for a review of a decision, the Tribunal or the decision-maker may, on application or on its own initiative, make an order staying or varying the operation or the implementation of the whole or a part of the decision pending the determination of the matter, or until such time (whether before or after the determination of the matter) as the Tribunal or the decision-maker may specify, if the Tribunal, or the decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.
- (3) An order by the Tribunal or the decision-maker under this section—
  - (a) is subject to such conditions as are specified in the order; and
  - (b) may be varied or revoked—
    - (i) in any case—by further order of the Tribunal; or

- (ii) if the order was made by the decision-maker—by further order by the decision-maker or the Tribunal.

### **30—Decision on review**

- (1) The Tribunal may, on a review of a decision—
  - (a) affirm the decision that is being reviewed; or
  - (b) vary the decision that is being reviewed; or
  - (c) set aside the decision being reviewed and—
    - (i) substitute its own decision; or
    - (ii) send the matter back to the decision-maker for reconsideration in accordance with any directions or recommendations that the Tribunal considers appropriate,

and, in any case, may make any order the Tribunal considers appropriate (including any interim order pending the reconsideration and determination of the matter by the decision-maker, or any ancillary or consequential order, that the Tribunal considers appropriate).

- (2) The fact that a decision is made on reconsideration under subsection (1)(c)(ii) does not prevent the decision from being open to review by the Tribunal.
- (3) The decision-maker's decision as affirmed or varied by the Tribunal or a decision that the Tribunal substitutes for the decision-maker's decision—
  - (a) is to be regarded as, and given effect as, a decision of the decision-maker; and
  - (b) unless the relevant Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect, from the time when the decision reviewed would have, or would have had, effect.
- (4) Without limiting subsection (3)(a), the decision-maker has power to do anything necessary to implement the Tribunal's decision.
- (5) Despite subsection (3)(a), the decision as affirmed, varied or substituted is not again open to review before the Tribunal as a decision of the decision-maker (but may be subject to appeal under this Act).

### **31—Tribunal may invite decision-maker to reconsider decision**

- (1) At any stage of proceedings for the review of a decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) On being invited by the Tribunal to reconsider the decision, the decision-maker may—
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute a new decision.
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceedings for a review are withdrawn, the proceedings will then be taken to be for—
  - (a) the review of the decision as varied; or

- (b) the review of the substituted decision.
- (4) The Tribunal may specify a period within which the decision-maker should act under this section (and if the decision-maker does not take action within that period then the Tribunal may resume its proceedings under this Part in such manner as it thinks fit).

## **Part 4—Principles, powers and procedures**

### **Division 1—Principles governing hearings**

#### **32—Principles governing hearings**

- (1) On the hearing of any proceedings, but subject to the provisions of a relevant Act—
  - (a) the procedure of the Tribunal will, subject to this Act, be conducted with the minimum of formality; and
  - (b) the Tribunal is not bound by the rules of evidence, may adopt, as in its discretion it considers appropriate, any findings, decision or judgment of a court or other tribunal (insofar as may be relevant to the proceedings before the Tribunal), and may otherwise inform itself as it thinks fit; and
  - (c) the Tribunal must act according to equity, good conscience and the substantial merits of the case and without regard to legal technicalities and forms.
- (2) Nothing in this Act affects any rule or principle of law relating to—
  - (a) legal professional privilege; or
  - (b) "without prejudice" privilege; or
  - (c) public interest immunity.
- (3) This section does not limit the operation of section 64.

### **Division 2—Evidentiary powers**

#### **33—Power to require person to give evidence or to produce evidentiary material**

- (1) The Tribunal may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence or to produce evidentiary material (or both).
- (2) A summons to produce evidentiary material may, instead of providing for production of the material before the Tribunal, provide for production of the material to an officer of the Tribunal, or to any person nominated in the summons.
- (3) The Tribunal may—
  - (a) retain any document, object or substance produced before it for such reasonable period as it thinks fit, and make copies of any document; and
  - (b) require a person to make an oath or affirmation (which may be administered by any member or officer of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; and

- (c) require any person to answer any questions put by any member of the Tribunal or any person appearing before the Tribunal that are determined by the Tribunal to be relevant to the proceedings before the Tribunal.
- (4) A person who is called to give evidence or to produce evidentiary material before the Tribunal and—
  - (a) refuses or fails to make an oath or affirmation when required to do so under this section; or
  - (b) refuses or fails without reasonable excuse to produce evidentiary material that the person is required by the Tribunal to produce; or
  - (c) refuses or fails without reasonable excuse to appear before the Tribunal in response to a summons; or
  - (d) refuses or fails without reasonable excuse to give evidence before the Tribunal or otherwise refuses or fails without reasonable excuse to answer any question put in proceedings before the Tribunal or otherwise required under this Act; or
  - (e) gives false or misleading evidence to the Tribunal; or
  - (f) misbehaves before the Tribunal, wilfully insults the Tribunal or 1 or more members or officers of the Tribunal in the exercise of official duties, or wilfully interrupts the proceedings of the Tribunal,

is guilty of an offence.

Maximum penalty: \$25 000 or imprisonment for 1 year.

- (5) A summons under this section may be issued on behalf of the Tribunal by—
  - (a) any member of the Tribunal; or
  - (b) a registrar; or
  - (c) any other officer authorised under the rules or by the President of the Tribunal to issue such summonses.

### **34—Entry and inspection of property**

- (1) A member of the Tribunal may enter any land or building and carry out any inspection that the Tribunal considers relevant to any proceedings before the Tribunal.
- (2) A member of the Tribunal may authorise an officer of the Tribunal to enter any land or building and carry out an inspection that the member considers relevant to any proceedings before the Tribunal.
- (3) A person who obstructs a member of the Tribunal, or a person authorised by the Tribunal, in the exercise of a power of entry or inspection under this section is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 6 months.

### **35—Expert reports**

- (1) The Tribunal may refer any question arising in any proceedings for investigation and report by an expert in the relevant field.
- (2) The Tribunal must seek submissions from the parties to the proceedings before making a reference under this section.

- (3) A person to whom a question is referred under this section becomes an officer of the Tribunal and may exercise such powers of the Tribunal as the Tribunal delegates.
- (4) The Tribunal may adopt a report obtained under this section in whole or in part (or may reject it).
- (5) Any action taken under subsection (4) does not prevent the Tribunal from making a further reference to an expert.
- (6) The Tribunal may order a party to pay or contribute to the costs of an expert's investigation and report under this section.

## **Division 3—Procedures**

### **36—Practice and procedure generally**

- (1) The Tribunal is to take measures that are reasonably practicable—
  - (a) to ensure that the parties to any proceedings have a reasonable opportunity to understand the nature of the matter under consideration; and
  - (b) to ensure that the parties to any proceedings understand the nature of any assertions made in the proceedings and the legal implications of those assertions; and
  - (c) to explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal, or any decision or ruling made by the Tribunal; and
  - (d) to ensure that the parties have the opportunity in any proceedings to be heard or otherwise have their submissions received.
- (2) The Tribunal—
  - (a) is to take all practicable steps to ensure that all relevant material is disclosed to the Tribunal so as to enable it to determine all the relevant facts in issue in any proceedings; and
  - (b) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument; and
  - (c) may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases; and
  - (d) may require a document to be served outside the State; and
  - (e) may adjourn any proceedings at any time and to any place (including for the purpose of enabling the parties to negotiate a settlement or for the purpose of reconsideration of a decision by the decision-maker); and
  - (f) may proceed to hear and determine proceedings in the absence of a party.
- (3) To the extent that the practice or procedure of the Tribunal is not prescribed by or under this Act or a relevant Act, it is to be as the Tribunal determines.

### **37—Directions for conduct of proceedings**

- (1) The Tribunal may give directions at any time in any proceedings and do whatever is necessary for the speedy and fair conduct of the proceedings.

- (2) The Tribunal may give directions on its own initiative or at the request of a party.
- (3) A directions hearing may be held for the purposes of this section before any other hearing in any proceedings.
- (4) The Tribunal may give a direction requiring a party to produce a document or other material, or to provide information, to the Tribunal or another party.

### **38—Consolidating and splitting proceedings**

- (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts or circumstances—
  - (a) be consolidated into 1 proceeding; or
  - (b) remain as separate proceedings but be heard and determined together.
- (2) If proceedings are consolidated, evidence given in the consolidated proceedings is admissible in relation to matters involved in either of the proceedings that were consolidated.
- (3) The Tribunal may direct—
  - (a) that any aspect of any proceedings be heard and determined separately;
  - (b) that proceedings commenced by 2 or more persons jointly be split into separate proceedings.

### **39—More appropriate forum**

The Tribunal may, at any time, make an order striking out all, or any part, of any proceedings if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court, or any other person.

### **40—Dismissing proceedings on withdrawal or for want of prosecution**

- (1) The applicant in any proceedings may withdraw or agree to the withdrawal of the proceedings or a part of the proceedings.
- (2) Unless otherwise provided by the rules, an applicant can only act under subsection (1) with the leave of the Tribunal.
- (3) The Tribunal may make an order dismissing or striking out all, or any part, of any proceedings if the applicant withdraws or agrees to the withdrawal of the proceedings or that part of it.
- (4) At any time, the Tribunal may make an order dismissing or striking out all, or any part, of any proceedings for want of prosecution.
- (5) The Tribunal's power to make an order under subsection (4) is exercisable only by a legally qualified member of the Tribunal.
- (6) The Tribunal may make an order under this section on the application of a party or on its own initiative.

### **41—Frivolous, vexatious or improper proceedings**

- (1) This section applies if the Tribunal believes that a proceeding—
  - (a) is frivolous, vexatious, misconceived or lacking in substance or involves a trivial matter or amount; or

- (b) is being used for an improper purpose; or
  - (c) is otherwise an abuse of process.
- (2) If this section applies, the Tribunal may order that the proceeding be dismissed or struck out and may make any related or ancillary order.
- (3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.
- (4) If a proceeding is dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a Presidential member.

#### **42—Proceedings being conducted to cause disadvantage**

- (1) This section applies if the Tribunal believes that a party to any proceedings is conducting the proceedings in a way that unnecessarily disadvantages another party to the proceedings by conduct such as—
  - (a) failing to comply with an order or direction of the Tribunal without reasonable cause; or
  - (b) failing to comply with this Act or a relevant Act; or
  - (c) asking for an adjournment the need for which is attributable to a failure described in paragraph (a) or (b); or
  - (d) attempting to deceive another party or the Tribunal; or
  - (e) vexatiously conducting the proceedings; or
  - (f) failing to attend any hearing in the proceedings.
- (2) If this section applies, the Tribunal may—
  - (a) if the party causing the disadvantage is the applicant, order that the proceedings be dismissed or struck out; and
  - (b) if the party causing the disadvantage is not the applicant—
    - (i) determine the proceedings in favour of the applicant and make any appropriate orders; or
    - (ii) order that the party causing the disadvantage be struck out of the proceedings.
- (3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.
- (4) If any proceedings are dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a Presidential member.

## Division 4—Conferences, mediation and settlement

### Subdivision 1—Conferences

#### 43—Compulsory conciliation conferences

- (1) The Tribunal may, at an initial directions hearing or at any other time, require parties to any proceedings to attend a compulsory conciliation conference (a *compulsory conference*).
- (2) The Tribunal must, if so required by the rules or a relevant Act, require parties to attend a compulsory conference.
- (3) However, subject to a relevant Act, the Tribunal may dispense with a conference in prescribed circumstances.
- (4) A conference must be commenced within the time fixed by the rules.
- (5) The purpose of a compulsory conference is to identify, clarify and narrow the issues in the proceedings and to promote the resolution of the matters by a settlement between the parties.
- (6) A compulsory conference may, at the discretion of the member of the Tribunal presiding at the conference, be adjourned or reconvened from time to time.
- (7) However, in any event, the proceedings constituting a compulsory conference should not run over a period exceeding 6 weeks (unless the member of the Tribunal presiding at the conference considers that good reasons exist that justify an extension of time for attempting to settle the matter).
- (8) If the period in which proceedings constituting a compulsory conference are conducted is extended beyond 6 weeks, the member of the Tribunal presiding at the conference must ensure that the good reasons justifying the extension of time are recorded on the file maintained by the Tribunal in relation to the matter and that a record of the reasons is issued to the parties.
- (9) Unless the member of the Tribunal presiding at the conference directs otherwise, a compulsory conference is to be held in private.
- (10) Subject to this section and except to the extent to which the rules may specify the procedure for a compulsory conference, the member of the Tribunal presiding at a compulsory conference may determine the procedure for the conference.
- (11) The member of the Tribunal presiding at a compulsory conference may—
  - (a) require a party to the proceedings to furnish particulars of his or her case;
  - (b) determine who, apart from the parties to the proceedings (and their representatives), may be present at the conference;
  - (c) subject to subsection (15), record any settlement reached at a conference and make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to a settlement;
  - (d) on his or her own initiative, close the conference at any time if, in his or her opinion, settlement cannot be reached;

- (e) advise the Tribunal if the conference does not reach a settlement within a reasonable time;
  - (f) permit a party to withdraw from the proceedings (and make any consequential order that is appropriate in the circumstances);
  - (g) determine a matter against any party who obstructs or delays the conference, fails to attend the conference, or fails to comply with a rule or order of the Tribunal and, in so doing, make any order as the member of the Tribunal thinks fit (including an order as to costs);
  - (h) do such other things as the rules of the Tribunal so provide.
- (12) Despite section 22, the member of the Tribunal presiding at a compulsory conference may not refer a question of law to a Full Bench of the Tribunal.
- (13) If settlement of a matter is not reached at a compulsory conference, the member of the Tribunal presiding at the conference—
- (a) must give to the parties an assessment of the merits of the party's case; and
  - (b) must seek to recommend ways to resolve any matter in dispute.
- (14) Evidence of anything said or done in the course of a compulsory conference under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.
- (15) The member of the Tribunal presiding at a compulsory conference—
- (a) must not accept a settlement that appears to be inconsistent with a relevant Act (but he or she may adjourn the proceedings to enable the parties to explore the possibility of varying the settlement to comply with a relevant Act); and
  - (b) may decline to accept a settlement on the basis that the settlement may materially prejudice any person who was not represented at the conference but who has a direct or material interest in the matter.
- (16) If the member of the Tribunal presiding at a conference is unable to continue with the conference, another member of the Tribunal may be appointed to continue and complete the conference.
- (17) Unless all parties to the proceedings agree to his or her continued participation, the member of the Tribunal who presided at the conference is disqualified from sitting as a member of the Tribunal for the purpose of hearing and determining the matter.
- (18) A registrar is expressly authorised to constitute the Tribunal for the purposes of this section.
- (19) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

#### **44—Referral of matters for hearing and determination**

If a compulsory conciliation conference under this Subdivision does not result in an agreed settlement of the matter, the member of the Tribunal presiding at the conference must refer the matter for hearing and determination.

## 45—Pre-hearing conferences

- (1) Before the Tribunal proceeds with the hearing of a matter, a pre-hearing conference must be held before a Presidential member of the Tribunal.
- (2) The Presidential member presiding at the conference—
  - (a) must—
    - (i) make an assessment of the matter; and
    - (ii) for the purpose of making the assessment—
      - (A) inquire into and consider the steps taken, and the steps that should be taken, to explore, or further explore, possible settlement of the matter (including referral of the matter to a Presidential member of the Tribunal for mediation); and
      - (B) seek to identify and narrow the issues in dispute; and
  - (b) may give such directions or orders as he or she considers appropriate.

## Subdivision 2—Mediation

### 46—Mediation

- (1) The Tribunal may, at an initial directions hearing, a compulsory conciliation conference or at any other time, refer the matter, or any aspect of the matter, for mediation by a person specified as a mediator by the Tribunal.
- (2) The person specified as a mediator must be a person who has been approved by the President of the Tribunal to act as a mediator.
- (3) The referral may be made with or without the consent of the parties.
- (4) The purpose of a mediation is to achieve the resolution of the matters by a settlement between the parties or, if a settlement is not achievable through this process, to further refine or narrow the issues in dispute.
- (5) The rules may specify how notice of the mediation is to be given, how the mediation is to be conducted, and the fees to be paid by a party to the mediation.
- (6) Unless the mediator directs otherwise, the mediation is to be held in private.
- (7) Subject to this section and except to the extent to which the rules may specify the procedure for a mediation, the mediator may determine the procedure for the mediation.
- (8) If the mediator is a member of the Tribunal and a settlement is reached at the mediation, the mediator may reduce the terms of the settlement to writing and make any determination or order (including an order under, or for the purposes of, a relevant Act) necessary to give effect to the settlement.
- (9) If a settlement is not reached at the mediation or the mediator is not a member of the Tribunal, the mediator is to report on the outcome of the mediation to the Tribunal as constituted when it made the referral.
- (10) Any settlement under this section—
  - (a) must not be inconsistent with a relevant Act; and

- (b) may be rejected by the Tribunal on the basis that the settlement may materially prejudice any person who has not participated in the mediation but who has a direct or material interest in the matter.
- (11) Evidence of anything said or done in the course of a mediation under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.
- (12) If the mediator is a member of the Tribunal, the member cannot take any further part in dealing with the proceedings after the mediation, unless all parties to the proceedings agree to his or her continued participation.
- (13) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

### **Subdivision 3—Settling proceedings**

#### **47—Settling proceedings**

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

### **Division 5—Parties**

#### **48—Parties**

- (1) A person is a party to proceedings before the Tribunal if the person is—
  - (a) the applicant; or
  - (b) in the case of proceedings involving the review of a decision—the decision-maker; or
  - (c) without limiting a preceding paragraph, a respondent to an application before the Tribunal, a person against whom a claim is made by proceedings brought before the Tribunal, or a party to a dispute before the Tribunal; or
  - (d) a person joined in the proceedings by order of the Tribunal; or
  - (e) a person lawfully intervening in the proceedings; or
  - (f) a person specified by another provision of this Act or a relevant Act to be a party to the proceedings.
- (2) Subsection (1) applies subject to any provision or exclusion made by the rules of the Tribunal.
- (3) In any proceedings where a decision-maker is a party, the official description rather than the personal name of the decision-maker is to be used so far as is practicable.

#### **49—Person may be joined as party**

- (1) The Tribunal may order that a person be joined as a party to proceedings before the Tribunal if the Tribunal considers that—
  - (a) the person should be bound by, or have the benefit of, a decision of the Tribunal in the proceedings; or
  - (b) the person's interests are affected by the proceedings; or
  - (c) for any other reason it is desirable that the person be joined as a party.
- (2) The Tribunal may make an order under this section—
  - (a) on the application of any person or on its own initiative; and
  - (b) without notice to the person to whom the order relates.

#### **50—Intervening**

- (1) The Attorney-General may, on behalf of the State, intervene in any proceedings before the Tribunal at any time.
- (2) The Tribunal may give leave at any time for any other person to intervene in proceedings before the Tribunal on conditions, if any, that the Tribunal thinks fit.

### **Division 6—Representation**

#### **51—Representation**

- (1) A party to proceedings before the Tribunal is entitled to appear (subject to the provisions of a relevant Act)—
  - (a) personally; or
  - (b) by counsel; or
  - (c) with the leave of the Tribunal and subject to the rules—by other representative.
- (2) Unless otherwise determined by the Tribunal, a person appearing before the Tribunal may be assisted by another person as a friend.
- (3) A person may not act as a representative in proceedings before the Tribunal if—
  - (a) the person is a legal practitioner whose practising certificate has been suspended; or
  - (b) the person's name has been struck off the roll of legal practitioners; or
  - (c) the person would be acting in any other manner that is inconsistent with disciplinary proceedings that have been taken under the *Legal Practitioners Act 1981*.

### **Division 7—Costs**

#### **52—Costs**

- (1) Unless otherwise specified in this Act, a relevant Act, or an order of the Tribunal under this section, parties bear their own costs in any proceedings before the Tribunal.

- (2) Unless otherwise specified in a relevant Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party, or of a person required to appear before the Tribunal or to produce evidential material, if the Tribunal thinks that it is appropriate to do so after taking into account—
  - (a) the main objectives of the Tribunal that are relevant to simplifying proceedings and issues before the Tribunal and to keeping costs to parties in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
  - (b) the need to ensure that proceedings are fair and that parties are not disadvantaged by proceedings that have little or no merit; and
  - (c) any provision made by the rules; and
  - (d) any other matter considered relevant by the Tribunal.
- (3) Without limiting subsection (2), if the Tribunal dismisses or strikes out any proceedings in any prescribed circumstances, the Tribunal should also make an order for costs against the party against whom the action is directed unless the Tribunal is of the opinion that there is a good reason for not making an order in the circumstances of the particular case.
- (4) If the Tribunal makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed and settled in accordance with the rules.

### **53—Costs—related matters**

- (1) The power of the Tribunal to make an order for the payment by a party of the costs of another party includes the power to make an order for the payment of an amount to compensate the other party for any expenses or loss resulting from any proceedings or matter.
- (2) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party, where the matter that is the subject of any proceedings comes within the Tribunal's review jurisdiction, the Tribunal is to have regard to—
  - (a) whether the party genuinely attempted to enable and assist the decision-maker to make a decision on its merits;
  - (b) whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.
- (3) The rules may deal with the effect of certain offers to settle, and the response, if any, to the offer, on the making of an order for the payment by a party of the costs of another party.
- (4) The Tribunal may order that the representative of a party, rather than the party, in the representative's own capacity compensate that or any other party for costs incurred because the representative acted in, or delayed, any proceedings in a way that resulted in unnecessary costs.

## **Division 8—Other procedural and related provisions**

### **54—Sittings**

The Tribunal will sit at such times and places as the President of the Tribunal may direct (including at different places at the same time).

### **55—Hearings in public**

- (1) Subject to this or any other Act, proceedings before the Tribunal must be heard in public.
- (2) The Tribunal may, where it is satisfied that it is desirable to do so—
  - (a) in the interest of justice; or
  - (b) by reason of the confidential nature of the evidence to be given before the Tribunal; or
  - (c) in order to expedite proceedings of the Tribunal; or
  - (d) for any other reason that the Tribunal thinks sufficient,give directions—
  - (e) requiring that a hearing, or part of a hearing, be held in private; or
  - (f) prohibiting or restricting the publication of the name and address of a witness appearing before the Tribunal; or
  - (g) prohibiting or restricting the publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or
  - (h) prohibiting or restricting the disclosure to some or all of the parties to proceedings before the Tribunal of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or
  - (i) excluding any person from the hearing before the Tribunal of any part of the proceedings.
- (3) A person must comply with a direction of the Tribunal under subsection (2).  
Maximum penalty: \$10 000.

### **56—Preserving subject matter of proceedings**

- (1) The Tribunal may, on such terms as appear just, make any order that may be necessary to preserve the subject matter of proceedings, or to otherwise protect the interests of a party, until questions arising in the proceedings have been finally determined.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by—
  - (a) a Presidential member of the Tribunal; or
  - (b) any other legally qualified member of the Tribunal who is authorised by the President of the Tribunal to make orders under this section.
- (3) The Tribunal may make the order on the application of a party or on its own initiative.

- (4) An order may be made under this section whether or not a person whose interests may be affected—
  - (a) is a party; or
  - (b) has been given an opportunity to be heard.
- (5) An order may be made under this section—
  - (a) for a specified period; or
  - (b) until a specified event or stage in the proceedings.
- (6) In making an order under this section, the Tribunal—
  - (a) may require an undertaking as to costs or damages as it considers appropriate; and
  - (b) may provide for the revocation of the order if specified conditions are met.
- (7) The Tribunal may assess any costs or damages referred to in subsection (6)(a) and any amount so assessed is recoverable as a debt in a court of competent jurisdiction.
- (8) The rules may place conditions on the Tribunal's power to make an order under this section.
- (9) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under a relevant Act to make an order in the nature of an injunction or interim injunction.

### **57—Security as to costs etc**

- (1) The Tribunal may order a party to proceedings before the Tribunal to give security for the payment of costs or to give an undertaking as to the payment of other monetary amounts that may be awarded against the party.
- (2) The security referred to in subsection (1) will be of such amount, and given at such time and in such manner and form, as the Tribunal directs.
- (3) The Tribunal may reduce or increase the amount of security ordered under subsection (1) to be given and may vary the time at which, or the manner or form in which, the security is to be given.
- (4) If security, or further security, or an undertaking, is not given in accordance with an order under this section, the Tribunal may order that the proceedings be dismissed (with costs), or that a determination (with costs) be made against the party.
- (5) The provisions of this section relating to security, or the giving of an undertaking, do not affect the operation of any provision made by or under a relevant Act or by the rules for or in relation to the furnishing of security, the giving of an undertaking or the imposition of costs.
- (6) A member of the Tribunal who is not a legally qualified member of the Tribunal may not make an order under this section except with the concurrence of a legally qualified member.

### **58—Interlocutory orders**

The Tribunal has power, in relation to matters within its jurisdiction, to make interlocutory orders.

## **59—Conditional, alternative and ancillary orders and directions**

- (1) The Tribunal may make orders and give directions on conditions the Tribunal considers appropriate.
- (2) The Tribunal may make orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.
- (3) The Tribunal may, when making an ancillary order, provide that a decision of the Tribunal is to be implemented by a person who is not a party to the relevant proceedings.

## **60—Special referees**

- (1) The Tribunal may refer any question arising in any proceedings to a special referee for the special referee—
  - (a) to decide the question; or
  - (b) to give his or her opinion in relation to it.
- (2) The Tribunal may adopt a special referee's decision or opinion, in whole or in part, or reject it.

## **61—Relief from time limits**

- (1) The rules may provide for the Tribunal to extend or abridge a time limit for doing anything in connection with any proceedings, or the commencement of any proceedings, even though the limit is imposed under this Act or a relevant Act.
- (2) The extension—
  - (a) may be authorised even though the time for complying has passed; and
  - (b) may be given on conditions specified by the Tribunal.

## **62—Electronic hearings and proceedings without hearings**

- (1) If the Tribunal thinks it appropriate, it may allow the parties and their representatives and any witnesses (or 1 or more of them) to participate in a hearing in any proceedings by means of telephone, video link, or any other system or method of communication.
- (2) If the Tribunal thinks it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing.
- (3) If the Tribunal acts under this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.

## **63—Completion of part-heard matters**

A person who ceases to hold office as a member of the Tribunal (other than on account of having his or her appointment revoked or being removed from office) may nevertheless continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard by the person when he or she ceased to hold that office.

## **64—Other claims of privilege**

- (1) A person is excused from answering a question or producing a document or other material in any proceedings if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
- (2) The Tribunal may require a person to produce a document or other material to it for the purpose of determining whether or not it is a document or material that the Tribunal has power to compel the person to produce.

## **65—Power to enlarge scope**

The Tribunal may, with the consent of all parties to proceedings, enlarge the scope of the proceedings to include questions that are not presently at issue in the proceedings.

# **Part 5—Review and appeals**

## **Division 1—Review and appeals**

### **66—Review of decision of conciliation officer or magistrate**

- (1) A decision of the Tribunal—
  - (a) constituted of a conciliation officer; or
  - (b) constituted of a magistrate; or
  - (c) constituted of 2 or 3 members (but not including a Presidential member),may be reviewed, on application under the rules, by a Presidential member of the Tribunal.
- (2) A Presidential member of the Tribunal may, on a review under this section—
  - (a) affirm the decision that is being reviewed; or
  - (b) vary the decision that is being reviewed; or
  - (c) set aside the decision that is being reviewed and—
    - (i) substitute his or her own decision; or
    - (ii) send the matter back to the member or members for reconsideration in accordance with any directions or recommendations that the Presidential member considers appropriate.

### **67—Appeal on question of law—single Presidential members**

- (1) An appeal lies on a question of law against a decision of the Tribunal—
  - (a) constituted of a single Presidential member; or
  - (b) constituted of 2 or 3 members including a Presidential member (other than a Full Bench),to a Full Bench of the Tribunal.
- (2) An appeal under this section must be commenced, heard and determined in accordance with the rules.

- (3) If an appeal is allowed, the Full Bench will endeavour to determine the matter for itself and will not remit the matter for re-hearing or reconsideration unless exceptional circumstances apply.
- (4) In exercising the power conferred by subsection (3), the Full Bench may draw inferences of fact from evidence taken at the original hearing and, in its discretion, hear further evidence on a question of fact.

## **68—Final appeal to Supreme Court**

- (1) Subject to subsection (2), an appeal lies on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court.
- (2) An appeal cannot be commenced under this section except with the permission of a Judge of the Supreme Court.
- (3) On an appeal to the Full Court of the Supreme Court under this section, the Full Court of the Supreme Court may—
  - (a) decide the question of law;
  - (b) refer the matter back to the Tribunal with directions the Full Court considers appropriate;
  - (c) make consequential or related orders (including orders for costs).

## **Division 2—Related matters**

### **69—Effect of appeal on decision**

- (1) The commencement of proceedings under this Part does not affect the operation of a decision to which the proceedings relate or prevent the taking of action to implement such a decision.
- (2) However, the Tribunal or the relevant court may make an order staying the operation of a relevant decision (including a decision of a relevant decision-maker) until the proceedings are finally decided (on such conditions as may be specified in the order).
- (3) The Tribunal or a court may act under subsection (2) on application or on its own initiative.
- (4) The Tribunal's power to act under subsection (2) is exercisable only by a Presidential member of the Tribunal.

### **70—Reservation of questions of law**

- (1) A Full Bench of the Tribunal may reserve any question of law arising in any proceedings (including on referral to the Full Bench) for determination by the Full Court of the Supreme Court.
- (2) If a question of law is reserved, the Supreme Court may determine the question and give any consequential orders or directions considered by the Court to be appropriate to the circumstances of the case.

## Part 6—Staff

### Division 1—Registrars

#### 71—Registrars

- (1) There is to be a principal registrar of the Tribunal (to be known as the *Registrar*).
- (2) There will be 1 or more other registrars of the Tribunal (to be known as *Deputy Registrars*).
- (3) A registrar will be appointed by the Governor on terms and conditions determined by the Governor for a term, not exceeding 5 years, specified in the instrument of appointment (and is, on the expiration of a term of office, eligible for reappointment).
- (4) The Governor may remove a person from the office of registrar for—
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (5) A person ceases to be a registrar if the person—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (4).
- (6) If there is a vacancy in the office of a registrar or a registrar is absent or for any other reason is unable to perform the duties of the office, the Minister may appoint a person to act in the relevant position.
- (7) The Minister must consult with the President of the Tribunal before an appointment is made under this section.
- (8) The office of the Registrar or of a Deputy Registrar may be held in conjunction with another office in the public service of the State or under any other Act.

#### 72—Functions of registrars

- (1) The functions of the Registrar are—
  - (a) to assist the President of the Tribunal in the administration of the Tribunal; and
  - (b) to be responsible for the registry and records of the Tribunal; and
  - (c) to undertake responsibility for the day-to-day case management of the Tribunal; and
  - (d) to constitute the Tribunal to the extent specified under this Act; and
  - (e) other functions assigned to the Registrar by the President or under the rules of the Tribunal.

- (2) The functions of a Deputy Registrar are—
- (a) to assist the Registrar in the performance of the Registrar's functions; and
  - (b) to constitute the Tribunal to the extent specified under this Act; and
  - (c) other functions assigned to the Deputy Registrar by the Registrar or under the rules of the Tribunal.
- (3) A registrar is, in the performance of any function or the exercise of any power, subject to the direction of the President of the Tribunal.

### **73—Delegation**

- (1) A registrar may delegate a function of the registrar under this Act—
- (a) to a particular person or committee; or
  - (b) to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A delegation under subsection (1)—
- (a) must be made by instrument in writing; and
  - (b) may be conditional; and
  - (c) does not derogate from the ability of the registrar to act in any matter; and
  - (d) is revocable at will by the registrar.

## **Division 2—Other staff of Tribunal**

### **74—Other staff of Tribunal**

There will be other staff of the Tribunal consisting of persons employed in a public sector agency and selected by the Registrar with the concurrence of the Chief Executive of the Department.

## **Division 3—Use of services or staff**

### **75—Use of services or staff**

The Tribunal may, by arrangement with the relevant body, make use of the facilities, staff or equipment of—

- (a) an administrative unit in the Public Service; or
- (b) the State Courts Administration Council; or
- (c) another public agency or authority; or
- (d) another tribunal or court.

## **Part 7—Miscellaneous**

### **76—Immunities**

- (1) A member of the Tribunal, mediator, expert or special referee has the same protections, privileges and immunities from liability as a Judge of the Supreme Court.

- (2) A member of the staff of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.
- (3) A person representing a party to proceedings before the Tribunal has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.
- (4) A party to proceedings before the Tribunal has the same protection and immunity as a party to proceedings in the Supreme Court.
- (5) A person who appears as a witness before the Tribunal or produces books, papers or documents to the Tribunal has the same protection as a witness in proceedings before the Supreme Court.
- (6) A person taking evidence on behalf of the Tribunal has, in doing so, the same protections, privileges and immunities as a member of the Tribunal.

### **77—Protection from liability for torts**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or a relevant Act as a member of the Tribunal or as a member of staff or an officer of the Tribunal.
- (2) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or a relevant Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

### **78—Protection for compliance with Act**

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

### **79—Alternative orders and relief**

Although a particular form of order or relief is sought by an applicant in proceedings before the Tribunal, the Tribunal may make any other form of order or grant any other form of relief that it considers more appropriate in the circumstances of the case.

### **80—Power to cure irregularities**

- (1) Where in proceedings before the Tribunal or a court on appeal it appears to the Tribunal or the court—
  - (a) that some irregularity has occurred affecting the proceedings or any matter to which the proceedings relate; and

- (b) that it would be conducive to the expeditious resolution of the questions of substance at issue between the parties if the powers conferred by this section were exercised,

the Tribunal or court may cure the irregularity by ordering that, subject to the fulfilment of such conditions as may be stipulated by the Tribunal or the court, a requirement of this Act, or of any other Act or law, be dispensed with to the extent necessary for the purpose.

- (2) An order under this section does not affect the rights or liabilities of persons who are not parties to the proceedings.

### **81—Correcting mistakes**

- (1) The Tribunal may correct a decision it gives or a statement of the reasons it has given for its decision to the extent necessary to rectify—
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or
  - (d) a defect of form.
- (2) The correction may be made—
  - (a) on a party's application made in accordance with the rules; or
  - (b) on the Tribunal's own initiative.

### **82—Tribunal may review its decision if person was absent**

- (1) In this section—

*relevant hearing*, in relation to a decision of the Tribunal, means a hearing at which the decision was made or which preceded the making of the decision but does not include a compulsory conciliation conference, a pre-hearing conference or mediation.
- (2) A person in respect of whom the Tribunal makes a decision may apply to the Tribunal for a review of the decision if the person did not appear and was not represented at a relevant hearing.
- (3) The application has to be made within the time limits specified by, and otherwise in accordance with, the rules.
- (4) The rules may limit the number of applications that can be made under this section in respect of the same matter without leave of the Tribunal.
- (5) If on hearing the application the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented at the relevant hearing, the Tribunal is to review the decision and may revoke or vary it if the Tribunal considers it appropriate to do so.
- (6) For the hearing of the application, the Tribunal is to be constituted by the members by whom it was constituted when it made the decision, if that is practicable.
- (7) A review under this section is part of the original proceedings.

### **83—Tribunal may authorise person to take evidence**

- (1) The Tribunal may authorise, in writing, a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal for the purposes of any proceedings.
- (2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by a Presidential member.
- (3) The Tribunal may authorise evidence to be taken under this section outside South Australia.
- (4) The Tribunal may give directions as to the taking of evidence under this section.
- (5) If a person other than a member of the Tribunal is authorised to take evidence, the person has all the powers of a member of the Tribunal in relation to the taking of evidence.
- (6) Evidence taken under this section—
  - (a) is to be regarded as having been given to the Tribunal; and
  - (b) if taken outside South Australia, is to be regarded as having been given in South Australia.

### **84—Miscellaneous provisions relating to legal process and service**

- (1) Any process of the Tribunal may be issued, served or executed on a Sunday as well as any other day.
- (2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.
- (3) If it is not practicable to serve any process, notice or other document relating to any proceedings in the manner otherwise prescribed or contemplated by law, the Tribunal may, by order—
  - (a) provide for service by post, or in any other way (including by substituted service) authorised by the regulations; or
  - (b) make any other provision that may be necessary or desirable for service.
- (4) Any process, notice or other document served in accordance with an order under subsection (3) will, despite any other law, be taken to have been duly served.
- (5) A registrar is expressly authorised to make an order under subsection (3).

### **85—Proof of decisions and orders of Tribunal**

An apparently genuine document purporting to be a copy of a decision or order of the Tribunal and to be certified as such by a registrar will be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a decision or order of the Tribunal.

### **86—Enforcement of decisions and orders of Tribunal**

- (1) If the Tribunal makes a monetary order, the amount specified in the order may be recovered in the appropriate court, by a person recognised by the regulations for the purposes of this subsection, as if it were a debt.

- (2) A person who contravenes or fails to comply with an order of the Tribunal (other than a monetary order) is guilty of an offence.  
Maximum penalty: \$50 000 or imprisonment for 2 years.
- (3) In this section—  
*appropriate court* means—
- (a) in relation to an order of the Tribunal that is a monetary order for an amount that does not exceed the amount that represents the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the Magistrates Court;
  - (b) in any other case—the District Court.

### **87—Accessibility of evidence**

- (1) Subject to this section, the Tribunal may, on application by any member of the public, allow the applicant to inspect or obtain a copy of—
- (a) any process relating to proceedings and forming part of the Tribunal's records;
  - (b) a transcript of evidence taken by the Tribunal in any proceedings;
  - (c) any documentary material admitted into evidence in any proceedings;
  - (d) any decision or order given or made by the Tribunal;
  - (e) any other material of a prescribed kind.
- (2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Tribunal:
- (a) material that was not taken or received in open court;
  - (b) material the disclosure of which would be contrary to a direction or order of the Tribunal given under another provision of this or any other Act;
  - (c) a photograph, slide, film, video tape, audio tape or other form of recording from which a visual image or sound can be produced;
  - (d) material of a class prescribed by the regulations.
- (3) The Tribunal may permit inspection or copying of material referred to in subsection (1) or (2) subject to any condition it considers appropriate, including a condition limiting the publication or use of the material.
- (4) A decision by the Tribunal on an application under this section is administrative and is final and not subject to any form of review.
- (5) The Tribunal may charge a fee, fixed by regulation, for inspection or copying of material under this section.

### **88—Costs of proceedings**

- (1) In this section—  
*costs of proceedings* means costs of, or incidental to, any proceedings of the Tribunal, other than the costs of a party.
- (2) The Tribunal may order that all or any of the costs of proceedings be paid by a party.

- (3) If the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal cannot make an order under this section against a party unless—
  - (a) the party brought or conducted the proceedings frivolously or vexatiously; or
  - (b) the Tribunal is acting in prescribed circumstances.

### **89—Annual report**

- (1) The President of the Tribunal must on or before 31 October in each year make a report to the Minister on the administration and operation of the Tribunal during the previous financial year.
- (2) The Minister must within 12 sitting days after receiving a report under this section cause copies of the report to be laid before both Houses of Parliament.
- (3) The report must include any information prescribed by the regulations.

### **90—Additional reports**

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

### **91—Disrupting proceedings of Tribunal**

- (1) A person who is present at a place where proceedings of the Tribunal are being conducted must not—
  - (a) wilfully interrupt any proceedings; or
  - (b) behave in a disorderly or offensive manner; or
  - (c) use offensive language.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (2) Nothing in this section derogates from the operation of another provision of this Act.
- (3) In this section—  
*offensive* includes threatening, abusive or insulting.

### **92—Rules**

- (1) Rules of the Tribunal may be made—
  - (a) regulating the business of the Tribunal and the duties of the various members and staff of the Tribunal; and
  - (b) authorising the registrars and other staff of the Tribunal to exercise powers with respect to proceedings before the Tribunal and providing for the internal review of specified classes of decisions in specified circumstances; and
  - (c) regulating the practice and procedure of the Tribunal; and
  - (d) imposing obligations on persons seeking to commence proceedings before the Tribunal to take any step, including to give a notification to another person or to provide any specified information; and
  - (e) providing for the service of applications and documents; and

- (f) imposing obligations on parties to proceedings before the Tribunal to disclose to each other the contents of expert reports or other material of relevance to the proceedings before or in connection with the hearing of the proceedings; and
  - (g) regulating the referral of a matter to mediation, the conduct of mediations or the referral of questions for investigation and report by an expert or referee; and
  - (h) regulating the form in which evidence may be taken; and
  - (i) restricting or prohibiting certain classes of persons from appearing as representatives in proceedings before the Tribunal; and
  - (j) providing for the Tribunal to waive any procedural requirement; and
  - (k) regulating costs and providing for the assessment and settling of costs; and
  - (l) providing for witness fees; and
  - (m) providing for other matters relating to the management, conduct or settlement of proceedings before the Tribunal; and
  - (n) dealing with any other matters necessary or expedient for the effective and efficient operation of the Tribunal.
- (2) The power to make rules under this section includes the power to make rules in respect of any jurisdiction conferred on the Tribunal by a relevant Act.
  - (3) Rules of the Tribunal may be made by the President and a Deputy President of the Tribunal after consultation with the Minister.
  - (4) The rules take effect from the date of publication in the Gazette or a later date specified in the rules.
  - (5) The rules must be consistent with the regulations, and with any relevant Act.

### **93—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or a relevant Act, or as are necessary or expedient for the purposes of this Act or a relevant Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) provide information to be included in registers to be kept for the purposes of this Act; and
  - (b) prescribe matters relevant to the practice or procedures of the Tribunal; and
  - (c) prescribe and provide for the payment of fees in relation to proceedings before the Tribunal; and
  - (d) prescribe penalties not exceeding \$5 000 for contravention of, or non-compliance with, any regulation; and
  - (e) make provisions of a saving or transitional nature consequent on the vesting of jurisdiction on the Tribunal under another Act.

- (3) The regulations may provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the President of the Tribunal or another prescribed person.
- (4) A regulation under subsection (2)(e) may (without limiting that subsection)—
  - (a) operate in addition to any saving or transitional provision enacted under another Act in connection with the vesting of jurisdiction in the Tribunal; and
  - (b) operate so as to modify the operation or effect of another Act insofar as may be expedient in connection with the transfer of jurisdiction to the Tribunal from another entity; and
  - (c) take effect from the day on which jurisdiction is vested in the Tribunal under another Act (including so as to provide for the retrospective operation of the regulations).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

| Year | No | Title  | Assent    | Commencement  |
|------|----|--|-----------|---|
| 2014 | 17 | <i>South Australian Employment Tribunal Act 2014</i>                           | 6.11.2014 | 1.1.2015 ( <i>Gazette 18.12.2014 p6869</i> ) except ss 5—9, 18—23, Pts 3—5, ss 79—89 & 91—1.7.2015 ( <i>Gazette 25.6.2015 p3076</i> ) |
| 2016 | 63 | <i>Statutes Amendment (South Australian Employment Tribunal) Act 2016</i>      | 8.12.2016 | Pt 2 (ss 4—41)—1.7.2017 ( <i>Gazette 16.5.2017 p1221</i> )  |
| 2017 | 16 | <i>South Australian Employment Tribunal (Miscellaneous) Amendment Act 2017</i> | 23.5.2017 | Pt 2 (s 4)—1.7.2017 immediately after Pts 8 & 20 of 63/2016 ( <i>Gazette 27.6.2017 p2620</i> )  |